

Inheritance and Estate Tax Switzerland

Increased mobility among high net worth individuals and family owned and private companies with assets in multiple countries has meant estate planning is subject to ever more complex tax issues. In turn, individuals are increasingly seeking specialist estate lawyers to help navigate complex legal affairs relating to inheritance and tax, such as tax residency and domicile and the tax aspects of international investments. To find out more, *Lawyer Monthly* speaks to Kinga M. Weiss and Stephan Neidhardt from one of Switzerland's leading law firms, Walder Wyss.

Please introduce yourself, your role and your firm:

Walder Wyss clients include national and international corporations as well as public-law entities and individuals. The firm offers private clients comprehensive advisory services and we head the private clients' team. We provide support with relocating to Switzerland and with planning as well as setting up appropriate structures and evaluate the most suitable domestic and international arrangements.

What are the most challenging aspects of your role? How do you navigate the challenges that arise?

The most challenging aspect of our private client's work is to elaborate state-of-the-art solutions on a case-by-case basis for the clients. Each case is different and requires an overall assessment of all circumstances of the client including his personal affairs. With our longstanding expertise and many years of practice experience in private client's work we navigate these challenges by a thorough analysis of each case.

Have there been any legislative changes that affect your practice area?

In the international inheritance law area actions need to be taken based on the EU Succession Regulation (No. 650/2012), which entered into force on 16 August 2012. Switzerland is not a member of the EU, but is affected by it. In order

to simplify the processing of cross border successions within the EU, the conflict-of-law rules on cross-border successions of 24 members of the EU have been harmonized and will by operation of law directly be applicable to all deaths on or after 17 August 2015. The EU Succession Regulation provides for one single criterion for determining the jurisdiction and the law applicable to cross-border successions: the last habitual residence at the time of death of the deceased. Pursuant to Swiss law the connecting factor in inheritance issues is the last residence of the deceased. In cases, where the EU and the Swiss connecting factors will not be defined congruently, conflicts will arise. Therefore, it might be recommendable for testators to make a choice of law in the last will in favour of his law of citizenship. The broad scope of the member state's competences might also lead to conflicts. Hence, already as of today the EU Succession Regulation has to be considered and appropriate actions might be necessary.

What is the most efficient way in which clients can minimize their tax liability when it comes to a substantial inheritance?

In Switzerland the inheritance tax falls into the competence of the cantons. Most cantons levy an inheritance tax except the canton of Schwyz. The inheritance tax is generally levied on the deceased's worldwide assets and by the canton where the deceased had his last residence. In cases where a real estate is transferred, the canton where the real estate is

situated levies the inheritance tax. Real estates outside of Switzerland are generally not taxed. Only the respective value of the real estate is included in the calculation of the applicable tax rate. In almost all cantons the heirs/legatees are subject to tax. As an important exception, spouses or registered partners are exempt from tax in all cantons, issues are exempt from tax in the majority of cantons, parents and unmarried partners only in some cantons. The amount of tax is usually calculated by the degree of cognation and the amount of the incurred assets. By taking up residence in a canton, where no inheritance tax exists or where the potential heirs are exempt from inheritance tax, a testator can in an efficient way minimize the tax liability of his heirs. The same is true by purchasing real estates in an inheritance-tax friendly canton. In international cases existing double taxation agreements must be taken into account.

This February a constitutional initiative to reform the inheritance tax has been filed. The initiative states that the estate of a deceased with last residence in Switzerland shall be taxed if the estate exceeds an amount of 2 million Swiss francs, whereby certain exceptions are foreseen for family businesses. Tax exemptions exist only for spouses or registered partners but not for direct descendants. Not the heirs will be taxed, but rather the estate itself and the tax rate shall be 20% of the estate. Based on the initiative the new provisions shall have a retroactive effect as of 1st January 2012 even though the new constitutional provision would – if approved – enter into force on 1st of January 2016 at the earliest.

How severely will private clients' wealth management strategies be affected by the recent tax deals that have been agreed between countries such as the UK and Switzerland, and Switzerland and Germany?

First of all, the proposed agreement between Switzerland and Germany has not been approved and shall most likely never come into effect.

Although the agreement between Switzerland and the UK has entered into force, we do not believe that this agreement has or will have any larger influence on future wealth management strategies, since this agreement is mainly trying to solve past undeclared funds issues and well advised wealth managers have to look into the future: the worldwide activities against undeclared funds shall continue and this will certainly also be the case with regard to Switzerland. Rumours are out that the large Swiss

banks are not going to accept undeclared funds in the near future. The Swiss federal council just released a proposal that the banks can only accept wealth in the future if they are absolutely sure that the respective funds are declared in the client's tax return. The agreement between Switzerland and the UK shall only, at least for the moment, ensure that the respective funds may stay in Switzerland, but the future of such funds in Switzerland is very unclear should the before mentioned proposals come into effect.

What are the possible effects of family mobility on investment planning and taxation and the applicable legislation?

Any change of residence to another jurisdiction will result in a new legal framework, which makes it indispensable to review one's investment planning and private wealth planning including the matrimonial property law, the inheritance law, any existing structures (e.g. trusts) and last but not least the tax planning. Often in these areas of international law the connecting factor is a person's residence, his/her habitual residence, domicile or nationality. Therefore, in most cases actions need to be taken at an early stage. **LM**

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