

# SWISS INVESTMENT REPORT\* 18

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The Swiss Investment Report is especially designed for Chinese Investors, who are intending to extend their business to Switzerland or Europe or are already doing business in Switzerland.

The Swiss Investment Report provides background information on the Swiss investment-related legal framework as well as information on current developments in the Swiss legislation from a foreign investor’s perspective.

## The most important federal decrees as of 2018 - An overview

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## The most important federal decrees as of 2018 - An overview

### I. Introduction

The following provides an overview of the most important new enactments and amendments to existing laws that have either already entered into force on 1 December 2017 or have recently entered into force in Switzerland on 1 January 2018. The innovations focus on the Federal Act on the Acquisition and Loss of Swiss Citizenship, the Federal Act on Value Added Tax and amendments to the Swiss Civil Code. In addition, important amendments to the Swiss Criminal Code came into force on 1 January 2018.

### II. Total revision of the Federal Act on the Acquisition and Loss of Swiss Citizenship and the Ordinance on the Acquisition and Loss of Swiss Citizenship

The total revision of the Federal Act on the Acquisition and Loss of Swiss Citizenship came into force on 1 January 2018. The Federal Act on the Acquisition and Loss of Swiss Citizenship of 29 September 1952 was thereby repealed. The revised law provides for naturalisation of persons who (1) hold a residence permit at the time the application is being made, (2) have lived in Switzerland for at least ten years (Art. 9 Federal Act on the Acquisition and Loss of Swiss Citizenship) and (3) are integrated into Swiss society (Art. 11 Federal Act on the Acquisition and Loss of Swiss Citizenship). Before foreign nationals could only apply for a naturalisation licence if they (1) have lived in Switzerland for a total of twelve years and (2) were integrated into Swiss society. Thus, on the one hand the preconditions have been mitigated because the period of residence in Switzerland has been reduced by two years. On the other hand, the requirements have been impeded, as the applicant now has to hold a residence permit at the time of submitting the application. It is considered to be integrated if you have language skills in a national language, observe public security and order as well as the values of the Federal Constitution, participate in economic life or the acquisition of education and take care of the integration of your family. Persons wishing to

naturalise must also be familiar with the local living conditions and must not endanger Switzerland's internal or external security.

The Ordinance on the Acquisition and Loss of Swiss Citizenship specifies the decisive integration criteria for naturalisation. Another area of the new ordinance concerns the fees for first-instance injunctions of the State Secretariat for Migration (SEM). These have so far been regulated in particular by the Ordinance on Fees under the Federal Act on Swiss Citizenship. They are now new to the Ordinance on the Acquisition and Loss of Swiss Citizenship. Fees for simplified naturalisation, renaturalisation and nullity of applications for citizenship have been increased in some cases. Fees for the grant of the federal naturalisation permit stay the same. In addition, the fees are now usually collected in advance and non-refundable.

### **III. Revision of the adoption law**

At its meeting on 5 July 2017, the Federal Council decided to bring the revised adoption law into force on 1 January 2018. Under the previous law, only married persons had the right to so-called stepchild adoption. Now, the adoption of the partner's child is also open to couples in a registered partnership or in different and same-sex factual cohabitations (Art. 264c Swiss Civil Code). In this way, unequal treatment is to be eliminated and the relationship between the child and the step-parent is legally secured. The joint adoption of other people's children remains refused to same-sex couples and couples in a factual cohabitation.

In addition, the general adoption requirements have been made more flexible. Since 1 January 2018 these may be departed from if this is in the interest of the child. Moreover, the minimum age of an individual or a couple to adopt a child has been reduced from 35 to 28 years and the minimum duration of the adopting couple's relationship has been reduced from five to three years (Art. 264a Swiss Civil Code). The deciding factor for the calculation is no longer the duration of the marriage, but rather the duration of the common household of the adoptive couple.

Furthermore, the revision of the adoption law relaxed the confidentiality of adoption information (Art. 268b Swiss Civil Code). Biological parents who have given their child up for adoption and later seek the child or wish to receive information about their child can now find out their child's identity, provided that the adult or adoptive child capable of judgement agrees. In the case of a minor child, the consent of the adoptive parents must also be available. According to the previous legal situation, adopted children were already entitled to know their biological parents without the consent of their biological parents. Since 1 January 2018 adopted children can not only obtain information about their biological parents, but also about their physical siblings and half-siblings, if the (half-) siblings are of legal age and have consented to the disclosure of the information.

#### **IV. Revision of the Swiss Criminal Code**

The main change to the Swiss Criminal Code is the relaxation of the conditions for pronouncing a short custodial sentence of less than six months. Short custodial sentences have so far been pronounced in cases of poor probation prognosis and when the execution of a monetary penalty seemed hopeless. Although the monetary penalty continues to take precedence, the short custodial sentence shall now also be pronounced if it is necessary to prevent the offender from committing further crimes. Until now, short custodial sentences were only possible unsuspended. With the amendment of the law, the short custodial sentence may now also be suspended, depending on the probation prognosis. The maximum amount of the fine remains unchanged at CHF 3'000 per day. What is new, however, is that a daily penalty unit of at least CHF 30 applies. Exceptionally, the daily penalty unit can be reduced to CHF 10 if the offender's personal and financial circumstances demand so (Art. 34(2) Swiss Criminal Code).

Furthermore, now the executive authority may order the use of electronic devices and their secure attachment to the offender's body (electronic monitoring) in execution of a custodial sentence or an alternative custodial sentence of twenty days to twelve months or in lieu of day release

employment or day release employment and external accommodation for a term of three to twelve months (Art. 79b Swiss Criminal Code).

Since 1 January 2018 (1) a custodial sentence of no more than six months or (2) the remainder of a sentence of no more than six months after taking account of time spent on remand or (3) a monetary penalty or a fine may be served in the form of community service, if it is not anticipated that the offender will abscond or commit further offences (Art. 79a Swiss Criminal Code). Thus, community service is no longer a separate custodial sentence, but is now a new form of enforcement, with the result that it is no longer the courts but the executive authorities which are responsible for ordering community service. The executive authority shall allow the offender a specific period not exceeding two years within which to complete the community service. In the case of community service carried out in lieu of a fine, this period may not exceed one year.

#### **V. Revision of the Federal Act on Value Added Tax (VAT Act)**

The partial revision of the VAT Act came into force on 1 January 2018. Now, the obligatory tax liability of a company is no longer determined only by its domestic turnover, but by its domestic and international turnover (Art. 10(2) VAT Act). Up to now, foreign companies have been able to provide their services in Switzerland without VAT up to a turnover of CHF 100'000. Since 1 January 2018, companies with a worldwide turnover of at least CHF 100'000 are subject to VAT in Switzerland from the first Swiss franc upwards.

#### **VI. Federal Act on the International Automatic Exchange of Country-Related Reports of Multinational Corporations (Federal Act) and the Ordinance on the International Automatic Exchange of Country-Related Reports of Multinational Corporations (Ordinance)**

The Federal Act and the Ordinance have already come into force on 1 December 2017. With the Federal Act and the Ordinance, Switzerland is implementing the global minimum standards of the BEPS project (Base Erosion and Profit Shifting). BEPS refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or

no-tax locations. Under its inclusive framework, over 100 countries and jurisdictions are collaborating to implement the BEPS measures and tackle BEPS. This project is headed by the Organisation for Economic Co-operation and Development (OECD) and was initiated by the G20 in 2012.

The Federal Act and the Ordinance oblige multinational groups in Switzerland to prepare a country-specific report for the first time as of the tax year 2018. These reports will be exchanged between Switzerland and the partner countries from 2020 onwards. The aim of this project is to improve the transparency of taxation of multinational groups. For the tax periods of 2016 and 2017, corporate groups can submit such a report on a voluntary basis.

The Ordinance determines the content of the country-specific report in its article 1. It contains, for instance, information on the worldwide distribution of turnover and taxes paid and information on the most important economic activities of all constitutive legal entities of the multinational group. Furthermore, the Ordinance sets the threshold for the obligation to prepare a country-specific report at 900 million Swiss francs (Art. 3) of the annual consolidated turnover in the tax period immediately prior to the reporting period and contains further provisions necessary for the implementation of the Federal Act.

The OECD and G20 countries will discuss the content of the country-specific report at the latest by the end of 2020 and will decide whether, for example, the threshold of 900 million Swiss francs needs to be adjusted.

## **VII. Conclusion**

In conclusion, the total revision of the Federal Act on the Acquisition and Loss of Swiss Citizenship has simplified the preconditions for receiving a naturalisation licence, as the period of residence in Switzerland has been reduced by two years. However, applicants need to hold a residence permit at the time the application is being made and need to be integrated into Swiss society.

The revision of the adoption law in general relaxed the conditions for the so-called stepchild adoption. Now, even couples in a registered partnership or in different and same-sex factual cohabitations have the right to adopt the partner's child. This regulation is a major step towards equality between traditional marriage and similar forms of cohabitations.

The changes to the Swiss Criminal Code focus on easing the preconditions for pronouncing a short custodial sentence of less than six months. Although the monetary penalty continues to take precedence, the short custodial sentence can now be pronounced more easily.

Pursuant to the revision of the Federal Act on Value Added Tax the obligatory tax liability of a company is no longer determined only by its domestic turnover in Switzerland, but also by its domestic and international turnover. Thus, this means that many more internationally active companies are now subject to VAT in Switzerland.

Furthermore, according to the Federal Act on the International Automatic Exchange of Country-Related Reports of Multinational Corporations multinational groups in Switzerland will have to prepare a country-specific report for the first time as of the tax year 2018.

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