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TAGLaw/TIAG Conference - Tax Specialty Group

Wealth planning in Switzerland



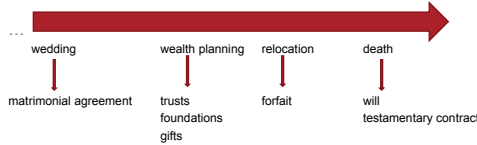
Why international private clients use Switzerland for their wealth planning?

1. Liberal and flexible system across all aspects of wealth planning (from matrimonial aspects to inheritance matters)
2. Most wealth planning tools are available: from pre-nuptial agreements, wills to trusts and private foundations
3. Tax efficiency
4. Strong reputation and capabilities for off- and on-shore wealth planning




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The lifetime of a HNWI and wealth planning opportunities in Switzerland



The diagram shows a horizontal timeline with a large red arrow pointing right. Below the arrow, four key events are marked: 'wedding', 'wealth planning', 'relocation', and 'death'. Under 'wedding' is 'matrimonial agreement'. Under 'wealth planning' is 'trusts foundations gifts'. Under 'relocation' is 'forfeit'. Under 'death' is 'will testamentary contract'.



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I. Matrimonial issues

- > Matrimonial property regime is governed by the law chosen by the spouses (with or without retroactive effect), failing which the law of their common place of residence applies.
- > Ordinary matrimonial property regime: participation in accrued gains
- ❖ Choice of Swiss matrimonial regimes (separation of property; participation in accrued gains; community of property).
- ❖ Spouses can freely adopt/amend any regime by marital agreements (pre-/post-nuptial), which are legally binding and fully enforceable.

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II. Wealth planning - Trusts

a) The Swiss Landscape for Trusts

- > Among the 10 global financial centres, Switzerland is the only one without its own trust law (Global Financial Centres Index 7)
- > No "Swiss trusts"
- > Since 1st July 2007, the Hague Trust Convention (HTC) ensures the full and complete recognition of trusts in Switzerland.
- > Experienced trust industry (STEP, Swiss Association of Trust Companies)
- ❖ Absolute freedom to select whatever trust law the settlor wishes.

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II. Wealth planning - Trusts

b) Swiss Taxation of Trusts

- > A trust is *per se* not subject to any Swiss taxation – it is not a taxable entity.
- > Swiss-based trustees and/or protectors are not liable for any Swiss taxation on the trust assets.
- > 2007/8 circulars on taxation of trusts

i ❖ Pre-immigration trust: complete tax neutrality for settlors and beneficiaries, who benefit from lump-sum taxation (*forfait*).

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II. Wealth planning - Trusts

c) Advantages/Disadvantages to use a Swiss resident trustee

- > **Advantages**
 - > Dealing with Swiss banks and asset managers
 - > Tax advantages
- > **Disadvantages**
 - > Lack of specific supervisory regulation
 - > Risk of trust litigation in Switzerland

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II. Wealth planning - Private foundations

- > Under Swiss law, only foundations set up for family members whose sole purpose is to provide for the education, professional establishment or financial aid of family members are allowed.
- > Swiss law prohibits maintenance foundations that makes distributions and grants other economic benefits to certain members of a specifically designated family in order to support them outside the narrow scope permitted by Swiss law.

i ❖ Foreign family foundations are recognized in Switzerland, as this recognition is not contrary to Switzerland's public policy (*ordre public*)

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II. Wealth Planning

- ❖ Set up of trusts and private foundations for estate planning
 - > Avoid probate procedure and death duties
 - > Recognised in Switzerland
 - > Subject to the usual limitations:
 - Proprietary effects of marriage
 - Inheritance rights, especially claw-back claims if the governing inheritance law applies forced heirship regime
 - Public policy (*ordre public*)

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IV. Inheritance and Cross Border Estates Rules

- > Principle: unity of succession and domicile as connecting factor
- > Recognition of foreign wills: Switzerland is party to the 1961 Hague Convention on the Conflict of Laws relating to the Form of Testamentary Dispositions
- > Forced heirship regime BUT it is not part of Swiss public policy
- ❖ *Professio juris*: testator can opt out of Swiss law and have his national law govern his estate.
- ❖ Testamentary contracts with/among heirs

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V. Conclusions

1. Liberal and flexible system across all aspects of wealth planning (from matrimonial aspects to inheritance matters)
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Thank you for your attention.

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