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Estate Planning for US Citizens Resident in Switzerland

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Does your US will and revocable living trust still work as you intended?

- There have been recent major changes in US Federal estate and gift tax law that may make your tax planning no longer relevant; this area of the law remains in flux so stay tuned;
- If you are a Swiss resident you may be subject to Swiss laws of inheritance and marital regime (Federal) and cantonal rules on estate and gift taxation.



Can I rely on my US documents?

Your US will, trust, beneficiary designations or joint tenancy with rights of survivorship might not work as intended:

- Forced heirship rules and/or marital property rights may interfere if Swiss law applies;
- If you want US law to apply, you may require a declaration of controlling law;
- If you are a Swiss citizen you may require an inheritance agreement with your spouse and children

What are differences between the Swiss and US systems?

TAXES

Switzerland

- The estate is not liable to tax – it is the respective heir or donee
- In all but 3 Cantons, spouses and children are exempt from inheritance and gift taxation
- amount of taxes on transfers to others depends on the recipient's degree of relation to you

US

- No tax on transfers to US spouse; potential tax on transfers to non-US spouse;
- Federal tax on all legacies and gifts in excess of exemption amount (there are currently 15 states plus D.C. that levy state estate taxes).



More differences between the Swiss and US systems

PROPERTY RIGHTS

Swiss

- Marital rights of spouse if no separation of assets agreed
- forced heirship $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ or spouse and $\frac{1}{2} \times \frac{3}{4} = \frac{3}{8}$ for children

US

- Gives a spouse some property rights in your estate; children have no rights.



If I live in Switzerland do I have to follow the Swiss system?

- If you are a Swiss citizen – Swiss law is applicable (no choice of law)
- If you are not a Swiss citizen but resident in Switzerland, Swiss law applies if you do not explicitly choose the law of one of your foreign citizenships in a last will.



If I can elect US law to apply to my estate then will my US will and revocable trust work as intended?

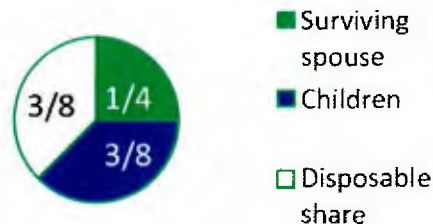
- Even if US law applies, Swiss tax laws remains applicable;
- In order to avoid tax on your US will or trust, the canton of residence needs to agree that the revocable trust remains transparent for tax purposes even after your death, as it has been established solely for the benefit of your spouse and/or your children:
 - If a trust benefits a person to whom a transfer would otherwise be taxed, that person may be subject to tax (if trust remains transparent, up to 40%);
 - If it there is not clear benefit after your death, the trust will no longer be transparent, thus the trust will be taxed (up to 40%);
 - The safest approach is to engage Swiss counsel to obtain a ruling from the cantonal tax authorities that your plan will not trigger any unexpected inheritance tax.

What if I am a Swiss citizen and I am unhappy with the forced heirship rules?

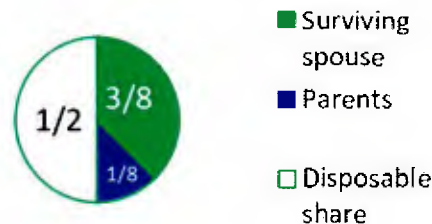
For example, my spouse and I want to leave everything to one another and only benefit our adult children after the death of the survivor?

- If you have adult children you can enter into an inheritance contract with them and your spouse, before a notaire. The children will waive their respective forced heirship portion:

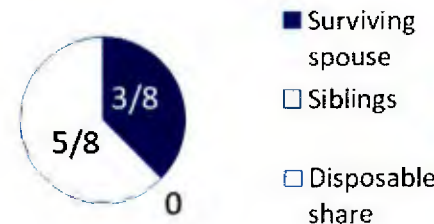
Surviving spouse and children



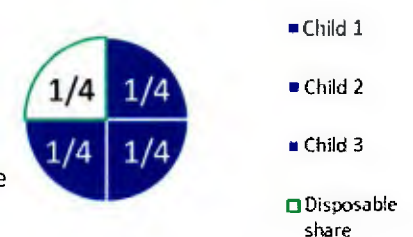
Surviving spouse and parents



Surviving spouse and siblings



Three children



What if I have minor children - can we enter into an Inheritance Agreement?

- No. A minor cannot make a contract to waive his or her rights.
- The surviving spouse is typically holding the child's property for the child until the child turns 18. You may wish in your last will that another person is managing the child's property.
- Transferring the funds to a trust solely benefitting the child will violate the child's forced heirship rights – KESP may enter into claw-back actions on behalf of the child



Guardianship for minorities or incapacitated family.

Guardianship for a minor child

- You can nominate the person you think is most appropriate to serve as guardian in your last will, but the Swiss courts will ultimately decide what is in the best interests of the child.

Healthcare

- Advanced medical directives
 - Advanced instructions for physicians
 - Appointment of a representative for health-care purposes

Legal Incapacity

- Freedom to appoint the attorney you want
- Freedom to define the scope of their powers in 2 possible fields
 - Personal assistance and legal representation on personal matters
 - Financial assistance and legal representation in financial affairs
- Possibility to appoint different attorneys in different fields

Do I Need to hire a Swiss lawyer or notaire to draft a Swiss will?

- Your last will has to be holographic (in handwriting) or in front of a notaire.
- You don't need a lawyer if your estate is straight forward.
- If you want an outcome different than Swiss inheritance rules consult a lawyer
- If you own real estate in the US, consult a US lawyer



Questions and Answers

If you have any questions, please contact us:

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THANK YOU!