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LAWYERS & NOTARIES

Inheritance Law in Switzerland and Australia (NSW)

1. Introduction

This article gives an overview of inheritance law in Switzerland and Australia. It also highlights various aspects of the inheritance laws of both countries, and indicates how these laws may, for example, affect Swiss citizens or expatriates living in Australia as well as Australian residents with assets in both Switzerland and Australia and also people living in Australia with family members in Switzerland.

This article also provides a general comparison of Swiss and Australian inheritance laws. It does not deal with specific issues, but outlines some of the basic principles of both systems. The following areas are dealt with in the article:

1.1. Statutory Inheritance;

1.2. Forms of Wills and Making Wills;

1.3. Executors;

1.4. Statutory or Compulsory Portions;

1.5. Taxes; and

1.6. International Aspects.

Inheritance or succession law is not uniform throughout Australia because different legislation applies in each state and territory. Nevertheless, succession law regimes throughout Australia are largely similar, and the law in New South Wales ("NSW") and in the other states and territories in Australia is generally uniform. Accordingly, any reference in this article to Australian inheritance law means the law in NSW unless stated otherwise. The specific character of the Australian legal system, which is based on common law rather than civil law, confers a range of discretions and powers in the Court and on judges which, under Swiss law, would be mainly dealt with by legislation.

In Australia, reference is often made to trusts. A trust is a common law concept. Under Australian law, a trust exists where a party (a trustee) who, despite being registered or recorded as the proprietor or owner of the relevant property (trust property), holds that property on behalf of another person or entity (beneficiary) or other legally recognised purpose (object). The trustee accordingly has a duty to administer the trust property for the benefit of the beneficiary or for the specific object.

Switzerland, on the other hand, does not recognise the creation of a trust in Switzerland under Swiss law. Switzerland does, however, recognise the creation of a trust created under a foreign (i.e. non-Swiss) legal system. On 1 July 2007, the Hague Convention in relation to the Law Applicable to Trusts and their Recognition (1 July 1985) came into force in Switzerland. In addition, the federal laws in relation to international private law, the enforcement of debts, and bankruptcy were aligned with the Convention. The result is that trusts which are established under a foreign law, have been legally recognised in Switzerland since mid-2007. This means, for example, that a trust that has been created under an Australian Will is now legally recognised in Switzerland at least for tax and some other purposes. In general, trusts created under foreign law can, however, not be used to avoid the application of compulsory Swiss law. For example, a testamentary trust cannot be used to avoid the payment of the statutory share to a beneficiary (the statutory share is discussed under 5.1 below). A beneficiary who has not received his statutory share in a situation where, for example, the estate was left to a testamentary trust, can, within one year of knowledge of breach of the provisions relating to the statutory share (but in any case within ten years of the reading of the Will), commence proceedings to have the statutory share paid to him.

Whether Australian trusts can be created by Swiss citizens under a Swiss Will has not yet been resolved by the courts in Switzerland. Legal opinion is divided, however there is a strong view that] trusts can be created under Swiss Wills. It is also generally recognised that non-Swiss citizens who have their last place of residence in Switzerland can establish trusts under their last Will if the Will is governed by the law of their home country and if the law of their home country permits the creation of trusts (e.g. an Australian citizen with his last place of residence in Switzerland could therefore create an Australian testamentary trust under his Will if Australian law applies.

It appears that the recognition of trust does not affect the affect the duty in relation to tax that is payable in the connection with an inheritance (please see 6.1.2 below) and the beneficiary remains the person liable to pay inheritance tax.

2. **Statutory Inheritance**

In this article, statutory inheritance law refers to the legal rules applying under Swiss and Australian law if a person dies intestate (i.e. wholly or partly without a legally effective Will or a Testamentary Contract under Swiss law).

Note:
The term “the intestate” when used in this article means a deceased person who has died intestate. If a person has made a legally effective Will or a Testamentary Contract under Swiss law then he or she is referred to as the “testator”.

2.1. Switzerland

2.1.1. Fundamental aspects

If there is no Will, a system of family relationships to the deceased (called *Parentele*, being the Latin word for relationship) is used to determine the order of inheritance under Swiss law pursuant to the Swiss Civil Code. Three different *Parentele* (which are generally referred to as “orders”) exist under

the Code (see section 2.1.2 of this article). Members of a closer Parentele inherit before a member of a more remote Parentele. If there are no members of any of the orders living at the date of the deceased's death then the estate passes to the canton of the deceased's last domicile or to the municipality designated by that canton's legislation.

The deceased's surviving spouse or registered partner is not part of the above system of orders. However, both of them are statutory beneficiaries. A surviving spouse's or registered partner's entitlement to receive a share of an estate arises only from the fact of the marriage or registered relationship, and not from their "Parentele" relationship to the deceased.

2.1.2. Statutory inheritance and shares in estates

If a deceased does not leave a Will then the question of who his or her beneficiaries are is determined in accordance with the intestacy rules based on the orders referred to in 2.1.1 above. The first order constitutes the issue or direct descendants (children, grandchildren, great-grandchildren, etc.) of the deceased. Parents of the deceased and their issue (e.g. the deceased's siblings) constitute the second order. Grandparents and their issue form the third order.

As indicated above, the spouse of the deceased or the registered partner of the deceased inherit outside the system of orders. Their proportion of the estate, however, depends on whether or not the deceased left family members of the first and/or second order. The third order does not inherit if the deceased left a surviving spouse or surviving registered partner.

Article 462 of the Swiss Civil Code stipulates the following statutory quotas or shares for the deceased's surviving spouse or registered partner:

2.1.2.1. one-half of the estate if there are descendants of the deceased;
2.1.2.2. three-quarters of the estate if there are no descendants but there are "Parentele" beneficiaries; and
2.1.2.3. the entire estate if there are no "Parentele" beneficiaries.

A diagrammatic overview of the respective entitlements in various situations appears at the end of this article.

2.1.3. Effective Date, extent of estate and renunciation

It should be noted that, as a fundamental principle, the community of heirs directly and automatically inherits all the deceased's assets at the time of the deceased's death. The beneficiaries therefore also "inherit" all the rights and obligations of the deceased. The deceased's debts accordingly become personal debts of the beneficiaries for which the beneficiaries are jointly and severally liable (Article 560 para. 2 and Article 603 para. 1 of the Swiss Civil Code).

Beneficiaries who are entitled to an estate or a share in an estate have the right to renounce the inheritance (Article 566 para. 1 of the Swiss Civil Code). The time limit for renunciation is three (3) months.

The estate includes all assets and liabilities of the deceased at as the date of death. If the deceased is survived by a husband or wife or a registered partner then, depending on the matrimonial property regime applying to the deceased and his or her surviving spouse or registered partner, the property of each party must firstly be separated in order to to determine what falls within the deceased's estate.

This separation of the property belonging to each spouse is not easy, particularly when the parties have been married for a long time. It is therefore recommended to document what each party brought into the relationship or received during the relationship (e.g. assets, liabilities, pension payments).

Before the calculation of each beneficiary's share, funeral and other related costs need to be deducted from the gross value of the estate.

2.2. Australia

2.2.1. Fundamental aspects

Statutory inheritance in NSW also follows a system of orders, in a similar manner to Switzerland. Since March 2010, the basic principles of statutory inheritance have been found in the *Succession Act 2006* (NSW) which replaced the intestacy provisions o f the *Probate and Administration Act 1898* (NSW) ("PAA").

2.2.2. Time limits for claims against and on the estate

The law in relation to time limits for claims against and on the estate is fundamentally different under Australian and Swiss law. . As indicated in section 2.1.2 above, a beneficiary of an estate in Switzerland has merely to adhere to the time limit within which to waive or renounce his or her claim on the estate. If the beneficiary does not waive or renounce his or her claim then he or she also inherits the liabilities of the deceased. The usual limitation periods for creditors to make a claim apply to such liabilities.

In Australia, beneficiaries have a certain time after publication of a particular notice in which to notify the executor or administrator of their claim, but only if the executor or administrator is not already aware of the claim or does not already have notice of the claim. Moreover, in Australia, beneficiaries, creditors and other persons having a claim on the estate are all treated in the same way in relation to giving notice of their claims before distribution is made..

In Australia, if an executor or administrator publishes a notice giving beneficiaries (as well as creditors and other persons having a claim on an

estate) at least thirty (30) days in which to notify the executor or administrator about the claim and then distributes the estate at least six (6) months after the death of the deceased, the executor or administrator will not be liable for failing to make distributions to beneficiaries (or creditors or other persons having a claim on the estate) of which he did not have notice (except in limited circumstances, for example, in circumstances where the executor breached his duty to search for a beneficiary and inform the beneficiary of his entitlement under a Will). If a person believes that he or she is a rightful beneficiary of an estate (whether pursuant to a Will or on intestacy) and the executor or administrator is not otherwise already aware of the person's claim or has not previously had notice of the person's claim then the person must give notice of the claim within thirty (30) days after publication of a Notice of Intention to Distribute the estate by the executor or administrator. If the person claiming an interest in the estate does not give notice to the executor or administrator within that time limit and the estate is distributed more than six (6) months after the death of the deceased without regard to the person's claim then the executor or administrator will not be liable to the claimant (section 92 PAA).This is fundamentally different from Swiss law under which the usual limitation period applies to the creditor making a claim on the estate. The Notice of Intention to Distribute must be published in a newspaper circulating in the district where the deceased resided or, if the deceased was not resident in NSW at the date of his death, in a Sydney daily newspaper.

2.2.3. Statutory inheritance and shares in estates

A distinction should be made between estates that are wholly regulated by Will on the one hand, and estates that are partly regulated by Will (partial intestacy) or wholly unregulated by Will (total intestacy) on the other.

Generally, Australian law allows for absolute freedom of disposition by Will. If no Will exists, or if a Will exists but only disposes of part of the real and personal property of the deceased then the statutory provisions applicable on intestacy will govern that portion of the estate which is not regulated by the Will.

Different alternatives for the distribution of an estate are presented by the Succession Act depending on who the deceased is survived by. The order in which the intestate's family members will take, and the amount or portion of the estate which they will respectively be entitled to, depends on where those family members rank in the order of priority set out in the Succession Act. The order of priority generally is:

2.2.3.1. Spouse

Pursuant to the intestacy rules, the surviving spouse is entitled to the whole estate of the deceased to the exclusion of mutual children. Therefore, if there is no Will, the children of the deceased are not entitled to a share in the estate if the deceased is survived by a spouse.

If the deceased is survived by children from a previous relationship then the surviving spouse receives all personal items of the deceased, $350,000 (CPI adjusted) out of the estate and half of the residuary estate. The other half is inherited by the children in equal parts.

If the deceased is survived by more than one partner (e.g. as wells as a husband or wife, a life partner with whom the deceased lived at the time of his or her death), the estate will be divided pursuant to the rules in relation to competing partners/ spouses contained in part 3 of the Succession Act.

2.2.3.2. children of the deceased (or the issue of children, if a child predeceases the intestate)

If the deceased leaves no surviving spouse or partner then the children inherit the estate in equal shares.

2.2.3.3. parents

2.2.3.4. siblings

2.2.3.5. nieces and nephews

2.2.3.6. grandparents

2.2.3.7. aunts and uncles (or their children, if an aunt or uncle predeceases the intestate).

3. Forms of Wills

3.1. Switzerland

3.1.1. Forms and formal requirements

The Will (*Testament*) and the Testamentary Contract are both covered by the term *"Verfügungen von Todes wegen".* If the statutory inheritance rules do not correspond with the testator's expectations or requirements then the testator has the opportunity to make his or her own arrangements concerning the distribution of some or all of his or her assets after death. However, the testator must also take the statutory restrictions into consideration when doing so (Article 470 of the Swiss Civil Code).The non-compliance with the formal requirements invalidates the Will with the consequence that the Swiss intestacy rules apply.

3.1.2. Will (*Testament*)

Whoever is capable of making rational judgments and is over 18 years of age is entitled, subject to the statutory restrictions, to make provisions concerning the distribution of some or all of his or her assets at death (Art. 467 Swiss Civil Code). People under a legal guardian's supervision are also able to dispose of their assets by a last Will. The legal guardian's agreement or acceptance is not necessary. Last Wills always have to be made by the testator himself or herself. They cannot be made by a representative or an attorney.

Swiss law recognises three different forms of testamentary disposition, namely:

3.1.2.1. Will drawn up and certified by a notary (also known as Will by public deed or in public form);

3.1.2.2. holographic Will; and

3.1.2.3. oral Will (in case of emergency).

A Will by public deed does not mean that the Will is accessible by the public, but rather that the Will must be prepared and certified by a notary (private or public notary) in accordance with the applicable cantonal law where the document is to be executed. The document must be signed by the testator in the presence of two witnesses and must also be signed by them. The document contains confirmation in the form of a public deed of the testator's capacity to make rational judgment. This is an advantage when compared with a holographic Will.

From a formal point of view, it is quite easy to make a holographic Will. A holographic Will must be entirely handwritten by the testator and signed by him or her. It must include the date (day, month and year) and place of execution. No witnesses are necessary and the testator's signature need not be witnessed or legalised by a notary.

An oral Will can only be made if the testator is hindered from using another form of Will due to extraordinary circumstances such as imminent death, communication breakdown, epidemic or war. The testator has to declare his Will before two witnesses whom he directs to have the Will prepared as a public deed at the earliest opportunity. One of the witnesses must then immediately write out the Will, date it (indicating place, day, month and year), sign it and have it signed by the other witness. The two witnesses must then submit the document without delay to a judicial authority, confirming that the person declaring the Will appeared to them to be capable of disposing of his or her estate and declared his last Will to them under extraordinary circumstances. An oral Will ceases to be valid 14 days after the testator had an opportunity to make use of another form of Will. Oral Wills made by testators in hospital are somewhat delicate since Wills are only valid if the testator is capable of disposing of his or her assets at the

time of its execution (Article 519 para 1 Swiss Civil Code). Under such circumstances, it is always better to contact a notary.

For a Will to be revoked, pursuant to Article 509 Swiss Civil Code); the testator only has to destroy the relevant document. However, it is also possible to revoke a Will by making a new one. A new Will replaces the previous Will unless it constitutes, without any doubt, a mere amendment to the previous document. In such circumstances, the risk of unclarity and misunderstandings is clearly present. It is therefore preferable to destroy all previous Wills and for the last Will to revoke all previous testamentary dispositions.

3.1.3. Testamentary Contract

In contrast to Wills which are only prepared by the testator, a Testamentary Contract is an agreement made between the testator and one or several contractual parties in the presence of two witnesses and a commissioner of oaths. For a Testamentary Contract to be valid, it must be in the form of a Will by public deed. The contracting parties must simultaneously declare their Will to the notary and sign the deed in his presence and in the presence of two witnesses (Article 512 of the Swiss Civil Code). The Testamentary Contract offers the parties the opportunity to deal with their assets on death, and only to take into consideration the individual needs of the parties to the document. This means that the Testamentary Contract operates independently of statutory inheritance law (see below)

For a Testamentary Contract to be valid, the testator must have testamentary capacity. Again, a Testamentary Contract cannot be made by a representative or an attorney.

In contrast to a Will, a Testamentary Contract cannot be revoked by one party unilaterally. A Testamentary Contract may be cancelled by the contracting parties in the form of a written agreement at any time (Article 512 ff. of the Swiss Civil Code). An amendment can only itself be made to a Testamentary Contract in the form of a public deed.

3.2. Australia

In Australia, Wills can be made as unilateral or mutual Wills.

3.2.1. Wills

The most common method of dealing with assets after death is to make a Will. The Will itself may be simple or complex, depending on many factors.

3.2.2. Mutual Wills

An essential aspect of the agreement or contract accompanying Mutual Wills is that there is an agreement between both testators to the effect that one party will not revoke or alter his or her Will without the consent of the other.

However, if one party nevertheless revokes the Mutual Will, the later Will would be valid. In that case, in accordance with the principles of equity, the executor of the later Will would nevertheless be obliged to administer the estate on trust for the beneficiaries under the Mutual Will.

3.2.3. Formal requirements

To make a valid Will under Australian law, pursuant to section 6 of the Succession Act the following minimum requirements apply:

3.2.3.1. the Will must be in writing; and

3.2.3.2. the testator must sign the document in the presence of two witnesses who are both present at the same time and in the presence of the testator.

The Will need not, but is usually signed by the testator at the foot of each page of the document.

It is important to ensure that no witness is a beneficiary under the Will otherwise any gift to that witness will generally fail (section 10 Succession Act).

4. Executors

4.1. Switzerland

A testator may in his or her Will (but not in a Testamentary Contract) nominate one person or several people to have legal capacity as executor(s) of the Will (called *Willensvollstrecker*). After the death of the testator, the executor must be notified of his or her appointment by the responsible cantonal authority. The nominated executor then has to declare whether or not he or she accepts the appointment within 14 days after notification. If a person does not declare that he or she does not accept the appointment within 14 days after notification then the appointment will be deemed to be accepted. An executor also has the right to adequate compensation.

The executor has the following specific duties:

4.1.1. administer the estate;

4.1.2. collect debts due to the deceased;

4.1.3. pay the debts of the estate; and

4.1.4. distribute the estate.

The executor does not inherit or become the owner of the deceased's estate himself or herself. However, he or she does occupy a special position which allows him or her to take possession of the estate and to administer and deal with the estate.

In Switzerland, the appointment of an executor for the administration of the estate is not a legal requirement. However, it is advisable to appoint an executor if the beneficiaries are not in a position to distribute the estate themselves, be it as a result of a dispute, beneficiaries living in another country or the complexity of the estate. In these cases, the appointment of an executor accelerates and simplifies the administration and distribution of the estate. The executor has an important duty. He is obliged to seek to uphold the Will and to make sure that distribution of the estate is made correctly.

4.2. Australia

In Australia, almost every Will nominates or should nominate an executor. Indeed, if an executor is not named or has died or is not willing to accept the appointment then another person or institution (e.g. a relative or the NSW Trustee and Guardian) must seek to be appointed either as executor or administrator of the Will, and apply for a grant of administration in order to deal with the assets in the estate.

An executor has a far more important and powerful position in Australia than in Switzerland. In fact, the choice of executor is a critical estate planning issue. The role of an executor entails considerable responsibilities. An executor under Australian law is able to do all that is legally necessary in order to achieve the due and proper administration of the estate. In particular, an executor is required to attend to the following matters in the administration of the estate:

4.2.1. organise any funeral or related service;

4.2.2. collect, maintain and protect assets pending the final distribution of the estate;

4.2.3. apply for probate of the Will;

4.2.4. invest estate assets pending distribution of the estate;

4.2.5. pay all debts, funeral and testamentary expenses of the deceased and the estate;

4.2.6. if the estate has earned income, obtain a tax file number and lodge any tax returns;

4.2.7. establish and administer any trusts created by the Will for minors; and

4.2.8. distribute the estate in accordance with the provisions of the Will.

Important:

In Australia, on the death of the testator, all the deceased's assets pass to, or vest in the executor (section 44 PAA) who is responsible to deal with them and distribute them in accordance with the Will. The transfer of ownership is, in effect, only confirmed by the grant of probate or administration.

5. Statutory Shares or Compulsory Portions

The term statutory or compulsory portion (Pflichtteil) refers to the share of the estate that must be left to certain members of the deceased's family under Swiss law.

5.1. Switzerland

As mentioned above, the deceased can make decisions which are wholly or partly regulated by Will or Testamentary Contract. If a legally effective Will or a Testamentary Contract exists then the order or manner of inheritance follows the scheme described by the deceased in the relevant document which takes precedence over the statutory order of inheritance. The deceased's ability to freely dispose of all of his or her assets is, however, limited by the formal requirements for Wills (see 3.1) and the statutory or compulsory portions that certain members of the deceased's family are entitled to.

Article 470 of the Swiss Civil Code stipulates three categories of statutory or compulsory beneficiaries, namely: the descendants (not only the children), the spouse or registered partner and the parents of the deceased. Whoever leaves descendants, a spouse or a registered partner or a parent may only dispose of his assets to the extent that the disposition does not contravene or reduce these beneficiaries' respective statutory or compulsory portions. These are:

5.1.1. Descendants

The descendants and their children have a statutory portion equivalent to three quarters of the statutory right of succession.

5.1.2. Parents

The parents have a statutory portion equivalent to one-half of the statutory right of succession.

5.1.3. Surviving Spouse

The surviving spouse or registered partner has a statutory portion of one-half of the estate.

5.1.4. Siblings

Under Swiss law, siblings (brothers and sisters) are not entitled to a statutory portion. That means that a testator who has no children, spouse, registered partner or parents, can dispose of his or her estate as he or she thinks fit even if he or she has siblings that survive him or her.

If the testator is married and has children, the statutory or compulsory portion which must be left to the members of the deceased's family is five eights of the estate, and the testator may therefore only freely dispose of three eights of his or her estate.

The statutory or compulsory beneficiaries can renounce their compulsory portion by executing a Testamentary Contract. The renunciation of a statutory share can be declared before the inheritance becomes effective. If potential beneficiaries, in

return for benefits from the testator, declare their renunciation while the testator is still alive, such a contract is called a Waiver of Inheritance for Consideration. If the testator does not distribute his or her estate having regard to the statutory or compulsory share, then the statutory or compulsory beneficiaries can, within one year of knowledge of breach the of statutory and compulsory entitlement provisions (but in any case within ten years of the reading of the Will), commence proceedings with the aim to obtaining their statutory or compulsory share. If the statutory or compulsory beneficiaries do not commence proceedings, then they forfeit their entitlement to the statutory or compulsory share. This happens regularly in family situations where the whole estate is left to the partner of the deceased and their mutual children do not challenge the Will.

As the statutory portion is merely a share of the statutory entitlement, a testator can dispose of the balance of his or her assets freely and leave the remainder of the estate to beneficiaries and/or organisations of his or her choice.

5.2. Australia

Australian inheritance law does not recognise fixed statutory shares as provided for under Swiss law. , So called “family provision” (similar in some respects to statutory share) claims by “elegible persons” (section 57 Succession Act) are dealt with by the Supreme Court under the Succession Act, but only if a claim is made. It remains within the Court’s discretion to determine whether, to what extent and on what basis, family provision claims are to be provided for out of the estate.

6. Taxes

6.1. Switzerland

6.1.1. General introduction

The Swiss tax system operates at three government levels (federal, canton, and municipality) and each level has its own right to impose taxes. In addition, despite the harmonisation of income tax law, the various cantons have different tax laws and can set their tax rates independently.

6.1.2. Inheritance tax and gift tax

In general, transfers made during a person’s lifetime and the transfer of assets after the deceased's death are taxed, if at all, in the same manner or are exempt from tax. From a taxation point of view, there is no difference between transfers before and after the death of the deceased.

At a federal level, neither gift duty nor death duty is payable. In all cantons, transfers between spouses and registered partners are tax exempt. In most cantons (i.e. all cantons apart from Appenzell I.R.h, Luzern, Neuchatel and Vaud), descendants are exempt from gift and death duty. In some other cantons, parents are also exempt from gift and death duty. In all other cantons (apart from Schwyz where there is no gift or tax duty at all), death duty is payable. The applicable tax rates and tax-free thresholds are

determined pursuant to each canton's tax laws. In most of the cantons, the tax payable depends on the beneficiary's entitlement and relationship to the deceased; the tax rate increases progressively the more distant the beneficiary's family relationship to the deceased.

6.1.3. Capital gains tax on real estate transactions

Capital gains tax is levied on transactions involving privately owned real estate (i.e. when an individual sells a property). The capital gain is the increase in value since the purchase of the property less the costs of increasing the value of the property. The tax is levied at a cantonal level and varies from canton to canton.

No capital gains tax is payable on the distribution of real property out of an estate. However, the beneficiary who receives the property bears the risk of incurring a tax liability at a later point in time. This may be regarded as a latent capital gains tax liability. Potential capital gains tax should accordingly be taken into account when calculating the division of the deceased's assets among the beneficiaries. The potential capital gains tax is regarded as a reduction in the value of the property concerned. Therefore, real property should not be valued for estate purposes at current market value but at its value after the potential capital gains tax on a transaction involving the real property has been taken into account.

6.1.4. Wealth tax

This tax is imposed on the aggregate value of the net assets of an individual and is based on the value of all assets (gross assets [e.g. money, property and cars] less debts). Wealth tax is levied in allcantons. Wealth tax varies between the cantons. Individuals, the value of whose assets is below a certain threshold, are exempt from the tax. The federal government does not impose a wealth tax.

6.2. Australia

6.2.1. Inheritance tax and death duties

There is no inheritance tax or death duty payable in Australia or in any state or territory of Australia. This means that all estate assets in Australia may be transferred to beneficiaries without incurring any duties or taxes. Australia does, however, impose capital gains tax in the case of many dispositions. In some instances this can operate as a de facto or delayed death duty (see section 6.2.2 below).

6.2.2. Capital gains tax

Capital gains tax (CGT) is a federal tax and accordingly applies throughout Australia. The rate of CGT is generally dependent on the taxpayer's marginal income tax rate for the financial year during which the relevant capital gains tax event (CGT event) occurs. CGT is not, however, payable on the transfer

of assets under a Will. Accordingly, estate assets may be transferred to beneficiaries (at least those resident in Australia) without either the estate or the beneficiaries thereby becoming liable for CGT. If beneficiaries resident overseas are involved then gifts to them are deemed to be a CGT event which occurred immediately before the deceased's death and, as a result, CGT may be imposed on the estate in respect of the gift.

CGT is generally payable on the disposal of an asset. There are numerous technical rules relating to when CGT arises and what constitutes a disposal or deemed disposal of an asset. As a result, the subsequent disposal of estate assets by beneficiaries who have inherited the assets may give rise to CGT liability in certain circumstances. The liability would, however, only be payable on the disposal of the asset.

Liability for, and the amount of CGT payable depends on a number of factors including the nature of the asset concerned, when the asset was originally acquired by the testator, when the testator died, when the asset is subsequently disposed of by the beneficiary, whether the beneficiary is a natural person or, for example, a corporate entity or a trust, and the marginal tax rate of the beneficiary at the time of disposal. Certain assets, such as the testator's family home, may remain permanently CGT exempt in the hands of the estate and the beneficiary provided certain residence rules are met or the home is disposed of within a particular period after the testator's death (generally 3 years).

If an executor or administrator disposes of an estate asset in the course of administration of the estate (e.g. because the executor or administrator is directed to do so under the Will or in order to distribute proceeds to or among beneficiaries), CGT may also be payable on the disposal of the asset. Liability for the CGT (i.e. whether it is payable by the estate or the beneficiary(ies)) depends on the wording of the Will.

6.2.3. Tax on assets

Generally there is no tax on assets in Australia except for land tax and/or landholder duty payable on certain classes of real property in certain states.

Because of the different taxes levied and not levied in Switzerland and Australia, estate planning for people whose estates are affected by both systems involves careful thought being given to arranging the testator's financial affairs and estate matters in a tax effective way.

7. International Aspects

7.1. Switzerland

The IPRG (*Gesetz über das Internationale Privatrecht*) is the relevant Swiss law that regulates whether a court has jurisdiction in a matter as well as the applicable law in international cases.

7.2. Australia

Australia does not have a single federal law regulating international conflict of laws or "private international law" as it is also called in common law countries; every state and territory has its own common law rules.

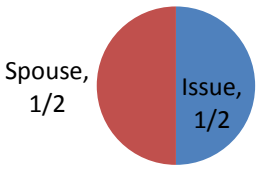
8. Glossary

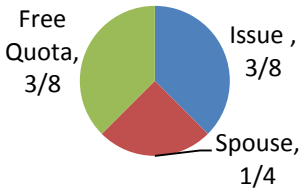
Erbschaftsverwalter	administrator (of the inheritance)
Parentele	order (of inheritance)
Pflichtteil	statutory or compulsory share
Pflichtteilsrecht	law governing statutory or compulsory share
Schweizerisches Zivilgesetzbuch	Swiss Civil Code
Testament	Will
Treuhänder	A person who acts in favour of and as representative of the legal owner
Treuhandverhältnis	Swiss trust concept
Willensvollstrecker	executor

Schedule 1: Intestacy Rules and Statutory Shares with a Spouse

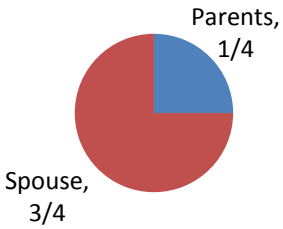
Division of the Estate without a Will/Testament **Statutory Shares and Free Quota**

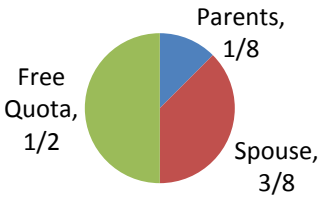
SPOUSE AND ISSUE



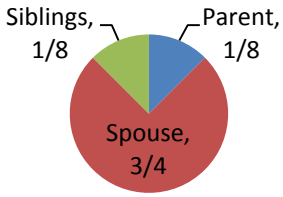


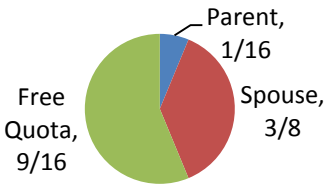
SPOUSE, BOTH PARENTS, NO ISSUE



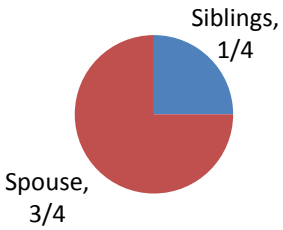


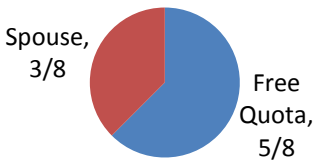
SPOUSE, ONE PARENT, SIBLINGS





SPOUSE, SIBLINGS, NO CHILDREN, NO PARENTS

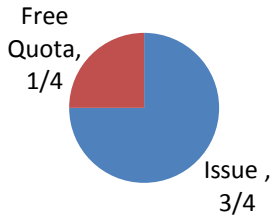




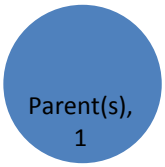
Schedule 2: Intestacy Rules and Statutory Shares without a Spouse

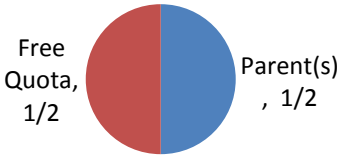
Division of the Estate without a Will/Testament **Statutory Shares and Free Quota**

WITH AN ISSUE

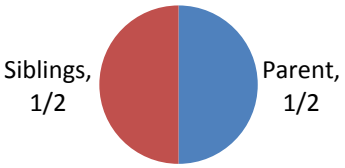


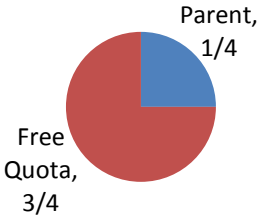
PARENT(S), NO ISSUE





PARENT, SIBLINGS, NO ISSUE





SIBLINGS, NO PARENTS, NO ISSUE

June 2013

Disclaimer

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