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# Referendum for Reform of Inheritance Tax

**The referendum "Millionen-Erbschaften besteuern für unsere AHV (Erbschaftssteuerreform)" (Tax millions inheritances for the benefit of our old age pensions) seeks to introduce a uniform federal inheritance and gift tax. A significant part of the revenues is foreseen for the Age and Survivors' Insurance Compensation Fund (AHV). If the referendum were to be accepted, this could have wide-reaching consequences for the persons affected by the initiative. The initiative is to affect gifts retroactively to 1 January 2012.**

On 16 August 2011 the Evangelische Volkspartei and its partners started collecting signatures with the aim of introducing a federal inheritance and gift tax. The initiative foresees a federal inheritance and gift tax of 20% on such transfers of assets. Signatures will be collected until 16 February 2013. It cannot be excluded that the initiative will be adopted, because it affects relatively few people and two-thirds of the revenues are for the benefit of the AHV. The popular vote would probably take place in 2014.

The proponents of the initiative adduce the following arguments for the introduction of a federal inheritance and gift tax:

- Equal opportunities for citizens. The unequal distribution of assets in Switzerland conflicts with this principle.
- A third of the revenues from the inheritance and gift tax would be for the benefit of the cantons. Two-thirds of the revenues would flow to the AHV that is burdened by the higher life expectancy of the population. The introduction of the tax would strengthen the AHV.
- By the way of setting exemption limits, the middle class would remain tax free.

The proponents expect additional revenues of approximately three billion Swiss francs a year. The cantons would be compensated with a third of the revenues for their loss of the cantonal inheritance and gift taxes, because with the introduction of a federal inheritance and gift tax the cantonal laws would have to be repealed.

## Proposed changes to the federal constitution

According to the initiative in future a federal inheritance and gift tax is to be imposed at federal level. The inheritance tax is to be imposed on the estates of individuals, who on the date of their demise are resident in Switzerland or inheritance proceedings are commenced in Switzerland. The gift tax will be levied at the level of the donor.

The initiative foresees a tax rate of 20%, whereby a one-off exemption of two million Swiss francs on the amount of the estate and all taxable gifts is granted.

Donations between spouses and registered partners are not to be taxed. Also tax free would be donations to tax exempt institutions. Gifts of 20,000 Swiss francs per year and recipient of the gifts would not be taxed.

Further exceptions are foreseen for small and medium sized enterprises and agricultural businesses.

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The text of the initiative foresees the following solution in the federal constitution:

> *"For businesses the relief pursuant to Art. 129a Para. 5 is achieved in that on the total value of the business an exemption is granted and the tax rate on the taxable residual value is reduced".*

The exact exemption amount and the reduced tax rate are not determined yet.

## Retroactivity clause for gifts

The transitional provisions foresee that gifts are to be taxed retroactively to 1 January 2012 or added to the estate. If the change in the constitution is accepted by the sovereign, all gifts made after 1 January 2012 would be counted in the exemption of two million Swiss francs or be taxed retroactively. This would mean that measures to avoid the gift tax would be too late for gifts made after 31 December 2011.

## Need for action before 31 December 2011

It remains to be seen whether the referendum has a chance with the Swiss people. The fact is that relatively few people would be affected by the new tax, but many would benefit from it (AHV) – at least in the short term and while ignoring the negative consequences of a new inheritance tax on the tax location and therefore of the tax substrate in Switzerland.

We therefore recommend people, whose assets total more than two million Swiss francs, to consider whether they want to transfer some of their assets during their lifetime. This is of particular importance for persons, who would like to transfer their assets to their descendants. If only asset transfers between spouses are under discussion, there is no need for action.

In view of the diversity of our clients' family and financial situations, there are no general recommendations that we can make at this stage. What is needed is an analysis of the specific family and financial situation. When making these considerations, however, one must also include the failure of the initiative, because "gifts from below" (for example from children to their parents) in principle trigger today's cantonal gift tax. A reversion clause, under which if the initiative fails, the gift is cancelled, can have gift tax consequences at the date of the reversion and is therefore scarcely an option.

One tax planning opportunity exists, however, in transferring assets (for example property) to the descendants before 31 December 2011 with a simultaneous grant of rights of usufruct in the asset. In this case the person liable for income and net assets tax remains the beneficiary. From the present point of view this is not an abuse of law. On the other hand, whether in drafting the new law, the grant of a right of usufruct could be stipulated as tax avoidance, cannot be predicted.

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### Extract from the text of the Initiative:

The Federal Constitution is revised as follows:

*Art. 129a (new)* Inheritance and gift tax

1 The Confederation imposes an inheritance and gift tax. The tax is assessed and collected by the cantons. Two thirds of the revenue is received by the Old Age and Survivors' Insurance Compensation Fund, one third remains for the cantons.

2 The inheritance tax is imposed on the estates of individuals, who at the time of their demise are resident in Switzerland or for whom inheritance proceedings are commenced in Switzerland. The gift tax is imposed on the donor.

3 The tax rate is 20 per cent. Not taxed are:

a. a one-off exemption of 2 million Swiss francs on the aggregate of the estate and all taxable gifts;
b. the parts of the estate and the 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 recipient.

4 The Federal Council adjusts the amounts periodically for inflation.

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

Revisions of the transitional provisions of the Federal Constitution (extracts):

*Art. 197 Paragraph 9 (new)*

*9. Transitional provision to Art. 112 Para. 3 lit. abis and Art. 129a (Inheritance and gift tax)*

1 ... Gifts are imputed to the estate retroactively from 1 January 2012.