THE MOST IMPORTANT 15 QUESTIONS TO ASK ABOUT THE *FORFAIT* IN SWITZERLAND

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INTRODUCTION

For many decades, the *forfait* taxation regime has been in effect in Switzerland, essentially allowing foreign nationals relocating to Switzerland to pay tax based on their worldwide living expenses.

The *forfait* regime is often mentioned alongside the soon-to-be former U.K. and non-dom regime and the Italian regime available to new residents. By comparison, the *forfait* regime, coupled with other advantages of the Swiss tax system, is more beneficial on many counts, such as legal certainty and inheritance tax.

Although the *forfait* regime was abolished locally in a number of cantons, a national vote was held in November 2014 with close to 60% of the voters voting in favor. It is fair to say that in most of Switzerland, the *forfait* is here to stay.

In light of the Budget Day announcement in the U.K., heralding the demise of non-dom taxation, wealthy non-domiciled individuals in the U.S. are likely to explore new countries in which to live under a favorable tax regime. For those contemplating Switzerland, this article answers the most important 15 questions that should be asked when considering a move to Switzerland

THE MOST IMPORTANT 15 QUESTIONS

1. **I am a not a Swiss national and I intend to relocate to Switzerland. Do I qualify for the benefits of the *forfait* regime?**

The *forfait* regime is available to foreign nationals taking up tax residence in Switzerland for the first time or after an absence of at least 10 years. Although the regime was originally aimed at wealthy foreigners coming to spend their autumn years in Switzerland, there has never been a minimum age nor a maximum age for *forfait* applicants.

2. **If I qualify for the *forfait* regime, am I allowed to work in Switzerland?**

To be eligible for the *forfait* regime an individual cannot exercise paid employment in Switzerland or be self-employed. Gainful activity abroad is permissible, however.

3. **If my spouse is a Swiss national does that affect my qualification for the *forfait* regime?**

Marriage to a Swiss spouse adversely affects an individual's qualification of the *forfait* regime. Beginning in 2016 neither the applicant nor the spouse can be a Swiss national.

4. If I am a dual national, and one of my nationalities is Swiss, does that affect my qualification for the *forfait* regime?

Individuals who are dual nationals do not qualify for the *forfait* regime when one of the nationalities is Swiss.

5. How is my income calculated when I qualify for the *forfait* regime?

Under the *Forfait* regime, income is deemed to be the highest of the following four amounts:

- An amount based on the taxpayer's worldwide living expenses. Living expenses include costs for accommodation, general living, cars, aircraft, yachts, housekeeping, and personnel for all family members financially supported by the taxpayer. Put simply, the tax base corresponds to what it takes to keep the family going, whereby cantons have substantial leeway in determining the practical aspects.

- An amount based on the rent multiple. The multiple is seven times the annual rent for the person's living accommodations.

- An amount determined under the so-called control calculation. The tax payable under the *forfait* regime must be equal at least to the income and wealth tax payable at ordinary rates on (i) Swiss real estate and related income, (ii) movable assets located in Switzerland and related income, (iii) Swiss securities and related income, (iv) Swiss intellectual property and related income, (v) Swiss source pensions, and (vi) income for which treaty benefits are claimed in a country that has in effect an income tax treaty with Switzerland.

  - Swiss securities include Swiss shares and dividends or interest from Swiss sources. A portfolio of non-Swiss shares held and managed by a Swiss bank should not give rise to any issues. In comparison, interest on a Swiss cash account may be problematic.

  - Treaty-protected income will typically include non-Swiss dividends or royalties subject to a withholding tax in the source country. Such income must be included in the control calculation if a reduction of source tax is claimed under an applicable treaty. See the answer to Question 8 for claiming treaty benefits after a *forfait* is obtained.

- A minimum amount. The minimum base for Federal tax purposes is CHF 429,100.

6. Under the *forfait* regime, how much tax will likely be paid?

Tax payable is calculated by application of the ordinary progressive tax rates to the agreed tax base. By way of example, a taxpayer with a monthly rent of CHF 5,500 will have a minimum Federal tax base of CHF 462,000 (5,500 × 12 × 7). With a monthly rent of CHF 3,500 his tax base will be CHF 429,100 (rent multiple of 3,500 × 12 × 7 = 294,000). Because the amount of CHF 294'000 is below the minimum of CHF 429,100, the minimum amount will be deemed to be the tax base.

In addition, the tax base for computing tax under the *forfait* regime Swiss source income such as dividends or interest on Swiss securities, royalties, and rental income, assets located in Switzerland, and non-Swiss income for which treaty benefits are claimed in the treaty partner jurisdiction must be taken into account. will be subject to a so-called “control calculation” The sum of that addition, if exceeding the minimum amount of CHF 429,100 or the rent multiple, will be the income tax base.

To illustrate, a married taxpayer with two children and a deemed income of CHF 429,100 would pay tax in the following cantons of residence in the following amounts:

Canton of Residence	*Approx. Tax Payable*
Zug	CHF 130,000
Gstaad	CHF 165,000
Klosters	CHF 149,000
Geneva	CHF 160,000
Lausanne	CHF 172,000

Given the wide range of applicable tax rates in Switzerland at both the cantonal and communal level, there is considerable scope for geographical tax planning.

7. What is meant by the term “geographical tax planning?”

Despite its relatively modest size, Switzerland has 26 cantons each of which is subdivided into more than 2,000 local communes. Tax is levied at the federal, cantonal, and communal levels. A *forfait* is negotiated with the cantonal authority to arrive at the tax base to which ordinary tax rates apply. Although a statute exists calling for the harmonization of taxes between cantons, considerable differences exist in how the cantonal authorities apply the law in practice. In addition, cantons and communes have strongly differing tax rates.

In other words, if your main concern is to pay as little tax as possible you will look first at the communes with the lowest rates and most attractive local practice. Income tax, wealth tax, and inheritance tax must be taken into account when choosing a jurisdiction. As a rule of thumb, remote cantons are generally viewed as having the most attractive tax rates.

Usually, a client will have an idea of where he or she would like to live. The first cut is based on language preference, (German/French/Italian-speaking cantons). Then, the cut is preference for cities, mountains, or somewhere in between. Taking these preferences into account, an individual look at the likely tax results under the applicable *forfait* regime.

8. As a *forfait* taxpayer, do I benefit from income tax treaties entered into by Switzerland?

Any income for which treaty protection is claimed will need to be included in the control calculation addressed in the answer to Question 5.

Income tax treaties with several treaty partner jurisdictions do not treat a taxpayer who benefits from a *forfait* regime as tax resident in Switzerland. Withholding taxes on income arising in those countries are not reduced. Other treaties contain specific provisions in respect of *forfait* taxpayers under which income from those countries must be included in the normal Swiss tax base. Income tax treaties with Germany, Belgium, Norway, Italy, Austria, Canada, and the U.S. contain this type of provision. In addition, there is some uncertainty in practice as to the treatment of French source income.

9. **If I live the balance of my life in Switzerland and pay income tax under the *forfait* regime of a specific canton, what is the likely inheritance exposure for my heirs?**

Inheritance tax remains a matter for the cantons to decide. Switzerland held a national vote in 2015 in which nearly 70% of the people voted against the introduction of a federal inheritance tax applying at 20% across the board.

All cantons offer full spousal exemption, and in the vast majority cantons, both lifetime and death transfers to descendants are not subject to tax. Vaud levies a relatively moderate inheritance tax on transfers to children. The same is true for Geneva if the decedent was subject to the *forfait* regime.

"Inheritance tax remains a matter for the cantons to decide."

Bequests to unrelated donees may be subject to gift or inheritance tax of up to approximately 54% depending on the canton. The cantons of Schwyz and Obwalden (German-speaking) have no inheritance tax at all, meaning that gifts and bequests to unrelated donees are free of tax.

10. **If I benefit from the *forfait* regime, am I subject to social security taxes?**

Forfait taxpayers under the age of 65 are subject to social security contributions. Depending on an individual's wealth, the annual contribution may be as much as CHF 25,700 plus approximately 5% administrative costs.

11. **How do I obtain my *forfait* and what do I have to disclose?**

Obtaining the *forfait* is usually less of an issue than immigration, especially for persons who are not E.U. nationals.

Once the residence canton and commune of choice have been identified, the local cantonal tax authorities issue the *forfait* ruling. Information to be provided in conjunction with an application for a *forfait* ruling includes an individual's worldwide living expenses and an approximation of his or her wealth. The level of detail requested by the authorities varies greatly among the cantons.

Once all required information is provided, a ruling may be issued within a couple of weeks. On an annual basis, a simplified annual tax return will normally have to be filed.

12. **Which Cantons offer *forfait* regime tax rulings?**

Forfait taxation is available in most cantons, including

- Geneva,
- Vaud,
- Valais,
- Berne,

- Schwyz,
- Zug,
- Grison, and
- Ticino.

Zurich and Basel are among the cantons having abolished the regime.

13. How complicated is it to obtain an immigration permit?

The relevant criterion in determining the complexity of obtaining an immigration permit is the nationality of the applicant. The primary distinction is the one between E.U. nationals and nationals of countries outside the E.U. Nationals of the 27 E.U. Member States are entitled to a residence permit, provided they demonstrate the ability to finance their lifestyle, and obtain valid health insurance within three months from the arrival date. The procedure for nationals of other countries is somewhat more burdensome. Typically, an applicant must fit within one of three categories:

- The applicant must demonstrate a particular connection to Switzerland (*e.g.* childhood or holidays regularly spent, family members resident, or education in Switzerland).
- The applicant is 55 years old or older.
- The applicant qualifies for a statutory exemption. Statutory exemptions can include a cultural exemption or a fiscal exemption, which is similar to an investor visa in other countries.

Nationals of countries that are not E.U. Member States may also seek a permit for education or medical reasons. For *forfait* purposes, such permits are not relevant except for the stays of an extended period.

An applicant's family will normally be granted the right to join the *forfait* taxpayer once he or she has obtained a residence permit.

14. Will Swiss forced heirship rules apply to my estate?

Swiss forced heirship rules are optional for foreign nationals, who may select the law that applies to the devolution of their property. If an individual is a national of an E.U. Member State, the E.U. Succession Regulation will be applicable.

15. Am I allowed to buy an apartment to serve as my residence?

The right to purchase real estate is unrelated to an individual's tax status. The rules apply equally to a holder of a *forfait* as to a foreign national that is an ordinary taxpayer.

Switzerland has enacted a statute restricting the acquisition of real property by persons who are not Swiss nationals. The statute is known as "Lex Koller." More or less, it provides as follows:

- A national of a Member State of the E.U. or the E.F.T.A. who resides in Switzerland is not subject to any restriction under Lex Koller.
- A national of Member States of the E.U. or the E.F.T.A. who is not a Swiss resident must obtain a Lex Koller permit for the acquisition of a holiday home.
- A national of a country outside the E.U. or the E.F.T.A. who holds a permanent residence permit (a "C permit") is not subject to any restriction under Lex Koller.
- A national of a country outside the E.U. or the E.F.T.A. who holds an ordinary residence permit (a "B permit") is entitled to purchase a primary home without a Lex Koller-permit. The purchase of a second home will require a Lex Koller permit.
- A holiday apartment inherited from a parent is not subject to Lex Koller.

In addition, Switzerland has enacted second home legislation, that applies regardless of nationality. The legislation essentially restricts the quota of holiday homes within a commune to 20% of the housing stock in the commune.

CONCLUSION

Many European countries compete to be attractive jurisdictions for the wealthy or near wealthy. The list grows from year to year, but also shrinks. In comparison to the "wannabe's," Swiss voters approved the existence of the *forfait* regime in a national vote by over 60% of the population voting favorably. Of equal importance, the tax regime is controlled locally on a canton-by-canton basis, meaning that the regime is beyond the reach of a central government, which is the case in other jurisdictions. It may not be the non-dom regime with the lowest annual tax payment, but for those who can afford it, the Swiss *forfait* regime is here to stay.