Basic Tax Rules For Emigration and Immigration Of Wealthy Individuals

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When individuals emigrate from Germany to Austria, Switzerland, France or Italy, several issues – in particular tax obstacles – need to be observed. German tax authorities regularly seek to secure tax revenue that threatens to be lost when income and assets are relocated in connection with emigration. In this context comprehensive regulations were introduced in Germany in its foreign tax legislation *(Aussensteuergesetz etc)* and its double tax treaties, allowing the complete termination of liability to tax in Germany only when all tax links to Germany cease to exist. Where termination of residence is purely tax-driven, a detailed analysis of the advantages of income and wealth relationships at the time of emigration is required. Long-term planning and advice before emigration is therefore indispensable.

II. Terminating residence in Germany

The basic prerequisite for tax-effective emigration from Germany (under domestic tax law) is the termination of residence in Germany. This does not simply involve notifying departure to the police authorities, but rather, a disposal or cessation of use of the taxpayer's home. In effect, this means that the individual will have to terminate the lease on, sell or let out his or her home. Thought should be given to any detrimental effect from retaining use of or control over any real property for residential purposes, particularly where it is let to a relative. Even the occasional use of a German property for recreational purposes (as a second or holiday home) may under certain circumstances lead to deemed residence in Germany.

It is also important that the individual's habitual place of abode *(gewöhnlicher Aufenthalt)* is no longer in Germany after taking up residence abroad and after the termination of residence in Germany. A habitual place of abode is presumed to be established, and thus will lead to unlimited tax liability, when the duration of physical presence exceeds six months. The stay must be continuous, but short absences during that period will not be taken into account.

If, in spite of taking up residence in Austria, Italy, France or Switzerland, the individual is nevertheless deemed to be resident or have a habitual place of abode in Germany, the individual will be subject to unlimited tax liability in both countries.

In such cases of dual residence, any existing double tax treaty will determine the country where the individual is deemed to be exclusively resident for tax purposes under the treaty, and consequently to which country the taxation rights in respect of the individual are assigned.

Generally, it is the individual's centre of vital interests that is decisive. The place with which the individual is most closely personally and economically connected will prevail here. If the individual has indeed transferred the centre of his or her vital interests abroad, the individual's residence and unlimited tax liability will be assumed to be in that jurisdiction alone. The source state remains entitled to taxation rights, which will generally be limited. If the centre of vital interests cannot be determined, the habitual place of abode or, failing which, the individual's nationality will be determinative.

When emigrating to Switzerland, it should be noted that liability to tax in Germany may continue to exist – even if the centre of vital interests is transferred to Switzerland – where personal use of a property continues or a strong connection with Germany persists due to frequent visits (partial residual tax liability, known as *überdachende Besteuerung* – 'overarching taxation'). For the affected individual, this means that even after emigrating and taking up residence in Switzerland, certain income (e.g. pensions) will continue to be taxed in Germany at German tax levels.

III. Tax consequences of terminating residence in Germany

Where an individual ceases to be resident for tax purposes in Germany and thereby ceases to be subject to unlimited liability, or where Germany loses taxation rights because the individual is treated as resident in the other contracting state under a double tax treaty, the individual is deemed to dispose of any interest of 1% or more that he or she holds or has in the previous five years held in the authorised or paid-up share capital of a German or foreign company. Any resulting capital gains will be subject to taxation in Germany (this is the so-called 'exit tax').

However, any liability to this exit tax will be deferred indefinitely without the need for an application or proof of special hardship if the individual is a German national or national of another EU or EEA state and has become resident in another such state, provided that the individual is subject in that state to a tax system comparable to Germany's unlimited liability to income tax (i.e. worldwide taxation). This will generally be the case when the individual becomes resident in Italy, Austria or France, but not, however, when moving to Switzerland, since Switzerland is not an EU/EEA state.

If the authorities do not consider the abovementioned requirements for automatic deferment to be met, as is the case of Switzerland, an application to defer the tax may be submitted. In such a case, however, deferment will be granted only if a guarantee is provided and payment is made regularly over a maximum period of five years, but only where the immediate collection of the tax would cause considerable hardship for the taxpayer. The deferred tax liability may attract interest charges of 6% per annum.

In addition, certain income received in Germany will continue to be subject to German tax even where a double tax treaty applies. This includes in particular the following:

- income from a German business, which also includes dividends from German partnerships
- income from real property located in Germany, including rents and disposal proceeds
- income from economic activities in Germany on an employed or self-employed basis
- remuneration for, e.g. supervisory-board directorships exercised or exploited in Germany (for purposes of tax deductions for payments in lieu)
- dividends and
- under certain circumstances, also interest and royalties

It is also possible that other income from German sources, e.g. pensions, will be subject to German tax for up to 10 years after departure from the country (this is the so-called 'extended limited tax liability' – *erweiterte beschränkte Steuerpflicht*). For this to be the case, the individual must have been subject to unlimited liability to income tax in Germany for a minimum of five years during the ten-year period immediately prior to departure and must also be liable to a lower rate of tax in the new state of residence.

When transferring residence from Germany to Switzerland, there is a special rule under the Germany-Switzerland double tax treaty that must be borne in mind. Under this rule, the individual cannot claim benefits under the double tax treaty on income originating in Germany for up to six years after moving to Switzerland. For example, a limitation of the tax on dividends from German companies *(Kapitalertragssteuer)* and exemption for German-source interest is not available for such individuals.

In addition, it should be noted that even where residence or unlimited tax liability has effectively ceased, a statutory requirement to submit a tax return in respect of certain income from Germany often continues, due to continuing (limited) or, in cases of dual residence, unlimited, tax liability.

IV. Social security considerations on termination of residence

Numerous bilateral and multilateral treaties leading to a mutual relationship between the contracting parties exist to regulate cross-border social security matters. These treaties ensure that foreign nationals receive equal treatment in the various contracting states. This means, among other things, that qualifying contribution periods can be cumulated and qualify for the minimum contribution record necessary to draw benefits (which is particularly important for state retirement pensions), and ensure that accident and healthcare schemes are provided on an equal basis in one contracting state to nationals of the other.

Entitlement to and acquisition of pension rights under the German state retirement pension scheme are essentially not lost and benefits may be drawn in Austria, Italy, France or Switzerland.

B. Becoming resident in Germany

I. Preliminary remarks

Becoming resident in Germany is primarily dependent on satisfying the statutory immigration and registration requirements and on obtaining the associated residence permits.

II. Tax consequences of becoming resident

Individuals relocating to Germany from Austria, Switzerland, Italy or France will be subject to unlimited liability to income tax once they become resident in Germany.

Income tax liability is worldwide, i.e. it includes not only income from Germany but also any income (such as income from securities, interest or rents) received in or from the former country of residence or other countries. Depending on the applicable double tax treaty, certain foreign income may be exempt from tax in Germany or, if not, the tax paid abroad on that income will be available for set-off (i.e. as a credit) against German tax on the same income.

The rate of income tax is progressive, ranging from a basic rate of 14% to an upper rate of 42% or 45% for income over EUR 250 000 (EUR 500 000 for married couples assessed jointly). Additional taxes are levied in the form of a 5.5% solidarity surcharge on the tax due and a church tax *(Kirchensteuer)* of 8% to 9% imposed on church members, depending on the *Land* involved. The initial tax rate is thus 15.9% where church tax is 8.0%, or 16.0% if the rate of church tax is 9.0%. The highest rate of tax is 47.7% or 48.1%, depending on the rate of church tax, and for income over EUR 250 000 (EUR 500 000 for married couples assessed jointly) the rate is respectively 51.1% or 51.5%. There is no wealth tax.

Where income from a business (a sole tradership or partnership) is concerned, the trade tax *(Gewerbesteuer)* charged on the business income is compensated for by a credit against the trader's personal income tax liability. The rate of trade tax varies according to the local authority area, but is not less than 7%, and is 14% on average. When the multiplier component of trade tax reaches 400%, then the whole of the trade tax is available as a credit against the trader's personal income tax liability.

Income from private assets has been subject to a flat-rate withholding tax since 1 January 2009. This includes in particular dividends, profit shares, proceeds from life policies and other capital debt-claims, such as interest, for example, as well as capital gains from shareholdings (where the holding is below 1.0% of the authorised or paid-up share capital) and capital gains from futures contracts irrespective of the holding period. Associated costs are covered by an all-inclusive exemption for the first EUR 801 (EUR 1602 for married couples assessed jointly) of savings income. Any further deduction for additional holding costs is not permitted.

Taxation of private capital gains is assessed at a uniform tax rate of 25% (plus solidarity surcharge) and church tax (where applicable), resulting in an effective tax liability of 28.4% combined with an 8.0% church tax rate or 28.6% in combination with a 9.0% church tax rate. Losses may be set off against investment income only. The tax is in the nature of a final withholding tax outside the normal progressive tax structure. Taxpayers can, however, apply to be subject to progressive tax on their savings income instead of on a flat-rate withholding tax basis.

Taxable capital gains on the disposal of assets, in particular of real property, shares and other participations and securities, are calculated as the difference between the disposal proceeds and the acquisition cost plus any disposal expenses. In general, this also applies to private property that the taxpayer already held at the time he or she became resident in Germany. However, privately held shareholdings already subjected to the equivalent of German exit tax in the previous residence state are treated differently. In such cases, the (higher) value used by that state to calculate exit tax will be used instead of the acquisition cost provided that the taxpayer can furnish the appropriate evidence.

Where German real property is acquired, there is a real property transfer tax *(Grunderwerbsteuer)* of 3.5% of the purchase price; in the *Länder* of Berlin and Hamburg this rate is 4.5%. The real property itself is then subject to an annual property tax *(Grundsteuer)*.

III. Miscellaneous considerations

Once tax liability in Germany has been established as a result of taking up residence, the individual is required to file an income tax return at the end of the year of arrival. Married couples when assessed jointly must file a joint tax return. No obligation to file a tax return exists where the taxpayer's only source of income is derived from gainful employment and subject to taxation at source or if the total amount of other income does not exceed EUR 7834 (EUR 15 668 for married couples assessed jointly). Tax returns for a tax year must generally be filed by 31 May of the subsequent year, but an extension may be applied for.

If a tax return is not filed on time, the taxpayer may incur surcharges or even assessments of back tax by the authorities. If income tax is assessed 15 months or more after the tax year, there is an interest charge of 0.5% per month commencing with the 15th month.

C Inheritance and gift taxes

In Germany, a personal tax liability on inheritances and gifts *inter vivos* obtains where either the transferor or the transferee is resident or has his or her habitual place of abode in Germany. The tax also applies to emigrants who are German nationals and have not lived abroad for a continuous period of at least five years at the time of the transfer (this is another case of extended unlimited tax liability).

Double taxation of inheritances or gifts may result from the application of differing tax rules in the state of residence of the transferor or transferee or the situs state of the asset concerned. Domestic laws and regulations tend to avoid or reduce double taxation where no double tax treaty exists. In Germany, for example, double taxation can be avoided by a tax credit for the foreign tax borne.

Germany has currently comparatively few treaties to avoid double taxation of inheritances and/or gifts. After the Austrian legislation on inheritance tax was repealed on 31 July 2008, the double tax treaty on inheritance tax with Austria was terminated with effect from 1 January 2008. No double tax treaty exists with Italy in this regard. The double tax treaty concluded with France on 12 October 2006 has in the meantime been ratified and came into force on 3 April 2009. In so far as double tax treaties exist, such as with Switzerland, only real property and business assets in Germany can normally be taxed in Germany. Other assets are exclusively subject to taxation in the country of abode. In the relationship with Switzerland, this principle for emigrants is restricted as extensive and 'overarching' German tax reservations continue to allow the continued taxation of the entire assets, or at least leave the tax liability with the transferee in Germany.

Since 2009, the tax market value *(Verkehrswert)* of assets transferred has been the basis of assessment for inheritance and gift tax in Germany. The tax rate varies from 7% to 50% depending on the degree of consanguinity between transferor and transferee and the value of the transfer. In addition, exemptions are available, in particular for the transfer of business assets.

2. Austria

A Terminating residence in Austria

I. Preliminary remarks

When an individual ceases to be resident in Austria, both the formalities of deregistration with the police and the tax consequences must be considered. Austria has concluded double tax treaties with Germany, Switzerland, Italy and France. These treaties govern the taxation rights of the countries concerned and apportion the income of an individual among the countries to avoid double taxation.

II. Terminating residence in Austria

Where residence is transferred to Germany, Switzerland, Italy or France, the possibility of a continuing tax link to Austria should be taken into consideration. This could occur where a home or a holiday home is retained or the individual returns to Austria for prolonged regular stays.

Any place where an individual has a place to live that he or she intends to use or retain may constitute a place of residence (a 'home'). It is not important whether or not the premises are actually or currently in use; the availability is sufficient. A home is deemed to have been relinquished when it is sold, rented out or no longer capable of occupation, for example, by the removal of all furniture. A special second-home ordinance regulates second-home occupancies and applies to holiday homes.

In addition, for non-residence to be effectively established, the individual must not have his or her habitual place of abode in Austria. Circumstances revealing that an individual's physical presence in Austria is not solely intermittent may constitute habitual residence. This is always the case when a stay in Austria lasts more than six months.

If an individual is considered resident in two countries concurrently by virtue of the domestic legislation of those countries, the individual's residence for tax purposes is to be determined on the basis of the applicable double tax treaty. The country of residence has the right to tax the entire worldwide income of the individual. If a double tax treaty assigns the taxation of income to the other state involved, then the system of credit or exemption with progression avoids any double taxation.

III. Tax consequences of terminating residence in Austria

Termination of residence in Austria and thus the loss of Austria's taxation rights may lead to a form of 'exit tax'. This is the case where the taxpayer has held shareholdings of more than 1% in an Austrian or foreign company at any time in the previous five years.

When the individual leaves Austria for residence in another state within the European Union or the European Economic Area, tax liability will be determined upon request but not assessed until the actual (not deemed) disposal of the asset. The mere transfer of residence itself into third countries, however, leads to a deemed disposal and immediate liability to tax.

In addition to this form of exit taxation in the private sphere, Austria also has a form of exit taxation in the business sphere. If neither residence nor a habitual place of abode exists in Austria, the Austrian state reserves taxation rights over certain income. This includes in particular:

- income from agricultural and forestry activities in Austria;
- income from employment and self-employment exercised or exploited in Austria;
- business income, including profits from Austrian partnerships;
- income from the letting of real property in Austria; and
- 'speculative' income from transactions with Austrian real property.

A 20% withholding tax is applied in special cases. This includes income from self-employment in Austria as an artist, architect, presenter, sportsperson or performer. Also subject to withholding tax are directors' fees from serving on supervisory boards, remuneration and income from the provision of commercial or technical advisory services conducted in Austria, or on income from personnel (human resources) services.

Termination of residence also affects tax liabilities in respect of inheritance and gifts *inter vivos*.

IV. Social security considerations on termination of residence

Numerous bilateral and multilateral treaties leading to a mutual relationship between the contracting parties exist to regulate cross-border social security matters. These treaties ensure that foreign nationals receive equal treatment in the various contracting states. This means, among other things, that qualifying contribution periods can be cumulated and qualify for the minimum contribution record necessary to draw benefits (which is particularly important for state retirement pensions), and ensure that accident and healthcare schemes are provided on an equal basis in one contracting state to nationals of the other.

B Becoming resident in Austria

I. Preliminary remarks

Once residence in Austria is established, unlimited tax liability in Austria commences, so that in principle all (worldwide) income is taxable in Austria.

For individuals whose arrival in Austria from abroad is considered to promote science, research, the arts or sport and for this reason is in the public interest, the Federal Minister of Finance may, upon request, remove additional tax liabilities on foreign income resulting from the establishment of residence in Austria for the duration of the individual's activity in the public interest.

For those individuals whose centre of vital interests is abroad for more than five calendar years, a home in Austria will establish unrestricted tax liability only for those years in which that home is used for more than 70 days.

II. Tax consequences of becoming resident

If, on the basis of a double tax treaty with Austria, taxation rights on certain income, such as rents from foreign real property, belong to the other state, Austria will, depending on the terms of that treaty, either exempt such income from taxation, while reserving the right to take it into account for determining the appropriate progressive rate of tax (exemption with progression) or provide a credit for the foreign tax paid against the Austrian tax liability on that income.

Austria employs progression in the assessment of income tax rates. The starting rate is 20.44% on an income of EUR 11 000. The highest rate is 50%, applicable to income of over EUR 60 000.

For investment in certain tangible business assets in the tax years 2009 and 2010, an accelerated depreciation rate of 30% is available.

Austrian legislation provides for a special form of taxation at source for income from shares in Austrian companies. A capital profits tax *(Kapitalertragssteuer)* of 25% is withheld by a company from profit distributions. After deduction of the tax, any income tax liability is deemed fully satisfied (so-called 'final taxation'). Where, however, tax is charged on this type of income via the regular assessment procedure, the applicable rate is half the taxpayer's average rate of tax.

This form of final taxation also applies to income from savings held in Austrian bank accounts and to yields from bonds and debentures when the coupon-paying agency is located in Austria.

Capital gains from the disposal of private property are generally exempt from taxation unless the disposal is deemed to constitute speculation. In the case of land, disposals are deemed to be speculative where less than ten years have elapsed between acquisition and disposal. Relief is available in the case of a main residence, disposals of which cease to be deemed speculative after two years have elapsed. As regards all other economic assets, in particular securities, the period within which disposals are deemed to be speculative is limited to one year.

Capital gains from the disposal of private shareholdings are taxable where the vendor has held an interest of 1% or more in the company at any time during the previous five years. Tax is charged at half the average rate. If, however, the transaction constitutes speculation (as it will when the period between the acquisition and the disposal is less than one year), tax is charged at the normal rate, regardless of the level of the participation.

There is no wealth tax *(Vermögenssteuer)* in Austria, with the exception of real property tax *(Grundsteuer)*.

When acquiring real property in Austria, a real property transfer tax *(Grunderwerbssteuer)* of 3.5% (2% in the case of transfers between certain related parties) of the purchase price is payable. Landholders are also liable to an annual property tax *(Grundsteuer)*, which is based on a low basic taxable value *(Einheitswert)* and is thus of minor consequence.

III. Miscellaneous considerations

Since 1993, it has been possible to establish foundations *(Stiftungen)* in Austria for, inter alia, predominantly private purposes. This has also created an incentive for the investment of foreign assets in Austrian foundations. A private foundation may serve as a 'family holding' vehicle for shareholdings and often secures cohesion of corporate interests over generations better than any form of articles of association or syndicate agreement.

C Inheritance and gift taxes

Since the legislation governing the taxation of inheritance and gifts *inter vivos* was repealed, the assets of individuals located in Austria are not subject to the taxation of inheritance or gifts *inter vivos* when they become resident in Austria.

Lifetime gifts must be declared, however. Transfers into foundations are subject to a 5% entry tax. If the assets transferred to the foundation consist of real property, the rate of tax increases by 3.5% of the relevant value of the real property thus acquired.

Austria has concluded a double tax treaty on inheritance tax with Switzerland, among others.

The double tax treaty with Germany was terminated as of 31 December 2007. An agreement was then signed on 6 November 2008 to extend the terms of the double tax treaty on a temporary basis. This secures the continued effect of the terminated double tax treaty on inheritance where testators die after 31 December 2007 and before 1 August 2008.

3. Switzerland

A Terminating residence in Switzerland

I. Preliminary remarks

If a wealthy non-economically active individual intends to leave Switzerland and terminate residence there, several possible concerns should be addressed. A variety of steps are advisable depending on whether the individual has already reached retirement age or whether he or she intends to retain ownership of a home in Switzerland. An analysis of the legal and tax consequences on the basis of long-term planning is in any event advisable prior to departure.

II. Terminating residence in Switzerland

When an individual intends to leave Switzerland permanently, the population registration agency *(Einwohnerkontrolle)* in the commune in which the individual has been resident must be informed of his or her impending departure. The local tax office will thereupon review whether any tax is still owing by the individual as of that date or whether the payment of any outstanding taxes may be secured. Tax is then levied on a *pro rata temporis* basis. No proof is required that residence has been taken up in another Swiss canton or in a foreign country. Only then will the individual be issued with the so-called *Heimatschein* (certificate of Swiss family origin), which can then used to reregister with a new Swiss canton of residence, should the occasion arise in the future.

Unlimited tax liability in Switzerland depends on residence. Residence status is determined according to where the individual intends permanently to remain (the so-called *Absicht des dauernden Verbleibens*). Therefore, the place where the individual's personal documents are deposited is of itself only considered as an indication of residence, i.e. residence in Switzerland. It is the actual circumstances, in particular where the individual's centre of vital interests lies, which are taken into account. This means in practice that the individual's family (if applicable) must also remove its residence abroad and give up its home in Switzerland (by selling it or renting it out) in order for a successful claim of non-residence to be lodged with the tax authorities.

In the event that an individual intends to terminate residence in Switzerland but still wishes to rent a second home there for occasional visits, this mere fact may cause the tax authorities to review the question of residence status. If the actual duration of the individual's stay in the other country is not decisive, then the individual's centre of vital interests (personal and business) comes into play. It is obvious that determining where this may lie could be difficult in the case of retired individuals. If, however, it is possible to show conclusively that not only does the individual have a place of abode at his or her disposal abroad but that the individual and his or her family have fully integrated there, no objection will be made to the recognition of residence abroad and non-residence in Switzerland.

In the event that under the domestic laws of both jurisdictions the individual is subject to unlimited tax liability in both Switzerland and the new country of residence (i.e. is considered to be resident for tax purposes in both states), the double tax treaty between the states will be invoked to resolve the question of so-called 'dual residence'. That is to say, the treaty will determine in which country the individual is deemed to be exclusively resident for tax purposes under the treaty and to which state the taxation rights as regards the individual are therefore to be assigned.

In general, the centre of vital interests determines residence in such cases, and it is the place with which the individual has the strongest personal and economic connections that is decisive. If the individual has indeed transferred his or her centre of vital interests abroad, then it is in that state that the individual will be regarded as being resident and consequently there that the individual will be subject to unlimited tax liability (or its equivalent). The source state will also generally reserve taxing rights, although these will generally be limited. If it is impossible to determine the individual's centre of vital interests, habitual abode or, failing which, the nationality of the emigrant, are normally determinative.

III. Tax consequences of terminating residence in Switzerland

Switzerland does not levy an exit tax on individuals. Tax liability in Switzerland generally ends on the day on which the individual's intention to depart is notified to the commune authorities.

Only where the individual retains an interest in a Swiss partnership, or where a self-employed individual retains business premises in Switzerland from which business is carried on, or where the individual retains ownership of Swiss real property, does tax liability in Switzerland continue on a basis limited to the income or assets concerned. In these cases, tax returns must continue to be filed in respect of that income or those assets derived or located in Switzerland. Since it will be the individual's worldwide tax status that determines the tax rate applicable in Switzerland, details of this must also be declared. In the state in which the individual is now resident, there will either be exemption for the income and/or assets taxed in Switzerland, or a credit for the Swiss tax paid will be available to set against the residence state's tax charge on the same income or assets.

Switzerland levies a 35% withholding tax on dividends and bank interest, as well as on interest from Swiss company securities. This tax can be partially, or in some cases entirely, reclaimed under any double tax treaty concluded between Switzerland and the new state of residence.

IV. Social security considerations on termination of residence

Numerous bilateral and multilateral treaties leading to a mutual relationship between the contracting parties exist to regulate cross-border social security matters. These treaties ensure that foreign nationals receive equal treatment in the various contracting states. This means, among other things, that qualifying contribution periods can be cumulated and qualify for the minimum contribution record necessary to draw benefits (which is particularly important for state retirement pensions), and ensure that accident and healthcare schemes are provided on an equal basis in one contracting state to nationals of the other.

Individuals leaving Switzerland are generally released from liability to Swiss social security contributions. An individual who has been resident in Switzerland can, however, as a so-called Swiss expatriate *(Auslandschweizer)*, opt to continue paying contributions, before reaching retirement age, to prevent the loss of pension rights.

B Becoming resident in Switzerland

I. Preliminary remarks

Becoming resident in Switzerland is primarily dependent on satisfying the statutory immigration and registration requirements and on obtaining the associated residence permits. Switzerland offers many possibilities as a country of immigration. Given the political structure with its 26 separate cantonal governmental and fiscal jurisdictions, the multilingual nature of Switzerland and its diversity of landscape within a relatively small geographical area, certain fundamental considerations must, however, be borne in mind.

II. Tax consequences of becoming resident

Individuals transferring their residence to Switzerland from Germany, Austria, Italy or France will become subject to unlimited liability to income tax in Switzerland once they take up residence there.

Income tax liability is worldwide, i.e. it includes not only income from Switzerland but also any income (such as income from securities, interest or rents) received in or from the former country of residence or other countries. Depending on the applicable double tax treaty, certain foreign income may be exempt from tax in Switzerland or if not, the tax paid abroad on that income will be available for set-off (i.e. as a credit) against Swiss tax on the same income.

Taxation in Switzerland is levied at three levels: the federal government (Confederation) levies so-called 'direct federal taxes' and the cantons levy and assess cantonal and communal taxes. Where unlimited tax liability applies, worldwide income as well as worldwide assets are generally taxable. Various types of income are included for income tax purposes. A family with two children should expect the following approximate tax rates:

Taxable Income	Canton of Schwyz	Canton of Neuchâtel
EUR 80 000	9.5%	27.5%
EUR 130 000	14.0%	35.0%
EUR 300 000	18.0%	43.0%

Personal capital gains are exempt from taxation.

Dividends from significant participations (usually in the range 10% to 20%) are subject to a more favourable rate of tax. Income of a pensionable nature in the form of capital payments is taxed separately at a more favourable rate of tax.

The federal government levies a 35% withholding tax on income from domestic movable property, e.g. interest receivable in Swiss bank accounts, on securities and so on. This is a so-called 'surety tax' *(Sicherungssteuer)*, ensuring that the bank transfers over a percentage of the profits directly to the federal government. If a taxpayer resident in Switzerland later properly declares the gross profit in his or her tax return, then a full refund of the prepaid federal withholding tax can be obtained upon application.

Wealth taxes are levied only at the cantonal and communal levels. The federal government does not levy a wealth tax. On taxable assets of EUR 3.4 million, for example, wealth tax rates range from 0.15% (Nidwalden) to 0.83% (Geneva).

A retired individual seeking to take up residence in Switzerland without the intention of carrying on a gainful occupation (i.e. one who is not economically active) may generally benefit from so-called 'lump-sum taxation' *(Pauschalbesteuerung)* based on expenditure. Where this applies, taxable income and assets are agreed with the tax authorities on the basis of the living expenses of the taxpayer and family. The actual factors (income and assets) need to be declared. This type of tax privilege is offered by many cantons, but not, however, by all. Since the particular detail of taxation on the basis of expenditure is the responsibility of each canton, it is in any event advisable to enter into an agreement initially with the appropriate cantonal tax authority. This variant is of particular interest to persons with considerable assets, since Switzerland – in comparison with most other European countries – levies wealth tax on private property, an aspect that should not be overlooked when contemplating a transfer of residence to Switzerland.

When landholdings in Switzerland are sold, there is a charge to the tax on transfer of ownership *(Handänderungssteuer)*. This is usually payable in equal shares by the purchaser and the vendor. The tax rate depends on the canton in which the land is located, and is charged on the purchase price of the real property concerned or on the official open market value for tax purposes *(Verkehrswert)*. Transfer tax ranges from 0% (Canton of Zürich) to approximately 3.3% (in Neuchâtel).

When there is a disposal of land situated in Switzerland, the capital gain (appreciation in the value of the landholding since the date of acquisition) should be included in the vendor's tax return in some but not all cantons, since some cantons levy a separate tax on capital gains from land.

III. Miscellaneous considerations

By taking up residence in Switzerland, an individual generally becomes subject to compulsory social security contributions unless the individual has already reached retirement age (currently 65 years for men and 64 years for women). Individuals who are not gainfully occupied must still pay contributions as so-called 'non-economically active persons' *(Nichterwerbstätigen)* until retirement. Contributions are calculated on the basis of assets and capitalised other income. If total assets thus calculated are approximately EUR 3.4 million, the maximum contribution per person per year is approximately EUR 7300.

Individuals resident in Switzerland are also required to contribute to a healthcare insurance fund. Any relevant foreign insurance coverage still in existence will be permitted for up to one year.

C Inheritance and gift taxes

Switzerland bases taxation of inheritances and gifts *inter vivos* on the residence of the testator or donor, with the exception of real property and business premises located in Switzerland.

Taxation on inheritances and gifts is levied solely at the cantonal level. Tax rates are thus dependent on the canton of residence, the amount of transferred assets and the degree of relationship between the transferor (donor or testator) and the transferee. Certain cantons (Schwyz and Lucerne) levy no taxation on gifts *inter vivos*. Lifetime gifts and transfers on death to a spouse or direct descendant are exempt from taxation in most cantons and assets are usually transferable tax-free, so that assets pass as a rule to the spouse and/or the issue of the marriage without tax consequences.

There is zero tax on lifetime gifts or transfers on death to children. Rates on transfers of over EUR 340 000 to persons other than relatives range from 0% (in Schwyz) to 54% (in Geneva). It is therefore advisable to obtain information on the taxation of inheritance and lifetime gifts before choosing where to settle.

4. Italy

A Terminating residence in Italy

I. Preliminary remarks

No detailed regulations exist for tax purposes to track income and assets affected where an individual transfers residence from Italy to Switzerland, Austria, Germany or France (i.e. so-called exit taxation does not exist), but possible tax consequences should, however, be considered early. In particular, the double tax treaties with Switzerland, Austria, Germany and France, which provide for the assignment of taxing rights on income and assets, should be borne in mind. The following is therefore a brief overview of the major tax consequences of making such a decision.

II. Terminating residence in Italy

Individuals are considered to have ceased to be resident in Italy when they have transferred their centre of vital and economic interests or their habitual place of abode abroad for a period of more than 183 days. However, the tax authorities may fail to recognise removal of residence to another country if it can be shown that the individual involved continues to maintain special economic and social relations with Italy. The taxpayer must then offer objective proof that residence has indeed been transferred.

Italian nationals who have been living abroad for more than one year are required to request deletion from the population register in the commune where they were previously resident in Italy, and inscription in the AIRE *(Anagrafe residenti all'estero* – the register of residents abroad). Exceptions apply to temporary absences of no more than one year and for civil servants working abroad.

Special regulations apply in cases where the individual becomes resident in a 'tax haven', which for this purpose includes Switzerland. In such cases, the individual is normally deemed to have remained resident in Italy for tax purposes. An exception is made where the individual can provide factual evidence that he or she is actually resident in that particular jurisdiction.

If, in spite of the fact that the individual is in fact now resident in Austria, Germany, France or Switzerland, dual residence obtains because a second home has been retained in Italy or that is where the individual still has his or her centre of vital or economic interests, the applicable double tax treaty will be invoked in order to determine in which country the individual is to be deemed exclusively resident for tax purposes under the treaty. Here, the so-called principle of the 'centre of vital interests' is decisive.

Where, for example, an individual spends weekdays working in Italy but weekends in Germany with his or her family, it will be the place where the individual maintains his centre of economic and vital interests (in this case, Germany) that is the state of residence. It follows that only the income received by such an individual from, for example, dependent personal services (employment) will be taxed in Italy, while his or her entire worldwide income will be taxed in Germany. Any income tax deducted in Italy from the individual's earnings will be credited against German tax on that income.

III. Tax consequences of terminating residence in Italy

Once the individual has become non-resident in Italy for tax purposes, Italian tax will be restricted to income received in Italy. Italy does not charge an exit tax on individuals. Income deemed received in Italy chiefly includes:

- Income from real property: income from real property situated in Italy; contents of dwellings are included in real property for this purpose. Income is deemed to be received even if the property is personally occupied by the individual, since there is a charge for owner-occupation on a deemed amount of rental income

- Income from capital investments: income paid by the Italian state, by Italian residents or by non-residents having a permanent establishment in Italy at their disposal is generally taxable in Italy (e.g. interest on securities issued by Italian parties), subject, however, to the provisions of any applicable double tax treaty

- Business income: income from businesses located in Italy (Italian business premises, interests in Italian partnerships)

- Other income: capital gains in connection with the disposal of real property (disposals within five years of acquisition) and building land (regardless of the ownership period) and capital gains in connection with the sale of shares and other participations, subject, however, to the provisions of any applicable double tax treaties

- Income from employment or self-employment: income from employment exercised in Italy and income assimilated to employment, as well as income from self-employment derived from an activity carried out in Italy (even if only occasionally), subject, however, to the provisions of any applicable double tax treaties

After an individual has become non-resident in Italy, his or her remaining obligations towards the Italian tax authorities consist mainly in the duty to file annual tax returns in respect of Italian-source income and the payment of the corresponding income tax (by withholding or otherwise). In the case of real property, there is also a local property tax (ICI).

IV. Social security considerations on termination of residence

Numerous bilateral and multilateral treaties leading to a mutual relationship between the contracting parties exist to regulate cross-border social security matters. These treaties ensure that foreign nationals receive equal treatment in the various contracting states. This means, among other things, that qualifying contribution periods can be cumulated and qualify for the minimum contribution record necessary to draw benefits (which is particularly important for state retirement pensions), and ensure that accident and healthcare schemes are provided on an equal basis in one contracting state to nationals of the other.

Vested retirement pension rights are generally not lost and may be drawn in Austria, Germany, France or Switzerland.

B Becoming resident in Italy

I. Preliminary remarks

Becoming resident in Italy is primarily dependent on satisfying the statutory immigration and registration requirements and on obtaining the associated residence permits.

EU nationals may move freely within the European Union. An EU national who transfers his or her residence to Italy must notify the relevant local authority within 60 days of arrival. Once registration is completed, an individual can request a personal identity card and access to the social services delivered by the local authority (welfare benefits, registration in a day nursery etc).

- An individual is considered to be resident in Italy where either he or she has been entered in the local population register *(anagrafe)* or

- that individual's habitual place of abode or centre of vital and economic interests is in Italy

for the greater part of the taxable period (at least 183 days in the calendar year).

II. Tax consequences of becoming resident

German, Austrian, Swiss and French nationals who become resident in Italy thereby become liable to tax on their worldwide income, subject, however, to provisions under any applicable double tax treaties for receiving foreign tax credits for tax already paid abroad.

Income tax is determined on the basis of total income as declared in the individual's tax return, as reduced by any applicable deductions, and is charged at progressive rates beginning at 23% and rising to a maximum of 43%. In addition, regional and local income tax surcharges are payable. The rates of these surcharges range from 0% to a maximum of 1%. No wealth tax is charged.

Total income includes the following classes of income: income from real property, income from capital assets, income from dependent personal services (employment), income from independent personal services (self-employment), income from business, and miscellaneous income.

The most important deductions are permitted for: the maintenance of family members, medical expenses, interest payable on loans to first-time home buyers, expenditure for the renovation of existing real property and social security contributions.

Filing dates for the various types of tax return differ, but normally these are in the June following the tax year. It should be noted that tax on employment income is generally deducted and withheld by the employer; if this is the only income received by the taxpayer, simplified tax returns (model 730) are available; the need to file a tax return may even be waived in certain cases.

With regard to the individual classes of income, it should be noted that, as mentioned above, there is a charge to tax for owner-occupation, i.e. a deemed rental income is attributed to individuals occupying their own property, in an amount depending on the type of property that it is. Capital gains from the disposal of real property are tax-free after a holding period of five years, with the exception of gains from the disposal of building land.

The following are the most important points to bear in mind as regards the assessment and taxation of income from capital.

- Disposal of shares and other participations: for portfolio (i.e. 'non-qualifying') participations (voting rights of no more than 20% and shareholdings of less than 25% in the case of unlisted companies or 2% and 5%, respectively, for listed companies), there is a final withholding tax of 12.5%; for significant participations, 49.72% of the capital gain on disposal is added to total income and taxable at the applicable progressive rate of income tax. This rule applies to participations in both Italian and foreign companies, because such capital gains, according to any double tax treaty, are taxable only in the state of residence. It should be noted, that for purposes of determining the gain on a disposal, the acquisition cost is taken to be the value on which the exit tax in the former country of residence was based (e.g. in the double tax treaty between Germany and Italy). Special rules may apply to the disposal of interests in property companies (e.g. in the double tax treaty between France and Italy). Special rules do, however, apply to capital gains from the disposal of partnership interests since these are generally taxable in the country in which the partnership is established (i.e. where it has its *Sitz* – its registered office), because such gains constitute income considered to be business income under any double tax treaty, and business income is taxable at the place where the business is established.

- Dividends: as with capital gains, Italian and foreign dividends from the non-qualifying holdings of individuals are subject to a final 12.5% withholding tax, whereas 50.28% of dividends from qualifying (significant) holdings are exempt, and the remaining 49.72% of the dividend is included in total income and subject to the appropriate progressive rate of income tax. In the case of foreign dividends from qualifying holdings, any tax paid abroad may be credited against the Italian tax charged on the dividends, but only where the tax concerned is specifically referred to for that purpose in the applicable double tax treaty. However, where a higher withholding tax is levied abroad than is provided for under any double tax treaty, a return of the excess amount can be claimed from the foreign tax authorities

- Other income from capital: bank interest is subject to a final withholding tax of 27%. Interest from securities on the other hand, is taxed at 27% in certain circumstances where the securities concerned are unquoted securities; otherwise the 12.5% rate applies. Investment funds are generally also taxed at 12.5%, real property funds, however, at 20%. This generally applies to both Italian and foreign income.

Any citizen with foreign assets (including real property) is required to declare these assets in a separate schedule to the tax return (Schedule RW). This is a surveillance procedure *(monitoraggio)* under exchange-control legislation, which also serves to monitor the taxation of the corresponding income. This schedule is, however, not used to declare income but only to reveal the existence of foreign assets and related movements.

The Interest and Royalties Directive in effect since 1 July 2005 provides for an automatic exchange of information between the tax authorities of EU Member States regarding interest income (exceptions exist regarding Belgium, Luxembourg and Austria). This means that not only do the Italian tax authorities receive information from the taxpayer by way of Schedule RW but that they also receive information from foreign tax authorities. This permits monitoring not only of the actual taxation of interest and other capital gains but also of the correctness of the declaration under Schedule RW. Any omissions not shown on Schedule RW may thus be revealed. Individuals resident in Italy must therefore provide detailed information in their tax returns concerning movements of foreign investments, including real-property investments. Any omission is liable to incur a penalty of between 5% and 25% of the value of the assets concerned, or the possibility of a confiscation thereof in a similar amount. The only foreign assets exempt from tax are bank accounts where the foreign bank, by order of the account holder, transfers interest income immediately at the time that it accrues to an Italian bank account where 27% withholding tax on the interest is deducted and accounted for to the Italian tax authorities.

The acquisition of real property in Italy will involve indirect taxes such as land registration tax, mortgage tax and cadastral tax. These can together amount to as much as 11% of the purchase price. When agricultural land is acquired, the tax rates rise to a total of 18%. Reliefs are, however, available for first-time buyers of homes and in respect of listed buildings (heritage property).

The ownership of real property incurs an annual real property tax (ICI) payable to the local authority in whose territory the real property is situated. Tax rates vary between 0.4% and 0.7% of an imputed rental value.

III. Miscellaneous considerations

A peculiarity in Italy is the personal tax identification number *(codice fiscale)*, which identifies each individual unambiguously. Any resident individual must apply to the tax authorities for this tax identification number, on which occasion the individual's passport (possibly also his or her visa or residence permit) must also be presented.

If a tax return is filed late, the consequences may be penalties or even irrebuttable tax assessments.

C Inheritance and gift taxes

Where the transferor (testator or donor) is resident abroad, taxation in Italy is restricted to the property and rights located in Italy, unless, in the case of lifetime gifts, the donee is resident in Italy. In such a case, even a lifetime gift of foreign property is taxable in Italy, although a credit may be available for tax paid abroad.

The taxable amount is calculated according to the following detailed percentages, taking into account any applicable exemptions:

Transferee	Exemption	Tax rate
Spouses, direct descendants or direct forebears	First 1 000 000	4%
Siblings	First 1 000 000	6%
Relatives up to the 4th degree	-	6%
Others	-	8%

Special rules apply to minors and the disabled.

Where the transferor is resident in Italy, Italian inheritance tax is governed by the principle of 'territoriality', i.e. the taxable estate in the case of transfers *mortis causa* consists of all the property (real property, securities etc) and rights transferred, including those that are situated abroad. In the case of gifts *inter vivos*, however, it is the residence status of the transferee or the location of the assets that is taken into account for tax purposes (e.g. a gift of real property located in Italy to a donee resident in Germany is taxable as is a gift of real property located in Germany to a donee resident in Italy). Since, with the exception of France, no double tax treaty covering transfers on death or lifetime gifts exists with the other countries in this survey (Switzerland, Austria and Germany), double taxation is a distinct possibility.

5. France

A Terminating residence in France

I. Preliminary remarks

Leaving France involves several tax issues generally contingent on the question of whether ceasing to live in France also entails the termination of residence in France for tax purposes.

II. Terminating residence in France

According to French tax law, an individual is resident in France for tax purposes if at least one of the following four criteria is satisfied:

- the individual and his or her family live in France on an ongoing basis ('family residence')
- the individual does not maintain a family residence in France but is mostly (i.e. for more than six months per year) physically present in France
- the individual's main gainful occupation is exercised in France or
- the centre of the individual's economic interests is in France

Double tax treaty criteria are used to determine residence for tax purposes only where dual residence exists under the tax laws of two countries or a conflict of residence arises. Double tax treaties concluded with Germany, Italy, Austria and Switzerland govern any conflicts by applying the following successive criteria: permanent place of residence, centre of vital interests, habitual place of abode, and nationality.

Termination of residence in France is established where the individual either no longer satisfies any of the abovementioned criteria or where the applicable tax treaty determines the state of residence to be other than France.

III. Tax consequences of terminating residence

Unlimited tax liability in France ends upon cessation of residence for tax purposes in France; up to the date of cessation, income received by the individual remains taxable in France. Once non-resident, the individual is under the provisions of the applicable tax treaty liable to tax in France on French-source income and assets only. A minimum tax rate of 20% is applied to the income of taxpayers in this category.

The removal of residence abroad does not automatically trigger an exit tax. However, departure from France does, however, result in a liability to French withholding tax in some cases. These are specifically:

– salaries and similar remuneration (private pension benefits) received by non-resident taxpayers, which are subject to a progressive rate of withholding tax retained by the employer at the time of payment. Withholding tax rates in 2009 were as follows:

- 0% for net amounts up to approximately EUR 14 000
- 12% for amounts between EUR 14 000 and approximately EUR 40 500 and
- 20% for amounts over EUR 40 500

The calculation of the withholding tax does not take family circumstances into account. The 12% withholding tax is considered to be a final withholding tax, and the corresponding salaries are not subject to additional income tax. Salaries and other income subject to the 20% withholding tax must be declared on the annual tax return and charged with a minimum tax rate of 20%. The 20% withholding tax already retained will be credited against the resulting income tax.

- dividends payable to private individuals in Germany, Italy, Austria or Switzerland, which are liable to an 18% withholding tax. On application of the corresponding double tax treaty, this withholding tax can be reduced to 15%. Any tax withheld in France may be offset against tax liabilities in the state of residence. Interest is generally exempt from withholding tax under the relative double tax treaty
- capital gains from the sale of shares in French companies by non-residents, which are exempt from tax in France under the double tax treaties with Germany and Switzerland. The double tax treaties with Italy and Austria, on the other hand, contain special provisions according to which profits from the sale of significant shareholdings (more than 25%) are taxable in France at an 18% tax rate.

- Income from rents and leases and the proceeds of the sale of French real property, which are always taxable in France according to the situs principle. In respect of income from rents, it should be noted that real property may not be depreciated for the determination of taxable net income. Losses may be offset against other income up to an amount of EUR 10 800; any excess may be carried forward for set-off against rental income of the subsequent 10 years. The rate of tax may not fall below 20% of the taxable net income, however.

- the tax rate on capital gains from land holdings is 16% for individuals resident in the European Union and 33.33% for taxpayers residing in third countries (e.g. Switzerland). Capital gains are exempt from tax if the land has been held for more than 15 years. The disposal by an EU resident of a second home in France may be exempt from tax under certain circumstances.

Cessation of residence in France does not relieve the individual from the obligation to file an annual tax return.

IV. Social security considerations on termination of residence

Numerous bilateral and multilateral treaties leading to a mutual relationship between the contracting parties exist to regulate cross-border social security matters. These treaties ensure that foreign nationals receive equal treatment in the various contracting states. This means, among other things, that qualifying contribution periods can be cumulated and qualify for the minimum contribution record necessary to draw benefits (which is particularly important for state retirement pensions), and ensure that accident and healthcare schemes are provided on an equal basis in one contracting state to nationals of the other.

Vested pension rights are generally not lost and may be drawn in Austria, Germany, Italy or Switzerland.

B Becoming resident in France

I. Preliminary remarks

German, Italian, Austrian and Swiss individuals moving to France and wishing to become resident for tax purposes there should first obtain information on any tax consequences. France is among those European countries still charging a wealth tax. In addition, the taxation of inheritances and gifts *inter vivos* is relatively high in France compared to Germany, Italy, Austria and Switzerland.

France does not have a registration requirement for new arrivals, and the incoming individual will be registered with the tax authorities in the following year when filing his or her first tax return.

II. Tax consequences of becoming resident

Individuals resident in France for tax purposes are subject to income tax on their worldwide income. This unlimited tax liability in France commences from the date of arrival, and the individual must consequently declare any income from French or foreign sources from that date. Any double taxation is avoided either by way of credit (dividends) or exemption with progression (salaries).

The double tax treaty with Switzerland contains a peculiarity in respect of the avoidance of double taxation by way of exemption with progression. Any income taxable in Switzerland under the double tax treaty will be taken into account in France only for the purposes of calculating the appropriate progressive rate of tax. Exemption from tax will be granted in France, however, only once it has been established that the income was actually taxed in Switzerland. Income taxable in Switzerland under the double tax treaty but not actually taxed for any reason will thus not be exempt from tax in France.

Income tax is calculated with regard to family circumstances, and the highest rate is 40%, which, in the case of a single individual, applies to that part of taxable income above EUR 69 505 (2009 rates).

The tax treatment of several categories of income is briefly described below.

Salaries and similar remuneration are generally taxable in France if France is deemed the country where the employment etc is exercised. Income tax is not withheld at the source by the employer on behalf of resident individuals but remuneration from employment must be declared by the employee in his or her annual tax return. The employer is, however, required to deduct income tax from remuneration receivable by non-residents. Such employees are subsequently required to declare any remuneration exceeding a certain minimum. Deductible employment expenses are limited to a 10% lump-sum deduction, subject to a maximum of approximately EUR 14 000 in 2009. Expenditure actually incurred may, however, be deducted when it can be evidenced by supporting documentation.

Interest is generally taxable in France at a progressive rate (of up to 40%). The taxpayer may elect to subject interest to an 18% flat-rate withholding tax *(prélèvement forfaitaire libératoire)* to be retained by the debtor upon maturity and made payable to the tax authorities. Social security contributions of 12.1% are added, resulting in total tax of 30.1%.

Dividend income is subject to progressive income tax, but only 60% of the dividend is subject to tax, so that 40% is exempt. Social security contributions of 12.1% are, however, also payable and are calculated on the entire amount of the dividend. The option exists in this case also for taxpayers to elect for a 30.1% flat-rat withholding tax.

Capital gains from share disposals are subject to a 30.1% tax rate if the gains exceed an annual limit (EUR 25 730 in 2009). Capital gains will be reduced by one-third commencing with the sixth year for each subsequent year of possession. Consequently, capital gains from shareholdings will be exempt from taxation after eight years of ownership. Gains from share options and bonus shares are subject to specific tax treatment and raise specific issues in connection with cross-border arrangements, thus requiring specific consideration when becoming resident in France.

Capital gains from the disposal of real property and of shares in property companies (companies more than 50% of whose assets consist of real property not used for operating purposes) are subject to a 28.1% tax rate. Capital gains from assets will be reduced by 10% commencing with the sixth year for each subsequent year of possession, and will thus be fully exempt from tax after being held for 15 years or more.

Rental income is included in total income subject to progressive rates of tax. Generally, only actual expenditure (interest, renovation expenses, insurance, property taxes etc) is deductible for tax purposes. Depreciation may be applied to rental income only in special circumstances. Foreign rental income is generally exempt from tax in France, but it must be declared on the tax return so that it can be taken into account in determining the appropriate rate of tax. This means that foreign income from rents must be calculated anew under the tax rules applicable in France. The tax authorities currently do not consider losses from foreign real property to be deductible when determining the applicable rate of tax in France.

Individuals are subject to annual wealth tax in France if the net market value of their assets exceeds a certain maximum (EUR 790 000 in 2009) after deduction of any outstanding liabilities. Tax rates are progressive and range from 0.55% to 1.80% (for wealth of over EUR 16.5 million).

Individuals who are resident in France for tax purposes are generally liable to wealth tax on their worldwide assets, whereas individuals resident abroad are liable to wealth tax on their French situs assets only.

Financial investments made abroad by non-residents are expressly exempt from wealth tax in France.

The domestic rules explained above are subject to any contrary provisions in double tax treaties. The double tax treaties with Germany, Italy, Austria and Switzerland cover wealth tax. Generally, however, individuals formerly resident in these countries become subject to wealth tax on the basis of their worldwide income under these treaties. With effect from 1 January 2008, however, immigrants may exclude any foreign assets from their French wealth tax base.

50% of income and 50% of capital gains from the sale of foreign financial investments are exempt from tax.

III. Miscellaneous considerations

Tax reliefs have been introduced over the last several years to make France more attractive to executives of international businesses. For example, employees and executives sent to France after 31 December 2007 or directly employed by a French company and who thereby become resident in France may claim certain income and wealth tax benefits for a period of up to five years. Any benefits related to the posting abroad (expatriation allowance, payment for accommodation, flights home etc) may be exempted from tax under certain circumstances.

Foreign employees directly employed in France from abroad may claim an exemption from tax for 30% of their basic remuneration.

C Inheritance and gift taxes

Liability to French tax on inheritances and gifts *inter vivos* depends on the residence status of the parties at the time of transfer.

Where the transferor (testator or donor) is resident in France, worldwide tax liability exists and assets located both in France and abroad (worldwide assets) will be taxable in France upon both transfers *mortis causa* and transfers *inter vivos*. If the transferor is resident abroad, the taxation of inheritances and lifetime gifts is determined according to the residence of the transferee as follows.

Only assets located in France (French real property, debt claims against French debtors, shares in a French company etc) are taxable if the transferee is resident abroad. However, by contrast, if the transferee is resident in France at the time of transfer and has been so resident for at least six of the previous 10 years, all assets involved in the transfer are taxable, wherever situated.

Exemptions from tax may be available according to the degree of consanguinity between transferor and transferee. For transfers among relatives in the direct line, for example, there is currently an allowance (tax-exempt amount) of EUR 156 357 (2009).

For lifetime gifts among spouses, the tax-exempt amount is EUR 79 221 (2009). Transfers *mortis causa* between spouses and life partners are exempt from inheritance tax. The clock on allowances stops running after six years (i.e. a further full allowance becomes available every seventh year).

Tax rates are progressive and range from 5% to 40% (on taxable amounts of over approximately EUR 1.7 million). Depending on the age of the donor, taxation on lifetime gifts may be reduced by up to 50%. In addition, the donor may opt to pay the tax instead of the donee on lifetime gifts. The amount of the tax is not, however, added back to the value of the transfer or treated as an additional lifetime gift.

These rules are subject to any contrary provisions in a double tax treaty. France has currently only very few double tax treaties on inheritances and lifetime gifts in force. The double tax treaty concluded with Germany on 12 October 2006 has recently been ratified and came into force on 3 April 2009. Cases of inheritance or lifetime gifts in a cross-border context between France and Germany and made before 3 April 2009 are subject to French tax without restriction and any German tax may only be available as a credit against French tax, which is higher in some cases.

A double tax treaty with Switzerland covers only the taxation of inheritances, so that lifetime gifts are subject to an unrestricted French right of taxation according to the aforementioned principles. According to the provisions of the double tax treaties with Italy, Austria and Switzerland, inheritances and lifetime gifts are generally taxable in France if the transferor is resident in France. The exception is French real property and French business assets of a foreign transferor, which are always taxable in France.

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Further information may be obtained from:

Germany

MOORE STEPHENS DEUTSCHLAND AG

Wirtschaftsprüfungsgesellschaft
Gerhard Schmitt
Prof. Dr. Günther Strunk
Stefan Thissen
Hohenzollerndamm 123
DE - 14199 Berlin
gerhard.schmitt@moorestephens.de
office@strunk-kolaschnik.de
thissen@HusemannPartner.de

+49 (0) 30 825021- 0

Austria

MOORE STEPHENS FISCHER
Jürgen Fischer
Gudrunstrasse 141
A – 1100 Wien
j.fischer@moorestephens.at

+43 (1) 877 39 00

Switzerland

REFIDAR MOORE STEPHENS AG

Hélène Staudt
Europastrasse 13
CH - 8152 Glattbrugg/Zürich
hstaudt@ms-zurich.com

+41 (0) 44 828 18 18

iTALY

BUREAU PLATTNER

Peter Karl Plattner
Via Leonardo da Vinci 12
IT - 39100 Bolzano
peterkarl.plattner@bureauplattner.com

+39 (0471) 222 500

France

Société Juridique & Fiscale
Franco-Allemande (SOFFAL)

Pascal Ngatsing
153, Bd Haussmann
F - 75008 Paris
pngatsing@soffal.fr

+33 (1) 53 93 94 00

MOORE STEPHENS