

# Switzerland

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## 1. Types of tax

Switzerland is a confederation of 26 cantons. In all instances, the cantons have maintained autonomy and sovereignty, unless specifically noted as the confederation in the federal constitution. This is especially the case in tax matters. The cantons have their own constitution and may, in turn, confer certain autonomy on the municipalities. In total there are 27 tax jurisdictions that include the confederation and 26 cantons.

### 1.1 Inheritance and gift tax

#### **Nature of the inheritance and gift tax**

The cantons have an exclusive right (to the exclusion of the confederation) to levy gift and inheritance taxes. In some cantons, this taxing power is shared with the municipalities, such as the cantons of Vaud and Graubünden.



The canton of Schwyz does not levy inheritance or gift tax. The canton of Lucerne does not levy gift tax except when the transfer has taken place within five years before the death of the donor. In this case the gift is subject to the inheritance tax.

In the majority of the cantons, inheritance and gift tax is donee based and is levied on the net share of the inheritance or legacy passing to the beneficiary (the heir, legatee or the donee). In case of an inheritance, two cantons have maintained an estate tax that is imposed on the net value of the decedent's estate. These are the cantons of Graubünden and of Solothurn, in which the cantonal estate tax can be combined with inheritance tax levied at the municipal level.

Although estate tax is levied at a fixed rate on the net value of the decedent's estate, the rate applicable to inheritance and gift tax charged on beneficiary depends on the net amount received and the relationship between beneficiary and decedent; the closer the relationship, the lower the applicable tax rate.

### **Determination of the tax basis**

The tax legislation of the 26 cantons contains specific provisions on the valuation of any assets transferred and on allowable deductions (expenses incurred in connection with the death). Reference needs to be made to the local cantonal rules in any particular case.

## **1.2 Real estate profit tax**

Transfer of real estate may generally be subject to real estate profit tax.

Furthermore, real estate transfer tax and/or real estate register costs may incur. Real estate profit tax is levied by the cantons or the municipalities, and therefore the tax legislation may differ in each canton.

A taxable transfer results because of the sale of real estate or a similar transaction (e.g., the sale of shares in a real estate company). The tax is calculated on the capital gain, and usually a progressive tax rate is applied. For short holding periods, an additional surcharge is levied.

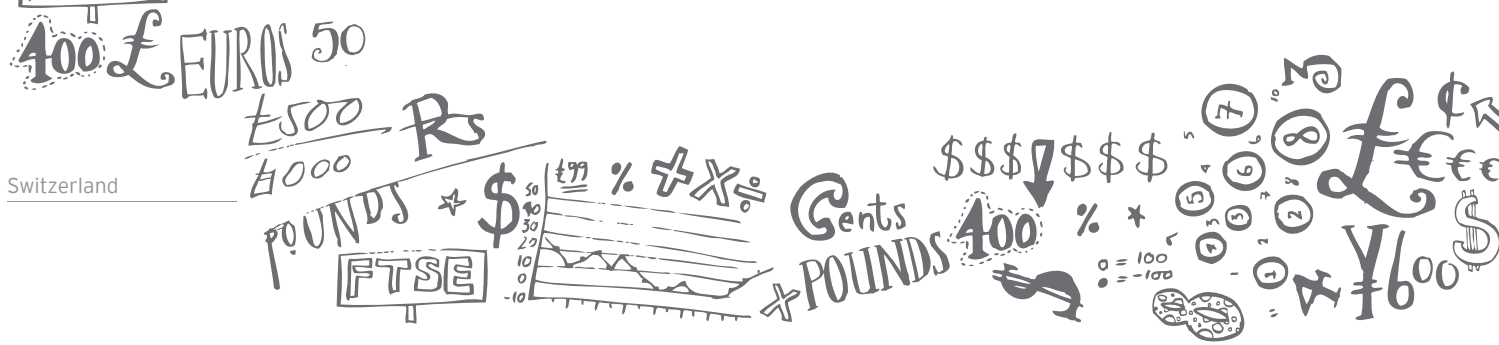
If the transfer of real property takes place in the course of an inheritance or gift, then the real estate tax is not levied but deferred until the new owner sells. However, such a transfer may be subject to inheritance or gift tax.

## **1.3 Endowment tax**

The incorporation of a foundation or a similar transaction upon death may be subject to inheritance or gift tax (see Section 2). However, Switzerland does not have a separate endowment tax.

## **1.4 Transfer duty**

Generally there are no transfer taxes in case of inheritance or gift transactions. However, certain cantons may levy a transfer tax (*Handänderungsabgaben*) if the transferred asset is real estate.





### 3. Rates

Due to the fact that the cantons and municipalities have the right to levy inheritance and gift taxes, the tax rates in each canton differ depending on whether inheritance and/or gift tax is levied.

Generally, there are two factors that influence the tax rate: the value of the transferred assets and the degree of relationship of the beneficiary to the decedent or donator.

The tax rates in the different cantons vary from 0% up to 50%. A detailed analysis based on the specific facts and circumstances is highly recommended.

### 4. Exemptions and reliefs

The majority of the cantons presently exempt the spouse/surviving spouse and the children from inheritance and gift tax.

In the cantons of Appenzell Innerrhoden, Neuchâtel and Vaud, children are still subject to inheritance and gift tax. In all other cantons they are exempt from inheritance and gift tax.

In certain cantons, such as Zug and Geneva, the parents are also exempted from inheritance and gift taxes.

Government bodies as well as charitable institutions are exempt from inheritance and gift taxes. As far as charitable institutions are concerned, exemption (total/partial) is only granted on the basis of a specific tax ruling. No general exemption exists.

### 5. Filing procedures

#### Inheritance

In case of the decease of an individual, the authorities are generally obliged to prepare an inventory of the abatement.

Depending on the canton, such inventory is usually prepared shortly after the decease. The inheritance tax is generally assessed on the basis of such inventory.

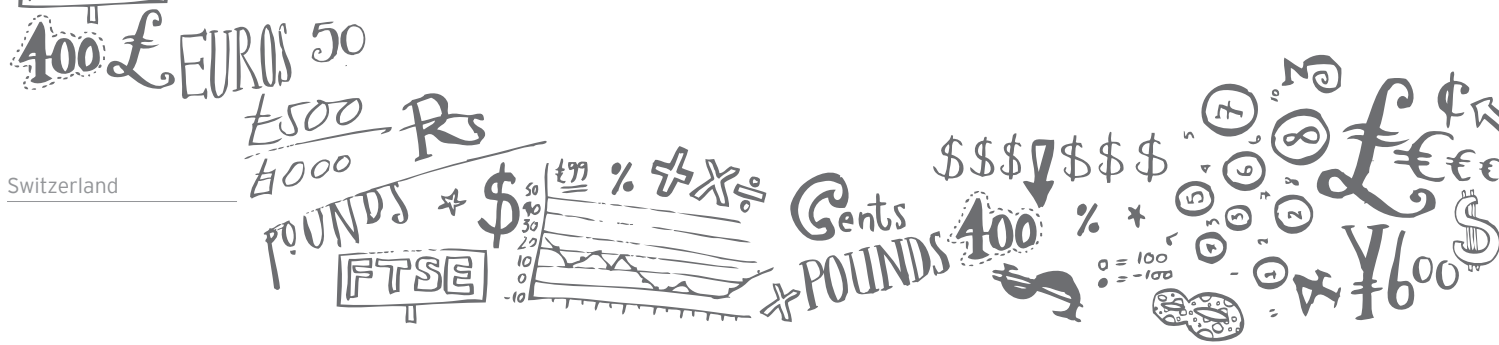
#### Gift

In most of the cantons, gift transfers have to be declared with the authorities by filing a gift tax declaration by the donee (in fewer cantons, the declaration has to be filed by the donor). The filing deadline for such declaration may vary in each canton (e.g., for the canton of Zürich it is three months).

The assessment of both inheritance and gift tax is notified to the taxpayer in written form. If the taxpayer does not agree with the assessment, an objection within a defined period (usually 30 days) can be filed.

### 6. Assessments and valuations

In the majority of the cantons, an estate inventory will provide the basis for the tax assessment. The assessment authority, with the cooperation of the beneficiaries or the beneficiaries themselves, prepare the estate inventory. The beneficiaries are required to file a tax return providing an inventory of the estate.





The beneficiary is taxed as if he or she was a usufructuary, and the share of trust corpus allocable to the income distributed will be subject to net wealth tax.

#### Distributions/grants out of an irrevocable discretionary trust

- ▶ Income: taxable as income when distributed, occasional distributions may fall outside of the scope of income tax
- ▶ Capital gain: subject to income tax
- ▶ Distribution of the contributed assets – is not subject to income tax
- ▶ Capital: not taxable as income – free of tax

The beneficiary of a discretionary settlement has only a virtual interest, and no share of the trust corpus is allocable to the income received on a discretionary basis and consequently, no net wealth tax is levied.

#### Taxation of the trust/trustee

The trust itself is not subject to tax under Swiss tax legislation. This is also the case for a fully discretionary trust in which all the trustees are residents in Switzerland.

The trustee is considered to hold the trust assets only in a fiduciary capacity and thus is not subject to tax under present Swiss direct tax legislation (income and wealth taxes).

## 8. Grants

See Section 7.

## 9. Life insurance

Under certain circumstances, the transfer of an insurance (e.g., life insurance) may be fully or partially considered in the inventory of the deceased and, therefore, be subject to inheritance tax. Additionally, income tax consequences could result if the transfer is not fully subject to inheritance tax.

Nominating a beneficiary of insurance can result in gift tax consequences.

Due to the numerous insurance products, it is essential to analyze any tax consequences on the specific facts.

## 10. Civil law on succession

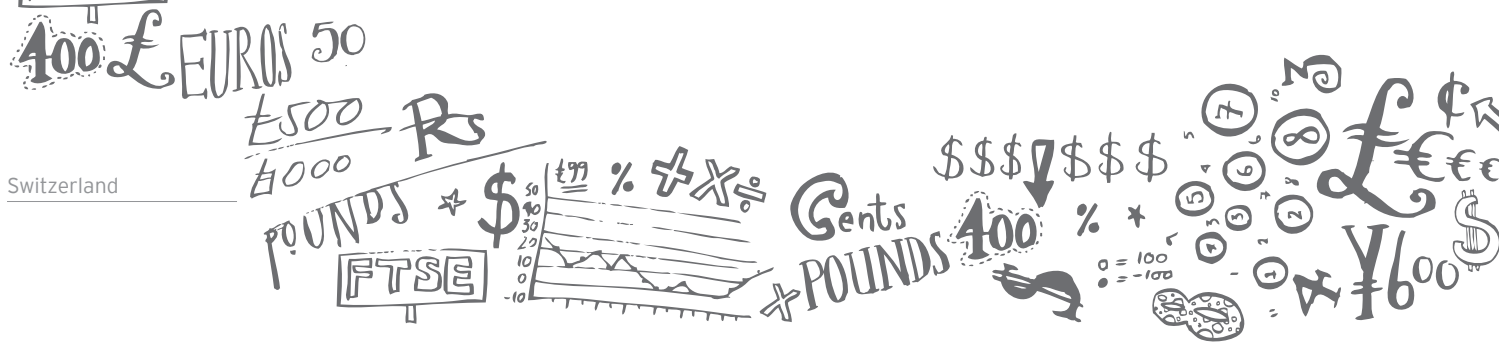
### 10.1 Estate planning

#### Pre-immigration trust and lump-sum taxation

In setting up a pre-immigration discretionary trust, a foreign (non-Swiss) settlor, resident in Switzerland under a lump-sum tax regulation, can achieve a double-tax optimization: distributions out of the foreign trust remain outside of the scope of lump-sum taxation and the assets irrevocably transferred into trust no longer form part of his or her estate at death.

#### Choice of law to govern succession

A foreign (non-Swiss) citizen who is a resident in Switzerland, may choose his or her national law to apply to his or her estate and thereby circumvent the Swiss civil code forced heirship rules, which might otherwise be an obstacle to flexible succession planning.







## 10.5 Probate

## 11. Estate tax treaties

As an exception of this general rule, immovable property is taxed at the place in which it is located (unilateral exemption).

## Estate tax treaties