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EXECUTIVE SUMMARY ON ACQUISITION OF SWISS RESIDENTIAL PROPERTIES

- **Acquisition of Swiss holiday properties by foreigners, not tax resident in Switzerland**

In principle foreigners who wish to acquire Swiss residential properties must obtain approval from the competent cantonal authority prior to their purchase, which will otherwise be invalid.

In fact, a foreigner may be authorised to purchase a holiday home in a place designated by the respective cantonal authorities as a holiday resort. Every authorisation must be deducted from the annual quota assigned to the cantons by the Federal government for holiday homes and hotel condominium units. The cantons and communities may apply their own restrictions which may be even more stringent and include personal usage time and living space limits. Furthermore, foreigners may only purchase property under their own name, and under no circumstances by a company. These regulations are provided by the so called “Lex Koller law”.

From a fiscal perspective, foreigners who are not tax resident in Switzerland are subject to **limited** taxation in Switzerland on their Swiss situs immovable assets which will trigger income and wealth taxation.

In particular foreign property owners are required to include in their Swiss tax return for federal, cantonal and communal income tax purposes a deemed rental value (determined by the competent cantonal authority) for the property they occupy themselves; mortgage interests and certain repairs and maintenance expenses are in principle considered as tax allowable deductions (each canton defines the terms and conditions). Nonetheless for the determination of tax rate which will apply for the taxation of the Swiss net taxable income, the worldwide income of the foreign taxpayer will be taken into account.

If the property is rented out (strong limitations apply), the taxable income is the actual rent received from the tenant and the same rules here above mentioned have to be taken into account.

For wealth tax purposes (taxation will occur at cantonal and communal level) the fiscal value of the property, as determined by the competent cantonal authority, will be taken into account and taxed with a tax rate that considers the worldwide movable and immovable wealth of the foreign taxpayer.

In Canton Ticino it is also levied an annual property tax of 1 ‰ at communal level on the fiscal value.

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Taxation of the Swiss property in the country of residence of the foreign taxpayer will depend upon whether a tax treaty has been concluded between Switzerland and that country. If such a treaty exists, in accordance with the OECD model convention, the sole right to tax real estate is granted to the country where the property is located (i.e. Switzerland).

- **Acquisition of Swiss residential properties by foreigners, tax resident in Switzerland**

Provided an individual as an EU / EFTA citizen has chosen to live in Switzerland and where she/he has its fiscal domicile he/she will be entitled to a B residence permit if the individual gives evidence of a minimum annual net income of approximately CH 60'000.- (for married couples). After 5 years' residence, albeit without any guaranteed entitlement, the foreign individual is eligible for a type C settlement permit. Holders of a B stay permit have the same rights as Swiss citizens resident in the country and therefore they have freedom to buy any property in Switzerland for their personal use as a primary residence, a second home and residential or commercial properties also for investment purposes.
Furthermore, please note that when moving to Switzerland, the property purchase transaction (by way of notarial deed) can take place even before the B permit is released but the entry in the cantonal Land Register – which definitely transfers the legal ownership – will occur provided the B permit is then obtained.

For non-EU / EFTA citizens the rules for the acquisition of a residence permit are stricter and subject to evidence of either relevant financial means or entrepreneurial activity that make the re-domiciliation of the applicant of interest for the Swiss canton of choice.
Holders of a B stay permit having their effective fiscal domicile in Switzerland only have freedom to buy and invest in properties once they have obtained the domicile/settlement permit C.
As a stay permit B holder the foreign national individual may purchase without authorization his/her primary residence to be used personally. The acquisition of an unusual large property as primary home requires a confirmation from the Cantonal authority.
A second home is only available for acquisition provided the individual with a stay permit B obtains an authorization form the authority.

From a fiscal perspective, tax residency is assumed if an individual either resides in Switzerland with the intention to permanently stay in Switzerland or stays in Switzerland, irrespective of temporary interruptions (a) for at least 30 days while pursuing an economic activity, or (b) for at least 90 days while not pursuing an economic activity. No tax residency is established by a person domiciled abroad and residing in Switzerland for the limited purposes of attending a school or medical treatment.

Swiss fiscal residency triggers income tax at federal, cantonal and municipal level on the basis of worldwide income (**unlimited taxation)**; however foreign sourced rental income is only taken into account to determine the applicable tax rate. For the special fiscal treatment of foreign individuals having opted for the favourable "lump sum taxation" see our technical news in our web site www.steimle-consulting.ch .

Furthermore, Cantons and municipalities levy wealth taxes on Swiss immovable net assets and worldwide movable net assets (market value of the assets less debt). The applicable tax rate is determined on the basis of the worldwide assets including foreign situs properties, but such foreign properties are then excluded from the taxable base.

As for foreigners not tax resident in Switzerland who occupy the property they own, the rental value of the Swiss property is used to determine the taxable income whereas the fiscal value of the Swiss property is used to determine the taxable wealth. Both are determined by the competent cantonal tax authority.

In Canton Ticino, as mentioned before, an annual property tax of 1 ‰ on the fiscal value is due.

- **Real estate capital gains tax**

All cantons levy real estate capital gains tax on the gains realised in connection with the sale of Swiss real property. The applicable tax rate varies greatly depending on the canton and depending on the duration of the holding of the property. In order to prevent speculation, short-term holding triggers increased taxation. In Canton Ticino the tax rate applicable to real estate capital gains varies between 4% (for holding > 30 years) and 31% (for holding < 1 year).

Majority shareholdings in property holding companies are also subject to real property capital gains tax as the share transfer constitutes an economic transfer of ownership of the property.

Further, the sale of real property in principle triggers the real estate transfer tax at cantonal and communal level.

For further information on the above, please do not hesitate to contact us