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Cantons May Relinquish Power Over Inheritance, Gift Taxes

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COUNTRY DIGEST

Cantons May Relinquish Power Over Inheritance, Gift Taxes

Switzerland's Christian and socialist parties are leading a push for a constitutional amendment that would transfer legislative power in inheritance and gift tax matters from the cantonal level to the federal level to better finance old-age and survivors' insurance.

Currently, Switzerland's 26 cantons have the exclusive power to levy inheritance and gift taxes. There are 25 different inheritance or estate tax regimes and 24 different gift tax regimes under the cantonal system. (In general, gifts are subject to the same tax treatment as inheritances.)

The initiative calls for the amendment of article 112, paragraph 3a, articles 129a and 197(9) of the Swiss Constitution. Under proposed article 129a, paragraph 1, the cantons would no longer be entitled to levy inheritance and gift taxes, leading to the harmonization of inheritance and gift tax at the federal level. The new federal inheritance and gift tax would affect only inheritances and gifts exceeding CHF 2 million.

Under proposed article 129a, paragraph 3, the tax rate would be set at 20 percent for both inheritance and gift tax, and the tax would apply to all inheritances and gifts regardless of whether the recipients are related or unrelated to the deceased/donor. Only spouses (including registered partners) and charitable organizations would be exempt.

Later, children may be subject to federal inheritance and gift tax in the future. This is in sharp contrast to the current laws, under which the applicable tax rate depends on the relationship between the deceased/donor and the beneficiary, and under which children are exempt in most cantons.

Also under new article 129a, paragraph 3(d), no taxes could be levied on gifts and legacies of less than CHF 20,000 per annum, and paragraph 5 proposes that inheritances or gifts consisting of businesses would be taxed on a reduced basis if the business is to be carried on for at least 10 years.

Most importantly, proposed article 197(9), paragraph 1, provides for a transitional system that could lead to a federal inheritance tax on donations made before the federal inheritance and gift tax has entered into force. As proposed, any gifts to beneficiaries as of January 1, 2012, could be added, for tax purposes, to inheritances received upon the death of the same donor once the proposed constitutional provision has entered into force (probably not before 2016). In other words, if a beneficiary (either related or unrelated to the donor) receives a donation in 2012 and inherits assets in 2016 on the death of the donor, a 20 percent inheritance tax would be due on the accumulated amount of the donation and the inheritance exceeding the threshold of CHF 2 million.

Moreover, the proposed system does not take into account the current cantonal law, which may not stipulate any gift tax. This could result in the application of inheritance tax on donations that are currently nontaxable.

In general, a constitutional amendment requires a petition signed by more than 100,000 citizens within a period of 18 months. In this case, the period for collecting the signatures started on August 16 and will end on February 16, 2013. In a next step, the parliament must validate the initiative and provide a public statement. Finally, the initiative will be put to a public vote.

It is unclear whether the initiative would pass in a public referendum in light of the fact that it would require the approval of a majority of Swiss citizens as well as the cantons. However, if it is implemented, donations made as of January 1, 2012, will be added to any inheritances from (and to) the same donor/deceased (and beneficiary), triggering inheritance tax on the amount exceeding CHF 2 million. ◆

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