№ 02 April 2015

Schweizerische Treuhandgesellschaft
Société Fiduciaire Suisse
Swiss Trust Company

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Inheritance Tax Initiative

Preliminary remark

By means of a federal popular initiative, it is being sought to introduce a national inheritance and gift tax which shall tax the estates of natural persons who demise in Switzerland or for whom inheritance proceedings are commenced in Switzerland, at a rate of 20%. The proponents of the popular initiative, which is entitled **"Tax millions inheritances for the benefit of our old age pensions" (Millionen-Erbschaften besteuern für unsere AHV [inheritance tax reform]),** seek to reduce the concentration of large amounts of assets in the hands of only a few people by means of an inheritance and gift tax imposed on those with large assets. In this way, equal opportunities (the same starting point for all persons) should be improved upon. Moreover, the Old Age and Survivors' Insurance Compensation Fund (hereinafter called the "AHV") would be strengthened. The proponents of the initiative are made up of the EVP (Evangelical People's Party), the SP (Social Democratic Party), the Green Party and the PdA (Swiss Labour Party).

Realisation of the initiative

The popular initiative was examined by the Federal Chancellery on the 2 August 2011 and was submitted with the necessary amount of signatures on the 15 February 2013. By means of a decree issued on the 12 March 2013, the Federal Chancellery determined that the initiative had come into being, it having some 110 205 valid signatures. Likewise, the other requirements stipulated in law for validity in accordance with article 139 paragraph 3 of the Federal Constitution, were also fulfilled.

Basic parameters of the initiative

- The AHV shall now be financed out of the returns from inheritance and gift taxes (supplement to article 112 Cst)
- The power to raise inheritance tax and gift tax transfers from the cantons to the federal government (new article 129a Cst) – the cantonal inheritance and gift taxations are thereby to be abolished. The tax is only to be levied and collected by the cantons.
- 1/3 of the tax revenue is to go to the cantons.
- 2/3 of the tax revenue is earmarked for the AHV.
- The **estate** of natural persons is to be taxed whose last place of residence was in Switzerland or for whom inheritance proceedings are commenced in Switzerland, but not the individual heirs. The gift tax is levied at the donor.
- The **tax rate** amounts to **20%**.
- The following are not taxable:
  a. A one-off tax-free allowance of CHF 2 million on the aggregate of the estate and all taxable gifts;
  b. The part of the estate and gifts that pass to the husband, the wife or the registered partner;
  c. The parts of the estate and the gifts that pass to a legal entity exempt from the tax;
  d. Gifts of at most 20 000 Swiss francs per year and per beneficiary.

If **businesses** or **agricultural businesses** belong to the estate or gifts, and are continued by the heirs or recipients **for at least ten years,** then special reliefs apply to the taxation in order that the continued existence of the business is not endangered and the jobs are preserved.

Tax relief for businesses

As set out by the terms of the initiative in accordance with article 129a paragraph 5 Cst, relief is applied in the case of businesses by means of a tax-free allowance on the total value of the company and a reduced tax rate on its remaining taxable value. Still open is the matter of the amount of the tax allowance and the reduction of the tax rate – these matters remain to be decided by the legislators. Experts suspect that despite allowances and tax rate reductions, debts would increase in the case of businesses because the taxes would have to be financed out of the businesses' financial resources. Companies owning real estate and having high undisclosed reserves would be particularly affected.

Example: A company owning real estate

In the following example, the balance sheet of a real estate company as per the 31 December 2013 and which is in the 100% possession of a single shareholder is represented. In the case of the property which is held in the capital assets (business property, built in 1957), mainly diverse refurbishment work needs to be undertaken such as facade renovation, roofing repairs, new windows etc., as well as modernisation and renewal of sanitary and electrical installations. In order to carry out all of this different renovation work, the annual profits were not distributed during recent fiscal years by way of a dividend to the shareholder, but rather, carried forward as a profit into the next business year.

The balance sheet looks like this:

Balance Sheet Sample Real Estate Ltd			31.12.2013
Current Assets	650 000	Short-term liabilities	150 000
Fixed Assets	2 500 000	Long-term liabilities	2 000 000
	3 150 000	Share capital	400 000
		Reserve	40 000
		Profit brought forward	560 000
	3 150 000		3 150 000

Suppose the sole shareholder dies and leaves a wife and two children. The estate including the company's assets must be valued at current market values:

Shareholder's Assets/Estate	
400 Share Sample Real Estate Ltd	6 100 000
Cash	40 000
Bank account	100 000
Car	20 000
Total Assets	6 260 000
./. exempt amount	–2 000 000
Estate	4 260 000
Inheritance tax reduced rate (10%) (without exempted amount on business)	**426 000**

Should the initiative be passed, then the decision about the amount of a reduced tax rate as well the tax free amount is to be decided by the federal parliament. In this example, a reduction of 10% was assumed (without allowance). According to the balance sheet, there would be sufficient liquidity available to pay the inheritance tax using it own resources. However, the necessary renovation would have to be put off because of having insufficient funds of their own or the money for the renovation would have to be financed by increasing the use of external capital.

It is assumed that the example used here will be encountered with some frequency.

Valuation of the estate

If the initiative is implemented, then it is to be anticipated that there shall be an increase in the amount of effort required on the part of the administration. According to the text of the initiative, the taxable estate is composed of the following:

1. The **current market value** of the assets and liabilities at the date of death;
2. The taxable gifts which the testator or testatrix has made;
3. The assets which have been invested in family foundations, insurances and the like in order to avoid the tax.

Special attention is to be given when arriving at the current market values of the assets. They would have to be evaluated officially and it is envisaged that it would require extensive efforts on the part of the federation with regard to organisational and personnel issues. This is because it requires a uniform valuation method for all estates on the one hand – particularly for real estate – and it is expected that a new administrative department is to be created which shall deal exclusively with the valuation of estates right throughout Switzerland on the other hand. The extent to which the federal government shall allocate this task to the cantons – under its own supervision if need be – is still open.

There is also another uncertainty which exists in respect of the continuation of the business for a further ten years: What happens if the business cannot be continued or goes bankrupt within the ten-year term? Would the inheritance tax then be raised retrospectively and would the market value be calculated by using a statistical or a dynamic method?

The Swiss Federal Council sends a message

The Swiss Federal Council, in its message dated the 13 December 2013, rejected the popular initiative for a national inheritance tax. Federalist concerns are crucial: the competence of the cantons is to be maintained.

The state government identifies further weaknesses in the Initiative:

- The impact on the federal division of powers;
- According to the message, the cantons would not be able to compensate the loss of tax revenue with the 1/3 of the tax income envisaged by the initiative;
- The **retrospective bringing back into account** of gifts made since the **1 January 2012** is considered to be problematic.

The Federal Council adopted the consultation proposal about the reforms to the 2020 old age pension arrangement on 20 November 2013. The financing requirements of the AHV are to be covered by an increase in VAT up to a maximum of 2 percentage points. Pension cuts or a general raising of the retirement age were rejected, as was an additional funding via higher wage contributions. With the specified parameters, the financing of the AHV should be guaranteed until 2030.

Decision of the federal councils

The Council of States clearly rejected the inheritance tax initiative by 32 votes to 11 with 2 abstentions, at its 11th meeting on the 24 September 2014.

According to the media release on the 21 October 2014, the National Council Committee for Economic Affairs and Taxation (CEAT-N) requested the National Council by 18 votes to 7 to recommend to the people and the Council of States to reject the "Tax millions inheritances for the benefit of our old age pensions" popular initiative (Millionen-Erbschaften besteuern für unsere AHV [inheritance tax reform]). The recommendation was ratified by the Swiss National Council on the 12.12.2014. The Swiss Federal Council resolved on the 28th January 2015, to bring a vote on this motion on the 14th June 2015.

The initiative's chances of success

The initiative's chances of success are currently uncertain. According to a survey conducted by the Stiftung (Foundation) KMU Next with over 1000 businesses from all regions of Switzerland about the federal popular initiative, more than two thirds envisage a threat to the business succession – should the initiative succeed. The survey also shows the result that in the event of an inheritance, around 78% of the businesses polled would not be able to finance the inheritance tax from their own business resources, because the company has its money bound up in fixed assets (machines, equipment, real estate, stock).

Some experts believe that a majority of voters could accept the initiative, because only a minority would be affected by the new tax. However, other referendums in the past have shown that additional redistribution measures are not exactly wanted by the electorate (e.g. Steuergerechtigkeitsinitiative [Tax Fairness Initiative] 2010; Capital Gains Tax, 2001).

Overview of the new scheme in comparison with current law

(source: Message of the Federal Council of 13.12.2013)

The following table shows an overview of the new features in comparison with the current law:

	Current law	Popular initiative
Fiscal sovereignty	cantons	federal government
Tax collection	canton/councils	canton (possibly councils)
Tax liability	Inheritance: heirs (GR + SO: Estate tax) gift: gift recipient	inheritance: estate gift: donor
Tax exemption	– spouse – (partially) registered partner – descendants (except VD, NE, AI) – (partially) parents, step-parents – public sector (the federal government, cantons, councils+institutions) – non-profit organizations – cohabiting partner (GR)	– spouse – registered partner – registered partner – corporations exempt from profit tax
Tax allowance	different in accordance with cantonal law	inheritance: CHF 2 million; gift: CHF 20 000 per annum and per beneficiary
Tax rate	different in accordance with cantonal law, usually graduated rate according to the amount of the inheritance and the degree of relationship to the deceased person	20% on taxable estate
Appropriation	none	2/3 AHV, 1/3 cantons
Company	different cantonal rules	relief envisaged at legislative level