Switzerland

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1. Types of tax

Switzerland is a confederation of 26 cantons. In all instances, the cantons maintain autonomy and sovereignty, unless specifically noted by 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, comprising 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 cantons of Schwyz and Obwalden do 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 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, the cantons of Graubünden and of Solothurn have maintained an estate tax that is imposed on the net value of the decedent's estate.

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 the beneficiary depends on the net amount received and the relationship between the 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 apply. 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 the property. 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 cases of inheritance or gift transactions. However, certain cantons may levy a transfer tax (*Handänderungsabgaben*) if the transferred asset is real estate.

1.5 Net wealth tax

On the cantonal/communal level, net wealth tax is levied. The tax base includes the worldwide assets, with the exception of real estate or permanent establishments located abroad.

The tax rates are reasonably low and vary widely, depending on the canton and municipality where the taxpayer is resident.

2. Who is liable?

The beneficiary of the assets (heir or legatee) is liable to pay the inheritance tax. When there are several heirs, they are jointly and severally liable to pay the taxes. Estate tax is levied once at a fixed rate on the net value of the estate.

In the case of a lifetime gift, the donee will be liable to pay gift tax. In certain cantons, the donor is jointly liable with the donee to pay gift tax.

Taxable transfers

Inheritance tax is levied on the share of the inheritance passing from the decedent to the statutory heir or to the heir or legatee specified under the terms of a testamentary document. Inheritance tax is also levied on gifts made in contemplation of death.

The contribution of assets to an existing foundation or to a foundation to be created by a last will is subject to inheritance tax. As the foundation is a legal entity not related to the decedent/testator, the highest tax rate will apply. Partial or total exemption may be granted, subject to obtaining a written tax ruling, when the foundation qualifies as a charitable foundation.

The transfer of insurance proceeds that mature at death is subject to inheritance tax, unless they have been subject to income tax. This applies whether or not the proceeds are payable directly to the beneficiary.

Gift tax is levied on *inter vivos* gratuitous transfers of assets and on any transfer of assets made without adequate consideration. In this latter case, gift tax will be imposed on the difference between the fair market value (FMV) of the property transferred and the consideration paid.

The following are also subject to gift tax:

- The *inter vivos* transfer of assets to a foundation
- The transfer of insurance policies that mature during the donor's lifetime
- The forgiveness of a private debt (provided the debtor is solvent)

The disclaimer of an inheritance, the waiver of a right before it has vested or the transfer of assets in fulfillment of a moral duty are, however, not considered as taxable gifts.

Residency/domicile

The inheritance and gift tax is generally levied by the canton in which the decedent had or the donor has his or her legal domicile. In the canton of Solothurn, the inheritance tax is also levied if the procedure of the estate distribution takes place in Solothurn.

The Swiss Civil Law defines legal domicile in cases of inheritance and gift tax as the place in which an individual resided or is residing with the intent of a continuous stay. There is no alternating domicile (as under other Swiss tax laws).

If immovable property is transferred, the canton in which the immovable property is located levies an inheritance and gift tax.

3. Rates

Rates may vary due to the fact that the cantons and municipalities have the right to levy inheritance and gift taxes.

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 currently 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

The authorities are generally obliged to prepare an estate inventory upon an individual's death.

Depending on the canton, such inventory is usually prepared shortly after the death. 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 a few 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 Zurich 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.

A tax assessment decision is notified to the beneficiary. The tax assessment decision can be challenged to reconsider and/or appeal to the cantonal judicial or administrative authorities. An ultimate appeal against the final cantonal decision can be brought before the federal Supreme Court.

Inheritance taxes are due within 30 days following the notification of the tax assessment.

Gift taxes are levied on the basis of a donee's self-assessment.

In most cantons, a tax audit can commence at any time within the 10 years following the end of the year of the decedent's death.

7. Trusts, foundations and private purpose funds

Trusts

The concept of trusts does not exist in Swiss civil and tax legislation. Nevertheless, Switzerland has ratified the Hague Convention of 1 July 1985, and the Swiss tax authorities have published guidelines regarding the taxation of trusts in Switzerland.

Taxation of the settlor

A Swiss resident settlor's settlement of assets into a trust may trigger gift/inheritance taxes.

The following criteria will be applied by the tax authorities in examining the trust documents:

Revocable trust:

- The ownership of the assets will not be considered to have been transferred. Income and assets of the trust remain taxable in the hands of the settlor, and distributions to the beneficiaries are considered as gifts from the settlor.

Irrevocable trust:

- The ownership of the assets will be considered to have been transferred to the trustee.
- When the trust is of a discretionary nature, the highest gift/inheritance tax rate will apply because the trustee has no relationship to the settlor.
- When the trust provides for an interest in possession for specific beneficiaries, the competent tax authority may consider that the transfer is made to the beneficiary directly, and the applicable tax rate in such case would depend on the value of the assets transferred and the degree of relationship between the settlor and each beneficiary.

Taxation of the beneficiaries

Beneficiaries of a trust who are residents in Switzerland will face income tax and net wealth tax consequences based upon the distributions received.

Subject to any specific tax ruling that can be negotiated with the competent tax authority, the following general taxing rules will apply:

Distributions/grants out of an irrevocable fixed interest trust

- Income: taxable as income when received
- Capital gain: not taxable as income — free of tax
- Distribution of the contributed assets — not subject to income tax
- Capital: not taxable as income — free of tax

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
- Capital gain: subject to income tax
- Distribution of the contributed assets — 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 the 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 to have his or her national law apply to his or her estate, thereby circumventing the Swiss civil code forced heirship rules, which might otherwise be an obstacle to flexible succession planning.

10.2 Forced heirship

Upon an individual's death, the heirs are divided into classes. The first class of heirs are the children and their successors. If there are no heirs from that class, the inheritance is divided among the parents and their successors. The third class includes the grandparents and their successors.

The surviving spouse receives:

- One-half of the inheritance if shared with children
- Three-quarters of the inheritance if shared with parents
- The whole in any other case

Under Swiss civil law, the following forced heirships are foreseen:

- For children and their successors: three-quarters of the inheritance as described above
- For parents: one-half of the inheritance as described above
- For the surviving spouse: one-half of the inheritance as described above

The heirs have the possibility of agreeing to another division of the inheritance by setting up a testamentary contract (certain legal requirements have to be considered in this situation).

10.3 Matrimonial regimes and civil partnerships

Swiss civil and international private law

The Swiss civil code, in common with other continental European legislation, attributes to specific categories of heirs (e.g., parent, surviving spouse and children of the deceased person) a fixed share in the estate, otherwise known as forced heirship.

The forced heirship provisions, however, are not a matter of public policy and, in an international context, can be circumvented by a non-Swiss testator who is resident in Switzerland and chooses his or her national law to govern the disposition of his or her estate.

The testator can also agree with the compulsory heirs to enter into a so-called successoral pact whereby the latter renounce their compulsory portion. In an international context, however, the validity of such a successoral pact may not only depend on the law applicable to the succession, but also on the law applicable to the capacity of the parties concerned to enter into such a pact.

Swiss international private law regards the jurisdiction of residence as the competent jurisdiction to determine the law applicable to the succession and the principle of unity of succession.

Issues connected with the matrimonial regime have been intentionally not dealt with, although they form an integral part of a succession planning in the circumstances of a married couple.

10.4 Intestacy

If the decedent has not created a last will, the inheritance is attributed according to Swiss civil law (see Section 10.2).

10.5 Probate

Swiss civil law does not normally require a formal procedure in respect of the presentation of a last will to the heirs. On the contrary, the validity of a will does not depend on specific procedures of filing, approval or opening as long as the formal requirements of drafting are respected.

11. Estate tax treaties

11.1 Unilateral rules

Under unilateral rules, the worldwide assets are generally taxed in the canton in which the decedent or the donor has his or her legal domicile. In the canton of Solothurn, the worldwide assets are also taxed if the procedure of the estate distribution takes place in Solothurn.

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

11.2 Double-taxation treaties

The unilateral tax rules are also applicable in international circumstances, unless a double-taxation treaty limits the taxation right of the canton. This may be the case if a fixed place of business (permanent establishment) is included in the inheritance.

Estate tax treaties

The confederation has concluded estate tax treaties with eight foreign countries: Austria, Denmark (including Faroe Islands), Finland, Germany, Netherlands, Sweden, the United Kingdom and the United States.

Certain cantons, such as Zurich and Basel-Stadt, have also concluded international tax treaties with foreign countries in connection with inheritance tax.

There are no double-tax treaties with regard to gift tax.

12. Specific rules

Certain rules apply when the testator has proscribed that persons take an interest in his or her estate in succession to each other, i.e., there are current and reversionary heirs. In most cantons, inheritance tax will be levied twice: once upon the transfer of the property to the initial heir, and a second time upon the transfer of the property to the reversionary heir. The applicable tax rate will depend upon the relationship between the decedent and the first heir, and the decedent and the reversionary heir. Some cantons such as Fribourg, Vaud and Jura levy tax once, at the higher rate, depending upon the relationship between the decedent and the first or reversionary heir.

Other rules apply in cases involving the creation of a usufruct. In the majority of the cantons, the beneficiary of the usufruct will be liable to inheritance tax on the capitalized value of the usufruct. The bare owner will pay taxes on the open market value of the capital assets less the capitalized value of the usufruct.

In both cases, tax advice should be sought on the basis of the individual circumstances.