

News Analysis: The New France-Switzerland Inheritance Tax Treaty

by Sophie Borenstein

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TREATY WATCH

NEWS ANALYSIS

The New France-Switzerland Inheritance Tax Treaty

by *Sophie Borenstein*

Following discussions that began in 2011, France and Switzerland on July 11 signed a new inheritance tax treaty that allows France to tax heirs and beneficiaries resident in France, makes properties held indirectly through a company taxable where they are located, and provides for greater information exchange.

The treaty was signed by Eveline Widmer-Schlumpf, chief of the Swiss Federal Department of Finance, and Pierre Moscovici, France's minister of finance and economy.

1953 Treaty

Once in force, the new treaty will replace the one signed in 1953. Under the current treaty, if an individual domiciled in Switzerland dies, his total assets, with the exception of properties and permanent establishments located abroad, are subject to inheritance tax in his canton. For French real estate properties held through French companies, Swiss inheritance tax applies to the extent that the shares are considered as securities and not real estate assets.

Because inheritance taxation is much more favorable in Switzerland than in France, France in 2011 informed Switzerland that it was considering denouncing the 1953 treaty because it had created significant tax losses for the country. To avoid a termination, Switzerland and France began negotiating a revision.

2013 Treaty

The new treaty was initialed on July 5, 2012, but after negative reactions from some cantons, Switzerland asked France to modify the agreement. The discussions resulted in the following main changes.

Real Estate Companies

Properties held indirectly through a company would be taxable where those properties are located. For ex-

ample, if a person (regardless of nationality) resides in Switzerland and indirectly owns property in France through a company, the property would be taxed in France when he dies.

This taxation would apply only if the deceased (with his family) owns at least half of the company and the properties represent more than a third of the total assets of this company. For example, in the case of a deceased person in Switzerland who owned 50 percent of the shares of a company whose real estate component represents less than 33 percent, taxation would occur in Switzerland.

Real estate assets used by a corporation in its own commercial activity would not be taken into account.

Residence of Heir

The laws of succession and inheritance of the country of the beneficiary (that is, the heir) would apply, rather than those of the country where the deceased resided. Therefore, France would be able to tax persons domiciled in France if they inherit goods from a person resident in Switzerland. However, if the heirs of a person domiciled in Switzerland live in France at the time of death, the heirs are taxed in France, provided they have resided in France for at least eight of 10 years preceding the year in which they receive the goods. It should be noted that in the absence of a tax treaty, French tax law provides that this period is six out of 10 years.

France should deduct any taxes that heirs pay first in Switzerland.

Date of Entry Into Force

Rather than January 1, 2014, as originally planned, the treaty will enter into force after the text is approved by the French and Swiss parliaments and the deadline for the optional referendum (three months in Switzerland) has expired — that is, the first day of the month following the exchange of ratification instruments.

Enhanced Administrative Assistance

The treaty's protocol provides for enhanced administrative assistance between the two countries on all tax issues. The exchange of letters of February 11, 2010, which restricted the scope of information exchange on

holding bank accounts, should be terminated as stated in the joint statement. The ministers have agreed to establish a joint working group on the topics of administrative assistance in tax matters, regularization of untaxed assets, and expenditure-based taxation (lump sum taxation). ♦

♦ *Sophie Borenstein, partner, Reed Smith, Paris*