

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. Neither gift tax nor inheritance tax are levied at the level of the Confederation. 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 may be levied depending on the rules of each canton.

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



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.

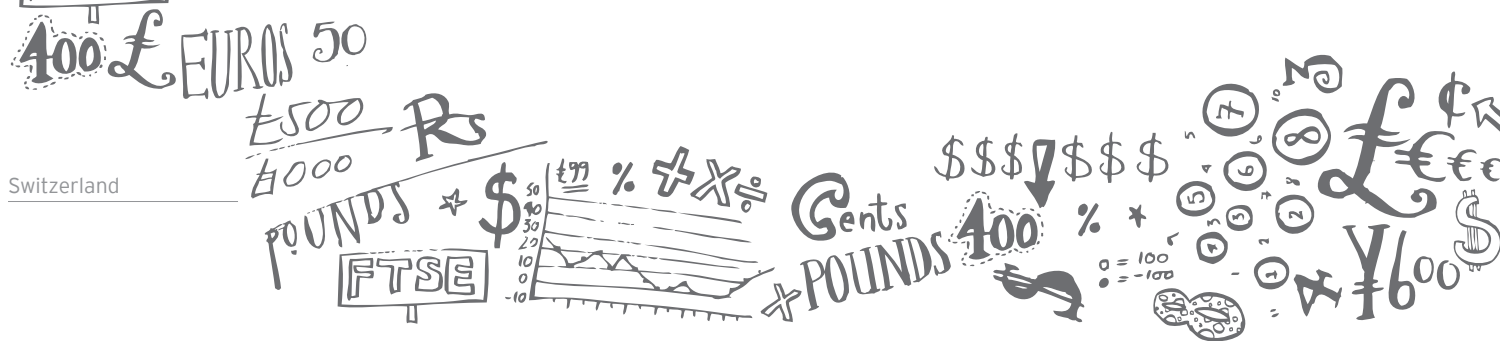
Gift

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, prepares the estate inventory. The beneficiaries are required to file a tax return providing an inventory of the estate.





- ▶ 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). However, specific attention must be paid to the effective place of management of non-Swiss companies belonging to the assets of a trust managed by a Swiss trustee.

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. For the definition of irrevocable trust under Swiss tax practice, please see Section 7 above.



A foreign (non-Swiss) citizen who is a resident in Switzerland may choose to have his or her national law applied to his or her estate, thereby circumventing the Swiss civil code forced heirship rules, which might otherwise be an obstacle to flexible succession planning. Such choice must be included in a formally valid will.

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.

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

- ▶ 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

10.3 Matrimonial regimes and civil partnerships

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 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.

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 to 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.