steimle&partners Tax&Legal Consultants

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SUCCESSION PLANNING: THE EXPOSURE TO US FEDERAL ESTATE TAX FOR SWISS TAX RESIDENT INDIVIDUALS (NON-RESIDENTS, NOT CITIZENS OF THE UNITED STATES)

1. INTRODUCTION

Subject to US estate tax are not only US citizens or persons tax resident in the United States (hereinafter also referred as US persons) , but the US extends also its taxing right (if certain conditions are met and the estate of the deceased persons includes so called "US situs assets") to non US persons therefore to Swiss citizens and individuals who are tax resident in Switzerland. Subject to tax is the entire estate and not the individual inheritances. Internal US tax laws treat US persons and foreign persons differently for tax purposes. Therefore, it is important to distinguish between these two types of taxpayers.

Please click here for ***Classification of Taxpayers for U.S. Tax Purposes | Internal Revenue Service (irs.gov)***

As the US federal estate tax rate is 40%, all parties involved in a future succession (testator, heirs, legatee, executor) shall be aware of the relevant US estate tax risk connected with notification obligations to the US Internal Revenue Service

Since 2011, the US Internal Revenue Service has started to consequently tax heirs being Swiss citizens or Swiss tax resident individuals not resident in the United States on those estate elements being considered so-called US situs assets.

US situs assets is a definition from the US tax law and includes basically any movable or immovable asset having a certain territorial relation to the United States, such as:

-Immovable and movable assets being located physically on US territory.
-Shares of companies being set up under US Law, independent from the place of stock exchange listing or physical deposit of such securities.
-Certain US bonds.
-Investment funds issued by US Institutions.
-Financial instruments and certain other contractual rights where the debtor is a US institution.

Many have been the cases in the last years of Swiss citizens or Swiss tax residents heirs having received an estate tax bill from the IRS although neither the deceased person nor his descendants had never been resident in the US and had never had US citizenship (or were Greencard holders), but the deceased person had invested in US situs assets such as shares and bonds that formed part of the overall estate.

2. **A potential Swiss and US double taxation of an estate which comprises movable US situs assets cannot be avoided despite the provisions of the US-Switzerland Inheritance Tax Treaty**
   In the absence of an applicable inheritance (and/or gift) bilateral tax treaty, international double inheritance (and gift) tax may occur. Wealth attributable to a foreign non-Swiss situs real estate (property) are however exempted from Swiss cantonal inheritance and gift taxation.
   The Switzerland-United States Inheritance Tax Treaty concluded on 9th July 1951 entered into force on 17th September 1952 but does not provide a relief from double taxation in the presence of US situs assets which are not US situs properties.

*If you wish to read the Switzerland-United States Inheritance Tax Treaty, please **click here** for the today valid version.*

The Inheritance Tax Treaty was concluded in 1951 and foresees in article 3 that also the succession of a "decedent who at the time of death was NOT a citizen of the United States and was NOT domiciled therein, but who was at the time of his death a citizen of or domiciled in Switzerland" can be taxed in the United States.

Unfortunately, Switzerland until today has not succeeded to renegotiate the Inheritance Tax Treaty of 1951, although the Swiss Parliament entrusted the Swiss Federal Council in summer 2011 to undertake the necessary political steps to initiate such renegotiation.

This came because of the US Tax Administration (IRS) having reconfirmed the US Inheritance Tax Law in December 2010 under the Administration Obama after years of reducing, step by step, the Inheritance Tax and discussing to abolish inheritance tax completely.

3. **The computation of the US federal estate tax exposure (as an introduction)**

The computation of the tax requires an inventory of the total value of the US situs assets at the decedent's date of death as well as a separate statement of all assets of the estate situated outside the US, all at fair market value.

These two statements are called "the gross estate in the United States" and "the gross estate outside the United States".

Certain deductions are allowed, and certain lifetime taxable gifts must be added to obtain the correct US taxable estate.

As specified in the Inheritance Tax Treaty of 1951, US non-residents non US citizens are allowed *" a specific exemption which would be allowable under its law if the decedent had been domiciled in the United States **in an amount not less than the proportion thereof which the value of the total property (both movable and immovable) subjected to its tax bears to the value of the total property (both movable and immovable)** which would have been subject to its tax if the decedent had been domiciled in the United States."*

The US Inheritance Tax basically is due when the total fair market value of the net estate in the United States exceeds the filing threshold of US$ 60'000

The exemption above referred to was US$ 2'000'000 in the years 2004/2005 and was increased year by year to reach US$ 15'000'000.- in 2026.

To better understand the mechanism of the exemption applicable, please refer to the following example:

Swiss citizen/ Swiss tax resident individual not to be qualified as a US person died in February 2026 and his succession was opened in Switzerland. The US taxable estate formed of US situs assets amounts to US$ 5'000'000 market value and the taxable estate outside the United States amounts to US$ 10'000'000 thus in total US$ 15 mio. The proportion of the US estate to the total estate is therefore 33.33%. The exemption is US$ 15'000'000 in the present year 2026, thus 33.33% of it equals to US$ 5'000'000 which is the proportional exemption the heir can benefit considering a US estate formed of US situs assets of US$ 5 mio.

The IRS therefore would not levy a US federal inheritance tax.

4. Who has an obligation to notify the estate to the IRS and to pay the estate tax due?

According to US Tax Law, the testamentary executor is responsible for the payment of the inheritance tax. In absence of an executor, any person being in possession of assets of the decedent (like the heirs) can be considered as executor, also a bank having a relation with the deceased person.

The heirs and the executor basically have the legal duty to notify the tax liability by filing the form 706-NA United States Estate Tax Return of non-US persons.

5. CONCLUSION

When investing as an individual in US situs assets as better explained above, the IRS notification obligations as well as the US inheritance tax exposure shall in advance be taken into account as in case of death, US inheritance taxes would be due.

While the transfer by death or inter vivos of a US situs property would in any case be exempted from Swiss Cantonal inheritance or gift taxes the transfer of movable US situs assets might well procure a double inheritance taxation or an unilateral US taxation should the heirs (even if not qualified as US persons) be the direct descendants of the deceased Swiss tax resident person.

A succession planning with focus on US situs assets would be advisable.

Steimle & Partners Consulting SA is not a qualified US tax advisor, and the contents of this article cannot be regarded as legally binding. We strongly recommend reverting to qualified US tax experts for any in depth analysis of the US Inheritance Tax legislation as applicable on US federal level and state level.

We also strongly recommend reverting to a professional asset manager with regard to the definition of "US securities" according to the US – Switzerland Inheritance Tax Treaty, Article 4.

For further information on the above, please do not hesitate to contact us