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1 Introduction

With this academic research, I want to analyse the two systems of the taxation of inheritance in Germany and Switzerland. The main research questions are:

- What are the differences between the tax systems of the two countries?
- Is it possible to develop tax-planning approaches?
- Is there a “better” system?

The main aim of this comparison is to evaluate the differences and similarities of the taxation of inheritance under the influence of each tax system and to develop tax-planning approaches. My motivation for this paper is to deepen my knowledge about a tax system that I have not yet learned anything about, but which will take a big part in my future personal life and work environment. I want to use this paper to set up my first specific experience with the tax system of Switzerland. As I plan on pursuing my academic and professional career in Switzerland, it is a logical decision to expand my background with this opportunity. I want to give a short overview on the tax systems of the taxation of inheritance, and how the systems in each country developed over time as well as how the taxation of inheritance is compared or related to other types of taxes.

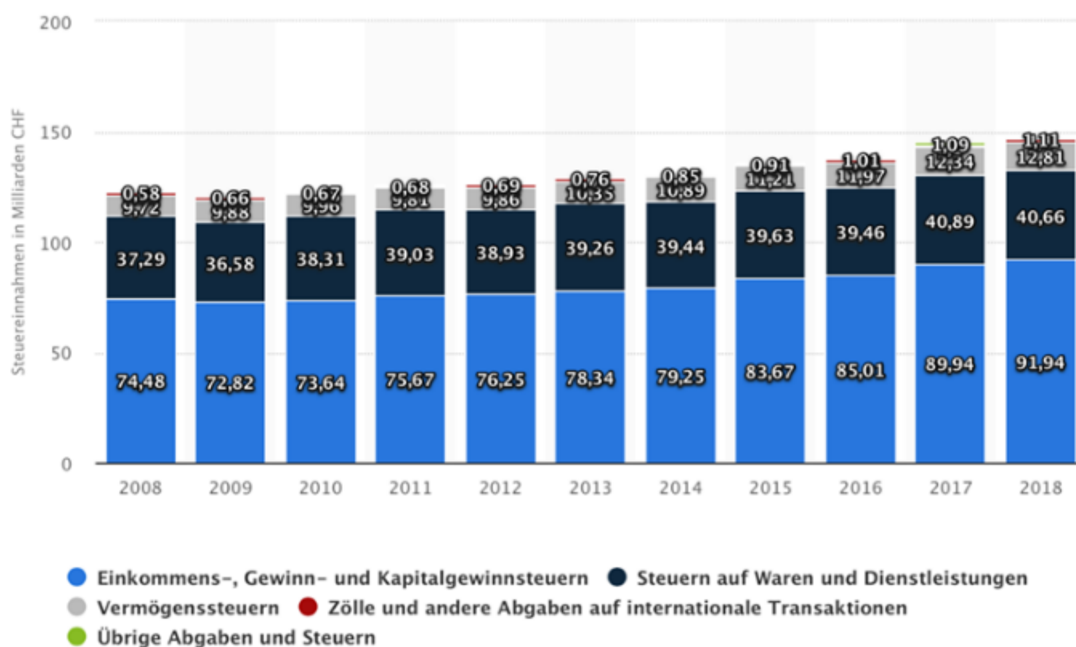


Figure 1: Division of Switzerland’s tax revenue among the different types of tax (statista.de, 2020)

In Switzerland, the taxation of inheritance was established quite late. The country first started to levy the tax in 1798 (Dr. Max Troll et al., 2020). In Switzerland, the cantons have the tax jurisdiction, and they are the ones that can levy the tax on inheritances (Bundesverfassung Der Schweizerischen Eidgenossenschaft, 2000) (Art. 3). The tax is identified as an indirect tax, and for this reason, the federal government is not allowed to establish harmonising legislation (Bundesverfassung Der Schweizerischen Eidgenossenschaft, 2000). Therefore, 26 different cantonal tax administrations and legal provisions are in order (Dr. Rembert Süß et al., 2020).

At the time of Helveticism (1798-1803), Switzerland had a uniform tax system, although some of it was only on paper and never fully applied. Since the collapse of Helveticism and the return to the confederation of states, with the simultaneous regaining of the tax autonomy of the cantons, their tax systems developed quite independently. It led to a great diversity in the structure of the tax systems and the design of the individual taxes. While some cantons returned to the indirect taxes of the period before the French Revolution, mainly excise duties, others retained the taxes of the Helvetic system that suited them, such as the wealth tax. When the state was founded in 1848, this tax code was fundamentally changed. Customs sovereignty was transferred in full to the Federal Government, and the cantons were forced to tap their sources of taxation regarding assets and income. Direct taxes gained a dominant position in the cantonal tax systems (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019). Switzerland was long considered the tax haven par excellence. However, this has less to do with the low tax rates than with the banking secrecy. The level of taxation for ordinary citizens and to some extent also for companies is comparable to German levels. The extents depend on the tax rates of each canton (Dr. Ulf-Christian Dißars, 2020).

The taxation of inheritance is one of the oldest known forms of tax payments (Hermann-Ulrich Viskorf et al., 2017). The first evidence of taxation of inheritance dates back to 100 B.C. to the old Egypt and the old Roman Republic (Dr. Max Troll et al., 2020). During the medieval period, the tax did not play a significant role because of the restrictions in the general inheritance law. Only direct male descendants were allowed to inherit property. In the case of no male descendants, the property was given to the municipality (Dr. Max Troll et al., 2020). As the general law of inheritance changed, the tax changed as well. More countries started to levy the tax and introduced the taxation of inheritance. The first countries to levy taxation of inheritance in Germany were Braunschweig, Hamburg and Luneburg during the 17th century (Dr. Max Troll et al., 2020).

The legal status of the taxation in Germany was fragmented, and there was no unity possible up until the implementation of the German Civil Code. In 1906 the German Empire taxation of inheritance law was inaugurated, and the taxation unified (Hermann-Ulrich Viskorf et al., 2017). The law was mainly based on the Prussian taxation of inheritance law from 1873 (Dr. Max Troll et al., 2020). The inheritance tax was levied as hereditary succession tax. Included was the acquisition in the result of death within paragraphs 1 to 4. Furthermore, inter-vivos gifts were included in paragraphs 55 and 56 (Dr. Max Troll et al., 2020). A similarity to the nowadays § 13 from the inheritance tax law, was tax exemption. Up until the "Große Steuerreform" in 1974 the taxation changed a lot and the tax rates and tax-free amounts were adjusted frequently. In 1974 the complete taxation was reformed, and in the following years, only slight adjustments took place (Hermann-Ulrich Viskorf et al., 2017). With the German reunification, the need for a new law was inevitable. With the 01.01.1991 a new unified legal territory was built, and it also applied for the taxation of inheritance. Since the unification, the law has been argued to be legally compliant, but with extensive tax reforms in 2008, 2011 and 2016 the laws have been revised (Hermann-Ulrich Viskorf et al., 2017).

The taxation of inheritance is connected to other taxations, and the different types of taxation co-exist. However, the taxation of inheritance covers non-paid increases in assets, which means that the same circumstances cannot be subject to income tax and inheritance tax at the same time (Hermann-Ulrich Viskorf et al., 2017). In Germany, the taxation of inheritance is on the 16th step of the tax spiral in the year 2018. The tax made up about 6.020 million Euros of the total 772.090 million Euros tax revenue in Germany. (Peter Zeitschel, 2020)

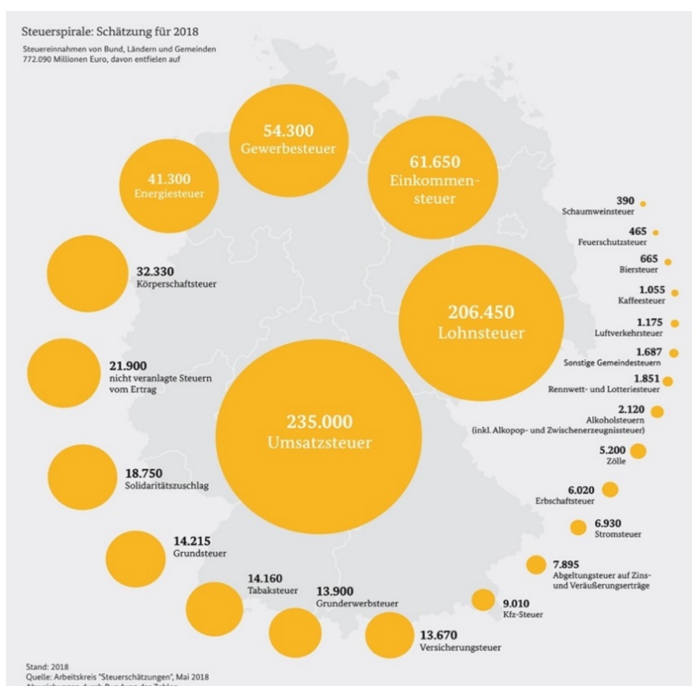


Figure 2: Tax loop estimation in Germany 2018 (Peter Zeitschel, 2020)

2 Taxation of inheritance

2.1 Germany

2.1.1 Tax liability

The first paragraph in the German tax inheritance law addresses the taxable transactions and therefore, the objective tax liability. The first section lists the subjects of taxation. It includes the transfer because of death, inter vivos gifts, special-purpose allocations and the assets of a foundation which is mainly built by the interest of a family and aims for the fixation of assets in time intervals of 30 years since the in § 9 (1) no.4 ErbStG set point in time (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). Aforementioned elements imply the frame of the liability of taxation (Prof. Dr. Jens Peter Meincke et al., 2018). The law does not imply a functional differentiation between the taxation of inheritance and the taxation of endowments, even though the first introduction sentence puts the two taxes independent from each other (Hermann-Ulrich Viskorf et al., 2017). However, the definite division between the two taxes is not necessarily needed if the process itself represents a taxable event. In detail, the assets of a foundation are taxable without an additional taxable transaction (Hermann-Ulrich Viskorf et al., 2017). The condition for a transfer by reason of death is the death of a natural person, which is stated by the declaration of death (Prof. Dr. Jens Peter Meincke et al., 2018). If a legal person is dissolved, the transfer by reason of death is impossible. It can only be an inter-vivos gift (Hermann-Ulrich Viskorf et al., 2017). Both, legal and natural persons can be the beneficiary, but in either case, the person needs to be still alive or already existing (Prof. Dr. Jens Peter Meincke et al., 2018). Inter-vivos gifts are listed in paragraph 7 in ErbStG. The definition of a gift is made in §§ 516 and following BGB. Following § 7 (1) Nr. 1, every generous allocation is a gift between two living persons (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). Furthermore, § 7 outlines other gifts between two people than just allocations (Hermann-Ulrich Viskorf et al., 2017). The special-purpose allocations are defined in § 8 ErbStG. Following this, the allocations can only be used for a special purpose and are not meant to be used for personal reasons but solely for that external purpose. The person who gains the allocation inherits the liability to follow this commitment (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The allocations are characterized by two criteria: First, the allocation itself and second, the restrictions that are attached to the allocation (Hermann-Ulrich Viskorf et al., 2017).

The jurisdiction and instructions about the limited and unlimited tax liability in Germany are found in § 2 ErbStG. This paragraph implies personal tax liability and includes when the tax liability occurs (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The second paragraph limits the first paragraph, which is without any territorial scope of application (Heinz-Willi Kamps, 2003). There is a differentiation between four different types of tax liability. These four types are the unlimited tax liability, the extended unlimited tax liability, the limited tax liability and the extended limited tax liability (Christoph Wenhardt, 2020). The conditions for unlimited tax liability are the following: The testator is a national resident at the time of death. The donor is a national resident at the time of the endowment (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The acquirer is a national resident at the time when the tax arises (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). This means that as soon as one of the participants is a national resident, the unlimited tax liability occurs. Paragraph 2 (1) No 1 S 2a ErbStG says that every natural person who have their place of residence and their habitual abode in the inland are a national resident. The place of residence is phrased in § 8 AO and the habitual abode is phrased in § 9 AO. A person has a place of residence where he has an apartment and the circumstances imply that he holds on to the place to live there (Abgabenordnung (AO), 1977). The habitual abode is the place where a person holds on to their personal relations and other relations that show that he is not only staying in the place temporarily. Usually, the time period needs to be continuous six months and longer (Abgabenordnung (AO), 1977). A taxpayer can have several places of residence but only one habitual abode (BFH, 10.08.1983—I R 241/82, 1983). Furthermore, every German citizen who has not lived longer than five years abroad without keeping a place of residence in Germany or is living abroad but receives a salary from a German juridical institution paid by the public is a subject to the unlimited tax liability. In addition to that, every association of individuals, corporations and estates are subject to unlimited tax liability (Hermann-Ulrich Viskorf et al., 2017).

The extended unlimited tax liability takes aim at the tax claim of the German government towards tax-motivated and short-term moves abroad (Reinhard Kapp et al., 2020). This concerns every Germany citizen within the first five years of leaving Germany and their habitual abode in the country (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). This regulation can lead to double taxation, which will be taken into further consideration in part about the double tax agreements. The result of the unlimited tax liability is that the total incurred assets are liable for the German inheritance tax, independently whether the assets are domestic or foreign (Christoph Wenhardt, 2020).

Therefore, global-assets-principle is being applied. In general, the unlimited tax liability is less favourable than the limited tax liability because, with unlimited tax liability, the taxation is more extensive (Karlheinz Konrad, 2017).

Nevertheless, it grants the taxpayer certain advantages. The personal tax-exempt amounts from § 16 ErbStG are higher than the ones for the limited tax liability (Hermann-Ulrich Viskorf et al., 2017). Additionally, the social security benefits from § 17 ErbStG only apply on unlimited taxable spouses, children up to the age of 27 and civil partners (Erbschaftsteuer-Richtlinien 2019 - ErbStR 2019, 2019). According to §21 ErbStG, foreign tax of inheritance payments is only allowable against unlimited tax liability. Another advantage is that only with unlimited tax liability, debts can be deducted from the acquisition in full extent (Christoph Wenhardt, 2020). In regard to this, § 10 (6) ErbStG needs to be taken into consideration as it specifies the extent of the deductible debt. The debt is only deductible to the part in which it is economically connected to the concerned asset (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The limited tax liability is the third form of tax liability and it results from an affiliation of the asset to the inland (Karlheinz Konrad, 2017). The so-called domestic assets are further specified in § 121 BewG. In the case of descent, no person involved can be a national resident. The only concern is the connection of the asset to Germany (Hermann-Ulrich Viskorf et al., 2017). The enumeration in paragraph § 121 BewG is exhaustive. This means that no other asset which is not listed in the paragraph can be counted as a domestic asset (R E 2.2 ErbStR 2011). The main elements are domestic business property, domestic immovable property, domestic agricultural or forestry assets and specific shares of capital companies (Bewertungsgesetz (BewG), 1935).

As a result of the enumerative delimitation of § 121 BewG, the elements which are not named are not a taxable asset. This affects, for example, securities, bank deposits at inland credit institutes or entitlements to benefits (Karlheinz Konrad, 2017). The significance of the regulations has special regard to financial assets and claims to a compulsory portion (Hermann-Ulrich Viskorf et al., 2017). Similar to the unlimited tax liability, debt is only deductible in the amount to which it has an economic connection to the liable domestic asset. Generally, the personal tax-exempt amounts for limited tax liability is similar to the amounts for unlimited tax liability (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The second passage of paragraph 16 limits the value to a partial amount. This amount equates to the proportion of the sum of the value of the at the same time inherited, not liable to the limited tax liability assets, that occurred within ten years from the same person, in relation to the sum of the value of the

total inherited assets within the last ten years from the same person (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The taxpayer does not need to file an application but obtains the tax-exempt amounts ex officio (Christoph Wenhardt, 2020).

These regulations changed with the new law to prevent tax evasion (Erbschaftsteuer-Richtlinien 2019 - ErbStR 2019, 2019). The legal situation changed, starting from the 25th June 2017 (Christoph Wenhardt, 2020). In the course of these new regulations, the social security benefits for limited tax liability has been adjusted as well (Erbschaftsteuer-Richtlinien 2019 - ErbStR 2019, 2019). The benefits are now also applicable for spouses, children up to the age of 27 and civil partners in regard to the limited tax liability (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). Equal to the tax-exempts amounts, the social security benefits are being applied ex officio (Christoph Wenhardt, 2020). The only condition is the given administrative assistance from the state in which the descendant is living (Erbschaftsteuer-Richtlinien 2019 - ErbStR 2019, 2019). The fourth form of tax liability is the extended limited tax liability, which is regulated by §§ 2,4 and 5 AStG. For the extended limited tax liability, it is necessary that the concerning person was at least five years unlimited tax liable as a German citizen in the sense of §1 (1) s. 1 EStG within the last ten years of their unlimited tax liability, they moved to a low-tax country, such as Monaco or Liechtenstein, and they still pursue significant tax interest in the inland (Hermann-Ulrich Viskorf et al., 2017). Different to the unlimited tax liability, the limited tax liability is subsidiary. If the extended limited tax liability occurs, the domestic assets are expanded on the extended domestic assets. This includes all property holdings, which would be recognized under unlimited tax liability as non-foreign income after § 34 c (1) EStG. It only applies if domestic assets after § 121 BewG exist (Karlheinz Konrad, 2017). Extended domestic assets include capital claims and debts, cash assets, shares and dues of capital companies, entitlements on pensions and periodic payments from debtors in the inland, movable assets in the inland, insurance claims, in the inland exploited copyrights, assets that are under § 5 AStG under the extended limited tax liability and assets under § 15 AStG that are connected to the tax liable person (Christoph Wenhardt, 2020). Following § 4 (2) AStG the extended limited tax liability is not applied if the tax liable person can prove that he already paid a similar tax to the German tax in the country of residence which is at least 30 of one hundred of the German tax (Gesetz Über Die Besteuerung Bei Auslandsbeziehungen (Außensteuergesetz), 1972). Similar to the limited tax liability, the tax-free amounts are applied (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974).

2.1.2 Value determination

§ 10 ErbStG outlines the basis for assessment before tax-exempt amounts are subtracted. Furthermore, it outlines the range of taxable acquisition (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The specifications from §§ 10 to 13d ErbStG give with what value the individual assets are subject to the taxation of inheritance (Harald Horschitz et al., 2018). Paragraph 10 (1) s. 1 ErbStG states as taxable acquisitions:

Table 1: Value determination

Enrichment of the acquirer evaluated by §12 ErbStG
./. profit-sharing by § 5 ErbStG
./. objective tax exemption by §§ 13, 13a-d ErbStG
./. the personal tax-free amount by § 16 ErbStG
./. social security benefits by § 17 ErbStG
= taxable acquisition (rounded up on full 100 € by § 10 (1) s. 6 ErbStG) The basis for assessment for the tax rate by § 19 ErbStG

The inheritance tax is levied as a hereditary succession tax, which means that not the inheritance as a whole is taxed but only the particular acquisition for a single acquirer (Hermann-Ulrich Viskorf et al., 2017). The value determination means to evaluate the not in money existing assets to an amount of money. Therefore, the first step is to determine an item to be valued (Hermann-Ulrich Viskorf et al., 2017). Additionally, debts and liabilities are evaluated, which are in direct relation to the acquisitions (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The regulations from §§ 2 – 16 BewG give the limitations for valuation, but there are exceptions for certain assets (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The assets listed in § 12 (2 – 7) ErbStG is being evaluated by special regulations (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). This includes assets from § 151 (1) s. 1 BewG, values for not noted shares of capital companies, the valuation of real estate, business property and shares of business property and debts which are credited to more than one person (Bewertungsgesetz (BewG), 1935). These assets are evaluated with the separated established value (Hermann-Ulrich Viskorf et al., 2017). Other assets which are evaluated by

special regulations are treasures of the soil (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974; Hermann-Ulrich Viskorf et al., 2017). The last assets which are evaluated by special regulations are foreign real estate and foreign business property. These assets are evaluated by § 31 BewG (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974).

2.1.3 Calculation of the tax

The calculation of the tax of inheritance is a complex topic and depends on personal circumstances. The specific components are the addition of former acquisitions, the tax class, the tax-exempt amounts and social security benefits, the membership fees and the tax rate (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The addition of former acquisitions is appointed in § 14 ErbStG. The paragraph outlines that all acquisitions from the last ten years must be added if they were given from the same person. (Harald Horschitz et al., 2018) The earlier paid tax for former acquisitions is added to the topical calculated tax. The ten-year period follows the restrictions from § 108 (1) AO + § 187 BGB, and it needs to be accurate on the day.

For inheritances, the day of the passing is the relevant date (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The tax rate for former acquisitions can be notional or the actual tax that has been paid, if it is higher than the notional tax rate (Harald Horschitz et al., 2018). Is the sum of the actual paid tax rates higher than the calculated tax on the total acquisition, there is no refund (Erbschaftsteuer-Richtlinien 2019 - ErbStR 2019, 2019). The minimum tax rate which needs to be paid is the amount of the last acquisition without any addition of former acquisitions (Harald Horschitz et al., 2018). The second component is the tax class of the acquirer. It depends on the degree of the personal relationship between the acquirer and the decedent (Harald Horschitz et al., 2018).

There are three tax classes in the German tax of inheritance system. The first class includes all spouses and registered partnerships, children and stepchildren, children of the children and stepchildren and parents (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The second class includes parents if the acquisition is not of the reason of death, siblings, children of the siblings, stepparents, children in law, parents in law and divorced spouses (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). Every other person that is not named in the first two classes is part of the third tax class.

Furthermore, every special-purpose allocation is part of the third tax class (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The third component of the calculation is the given tax-exempt amounts, which I will briefly show in a table:

Table 2: Tax-exempt amounts

Tax class I – spouses and registered partners	500.000 €
Tax class I – children and children of deceased children	400.000 €
Tax class I – children of living children	200.000 €
Tax class I – remaining	100.000 €
Tax class II	20.000 €
Tax class III	20.000 €
The person with limited tax liability	2.000 €

The tax-free amounts are dependent on the tax class and the personal relationship between the involved parties. The closer the relationship is, the higher are the tax-free amounts. As a result, parents can together, for example, give their children 800.000 € every ten years without taxation of inheritance applying (Harald Horschitz et al., 2018; Peter Zeitschel, 2020). The fourth component is social security benefits. These benefits apply parallel to the tax-free amounts and are installed for the spouses, registered life-partners and children of the deceased (Hermann-Ulrich Viskorf et al., 2017). The fifth component which needs to be taken into consideration for the calculation is deductible membership fees (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The membership fees and donations have to be given to a non-profit organisation, and the members cannot benefit from the given money (Harald Horschitz et al., 2018). The last and seventh component is the tax rate. The following table shows the tax rates after § 19 ErbStG.

Table 3: Tax rates

Up to EUR	I	II	III
75.000	7 %	15 %	30 %
300.000	11 %	20 %	30 %
600.000	15 %	25 %	30 %
6.000.000	19 %	30 %	30 %
13.000.000	23 %	35 %	50 %
26.000.000	27 %	40 %	50 %
over 26.000.000	30 %	43 %	50 %

Different to the taxation of income, the taxation of inheritance is not progressive (Harald Horschitz et al., 2018). Paragraph 19 (3) ErbStG additionally outlines the outcome of smaller amounts that exceed the limits for each degree of taxation. This is called hardship allowances. Therefore, small amounts of inheritance are not directly taxed with the next higher tax rate, but the exceeding amount until 1.000 € is taxed with 50 % (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974; Harald Horschitz et al., 2018).

2.1.4 Tax assessment

Paragraph 20 ErbStG is the first prescription in the chapter tax assessment and imposition, and it outlines which person is liable to pay the tax. Generally, the acquirer is the taxpayer (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). In the case of inheritance because of death, every person that acquires something needs to pay taxes (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). In the case of inter-vivos gifts, the taxpayers are both parties. For special purpose allocations, the taxpayer is the obligor, and in case of taxation of a charity, the charity itself is the taxpayer. Every acquisition in the legal sense of § 1 ErbStG has to be reported within three months to the responsible inheritance tax office. (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974)

The exceptions to a report are stated in § 30 (3) ErbStG and § 33 ErbStG. In addition to the report of the acquirer, the banks of the deceased person have to send a report about the accounts and wealth to the tax office. (Erbschaftsteuer-Durchführungsverordnung (ErbStDV), 1998; Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The acquirer has to file a tax computation after § 31 ErbStG, and this is without any relation to the general tax liability of the involved person (Harald Horschitz et al., 2018). Eventually, the responsible tax office determines the tax and levies it. The assessment is carried out by a written tax assessment notice. This notice needs to give the kind and amount of the tax and state who is the taxpayer. (Karlheinz Konrad, 2017) Moreover, the foreign paid tax of inheritance is important for the tax assessment. Paragraph 21 outlines further terms. I will go into further detail in the chapter of European Law. There is also a paragraph which sets the amount of the midget-limit. In Germany, the amount is 50 €, and it means that, if the appointed tax is below 50 €, it is not levied. Furthermore, there are other paragraphs that state the reason for the waiver of the tax. This is regarding § 28a ErbStG and § 29 ErbStG. To benefit from these regulations, special circumstances must be given, or the amount of money or wealth exceeds the usual by far. (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974) It is possible to sign an appeal against the tax assessment notice within a month (Karlheinz Konrad, 2017).

2.1.5 Implementation

For the implementation of the law there are three dates that have to be taken in account: the date of the conclusion of law in the legislative body (Art. 78 GG, 1949), the date of promulgation in the official gazette (Art. 82 I GG, 1949) and the date of commencement (Art. 82 II GG, 1949). (Grundgesetz Für Die Bundesrepublik Deutschland, 1949) Following § 37 ErbStG, the law is effective for acquisitions after the 31st December 2009 (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). For this reason, § 37 concepts, that a law in place, can either not yet or not anymore be applicable or that a law can have its period of application beyond its effective date or it is going out of force so that the law is applicable on events before its effective date or after it is going out of force (Prof. Dr. Jens Peter Meincke et al., 2018). Another interesting paragraph is §37a ErbStG which outlines special provisions for the German Unity. Again, here are three different dates that are important. Until the 30th June 1990 § 2 (3) ErbStG a.F. was in place. Following this, the right to levy tax was given to the GDR.

This signifies that the GDR law was in place until the 31st of December 1990. (Hermann-Ulrich Viskorf et al., 2017) During the time from the 1st July 1990 and the 31st December 1990, the GDR law of inheritance is still effective, even though the treaty between the Federal Republic of Germany and the German Democratic Republic was set up (Gesetz Zu Dem Vertrag Vom 18. Mai 1990 Über Die Schaffung Einer Währungs-, Wirtschafts- Und Sozialunion Zwischen Der Bundesrepublik Deutschland Und Der Deutschen Demokratischen Republik, 1990). The tax jurisdiction was only held by one state. Therefore, the result was liability-difference because of different tax rates. From the 1st January 1991, the nationwide ErbStG is effective. The only exception is for acquisitions before the year 1991, or if the tax note is changed after the 1st January 1991 (Hermann-Ulrich Viskorf et al., 2017).

2.1.6 European law

In many cases, Paragraph 21 ErbStG leads to double taxation of inheritance. Due to the principle of global earnings for unlimited tax liable persons and the regulations for limited tax liable persons, paragraph 2 ErbStG generates a conflict regarding double taxation. (Hermann-Ulrich Viskorf et al., 2017) The only instrument to avoid double taxation completely is a double-tax agreement. For the taxation of inheritance, Germany has not many agreements with other countries; in fact, at the moment, only six are effective (Bundesfinanzministerium, 2020). However, it is possible to tax credit the foreign tax on the German tax without a double-tax agreement (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The requirements are the following: The tax credit is only possible with a filed application. For each state, there has to be an independent application. The application itself is not tied to a certain form or deadline (Dr. Max Troll et al., 2019). The second requirement is that the acquisition needs to be fully liable to the unlimited tax liability (Hermann-Ulrich Viskorf et al., 2017). The third requirement is that foreign taxes need to be levied and paid on foreign assets (Prof. Dr. Jens Peter Meincke et al., 2018). This paid foreign tax needs to be similar to the German tax. The last requirement for a tax credit is that the foreign tax payment cannot be more than five years apart from the levying of the German tax (Hermann-Ulrich Viskorf et al., 2017). The tax credit needs to be included in the tax assessment (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). In general, European law stands on a higher level than the national law (Karlheinz Konrad, 2017). The member states of the European Union are free in the layout and setup of their tax systems, but they have to follow the settled case-law of the European Court

of justice and respect the fundamental freedom of the EU-contract (EuGH v. 14. 12. 2000, C-141/99 (Amid), Rn. 19, Slg. I-2000, DStRE 2001, 20, 2000). In particular, the European legally guaranteed freedom of movement of capital and freedom of establishment takes a spill-over effect on the taxation of inheritance (Hartmut Hahn, 2005). Furthermore, the influence of the European Law on the German tax of inheritance law changed with the case of Barbier in 2003 (Karlheinz Konrad, 2017). The European Court of Justice ruled on the 11th December 2003 that the European Community law is not compatible with the taxation of inheritance law of a single member state, as far as the country only acknowledges the successors' liability to onward transmission of an estate item under the condition of impairment of value, which the successor held in the situs state (Prof. Dr. Jens Peter Meincke et al., 2018). In regard to the German law, the three main conclusions of the verdict are the following: First, the freedom of capital movements is protected by the Euopean Community law and the capital movements directive. The acquisition and alienation of property in a member state are included in the capital movements and therefore protected by the laws. Second, provisions that exclude the deduction of a transfer obligation when appraising the value of a domestic real estate in the case of succession because the deceased at the time of his death lived abroad will result in a depreciation of the inheritance and can detain potential investors in a similar situation or who might be facing a case of succession, from the acquisition of such real estate. Third, provisions of the particular national law, which are eligible to detain non-residents of a member state because of their place of residence from the acquisitions of real estate in the situs state, compromise the freedom of capital movements. (Prof. Dr. Jens Peter Meincke et al., 2018) These conclusions open the question about the conformity of the German tax law to the European law. In the literature different paragraphs are questioned in particular:

- § 2 Abs. 1 Nr. 1b ErbStG (extended unlimited tax liability for German citizens) (cf. Schaumburg RIW 2001, 165; Surbier-Hahn ErbStB 2004, 124; and EuGH Urt. 23.2.2006 – C-513/03 – DStRE 2006, 851.)
- § 4 i. V. m. § 2 AStG (extended limited tax liability for German citizens with an essential economic interest in Germany) (Schnittger FR 2004, 185.)
- § 5 ErbStG (limitation of exemption from taxation of profit-sharing in communities of acquisitions) (Schnittger FR 2004, 185)
- § 10 Abs. 6 S. 2 ErbStG (limited deduction possibility of liabilities of the estate of limited tax liable persons) (Burgstaller/Hasslinger, Group 9, p. 157; Thömmes, IWB, 11A, S. 1191; Hey DStR 2011, 1149 (1153).)

- § 15 Abs. 2 S. 1 ErbStG (no rate benefit for incorporation of a foreign family foundation) (Thömmes/Stockmann IStR 1999, 261; Kellersmann/Schnitger IStR 2005, 255; Hey DStR 2011, 1149 (1156).)
- § 20 Abs. 6 ErbStG (inheritance tax liability for insurance companies, that pay the insurance or life annuity abroad or make it available to a beneficiary abroad before the tax is established or secured) (Hey DStR 2011, 1149, 1156 f.)
- § 21 ErbStG (imputation system for paid foreign taxation of inheritance) (cf. Jochum ZEV 2003, 171; Hamdan ZEV 2007, 401; EuGH Urt. 12.2.2009 – C-67/08, DStR 2009, 373.)

The influence of European law is growing more significant during the last years as society becomes more cross-linked throughout the European Union with personal relations and family structures (Frank Hannes et al., 2011).

2.2 Switzerland

In Switzerland, the tax of inheritance is only levied by the canton and in some regions by the commune, but not by the federal government (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019). Because the tax is indirect, the federal government is not allowed to pass a harmonisation-provision (Bundesverfassung Der Schweizerischen Eidgenossenschaft, 2000). Therefore, in Switzerland, 26 different cantonal legal regulations are in order (Dr. Rembert Süß et al., 2020).

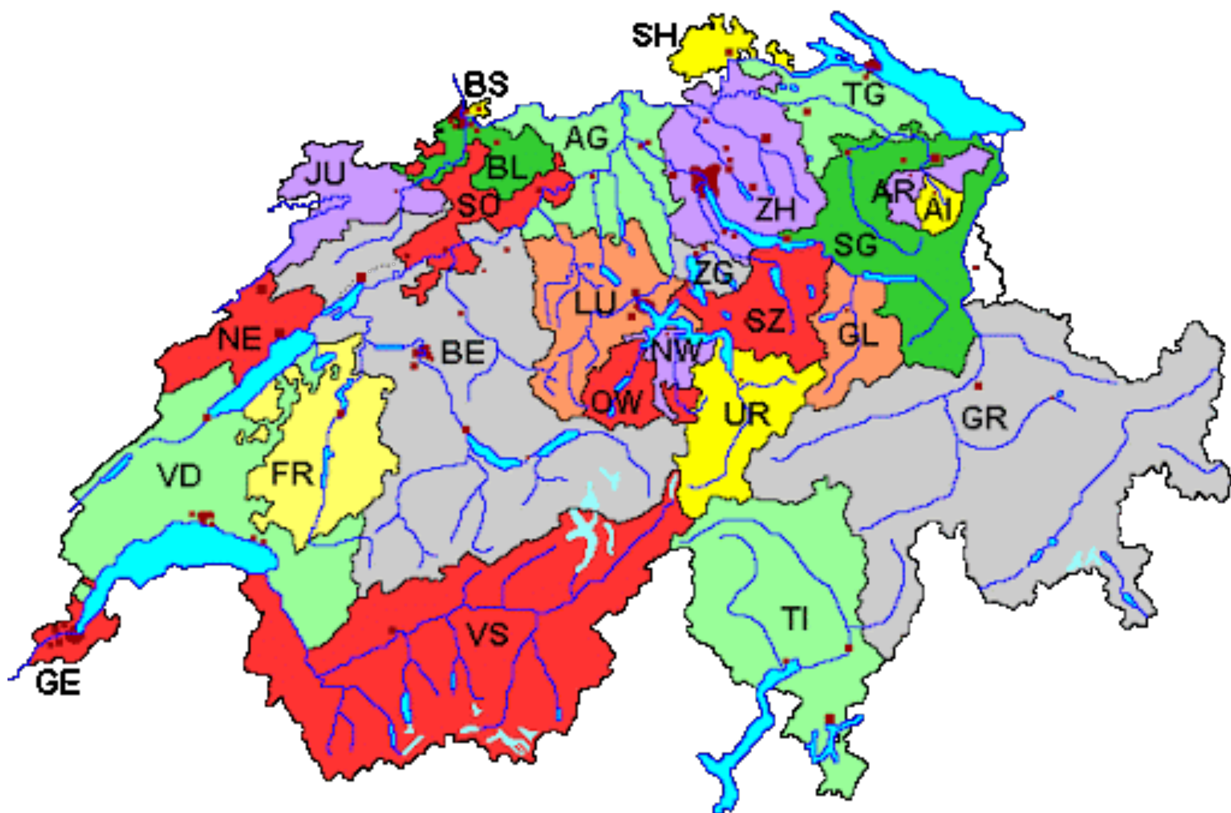


Figure 3: Map of Switzerland (kantone-staedte.infos-schweiz.ch, 2020)

The tax systems have different unique characteristics in some cantons. The only canton that does not levy any taxation of inheritance is the canton Schwyz. In other cantons, the tax is either levied as an estate tax, an inheritance tax or combined with both (Dr. Peter Mäusli-Allenspach, 2010). In consequence of these 26 different legal regulations, I will use the canton Zurich as an example case for any further specification. Although there are different regulations, the taxation still needs to follow the constitutional order. This order is achieved by some main principles which follow the federal constitution. The principle of legality (Bundesverfassung Der

Schweizerischen Eidgenossenschaft, 2000) states that the person liable to pay the tax, the tax object and the basis for assessment need to be regulated by law. Furthermore, taxation needs to follow the principle of generality and uniformity. Besides the generality and the uniformity, the taxation needs to follow the principle of economic capacity (Bundesverfassung Der Schweizerischen Eidgenossenschaft, 2000). For the taxation of inheritance, this principle means, that different amounts of inheritance are taxed with a progression along with the value of the acquisition. Important for the taxation of inheritance is the ban of an intercantonal double taxation (Bundesverfassung Der Schweizerischen Eidgenossenschaft, 2000). Additionally, the double taxation between states is managed in a treaty, the double-tax agreements, to restrict the fiscal jurisdiction. I will explain these principles in further detail in a subsequent section.

2.2.1 Tax liability

The tax liability lies with the natural or legal person, who is the beneficiary of a gratuitous acquisition (Dr. Peter Mäusli-Allenspach, 2010). In the case of succession, the taxpayers are the heirs and legatees in all cantons. The authority to levy a tax on movable property lies with the canton in which the legator held his place of residence and the properties which are passed on are taxable in the canton where they are located (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019). Therefore, the unlimited tax liability usually applies in the canton where the legator lived, and the limited tax liability applies to the immovable property in the canton where its located (Dr. Max Troll et al., 2019). The cantons Solothurn and Grisons levy an estate tax instead of an individual inheritance tax. Hence, the inheritance is taxed in total, and the tax is deducted from the estate in one (Dr. Rembert Süß et al., 2020).

In Switzerland, it is possible to nominate a beneficiary heir (Prof. Dr. Wolfgang Burandt et al., 2019). If so, the tax is levied twice, except in the cantons Fribourg, Vaud and Jura, where special exceptions apply (Dr. Max Troll et al., 2019). When the tax is levied twice, it first applies on the transition from the legator to the preliminary heir and then again on the transition from the preliminary heir to the reversionary heir (Prof. Dr. Wolfgang Burandt et al., 2019). Similar to the usual taxation, the grade of the relation between the individuals is essential (Obergericht Zürich, 2020). Now, the before mentioned ban of double taxation and the principle of economic capacity is essential. Therefore, if the nomination of a beneficiary heir was correctly installed, the tax tariffs are adjusted.

For example, the already paid tax can be credited, or only the capital value of the acquisition is taxable. If more than one heir is named, the group is liable for the tax altogether. In the cantons Vaud and Geneva, the heirs vouch with their estate to the inheritance tax. (Prof. Dr. Wolfgang Burandt et al., 2019) In all cantons, the spouses are not liable to any taxation.

The canton Zurich has some specifications about the taxation of inheritance. First of all, the canton levies a tax based on the law of taxation of inheritance and gift duty from 28th September 1986, which was adjusted on 1st January 2011 (Kanton Zürich Steueramt, 2015). The liability to pay taxes applies in Zurich if the legator held his last place of residence in Zurich or if the inheritance was opened in Zurich (Kanton Zürich Steueramt, 2015). It also applies if the real estate has its location in the canton or if property rights for estates in the canton are passed on (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987). In an international context, the tax liability can apply for movable business assets (Kanton Zürich Steueramt, 2015). Paragraph 11 states that spouses, registered partners and the direct descendants are excluded from any taxation of inheritance (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987).

2.2.2 Value determination

The tax object to a tax of inheritance is the transfer of assets to the heirs by law or the personal will (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019). Because each regional legislation can decide about the interpretation of the taxable transfer of assets, in some cantons, other transfers can be taxable if they are related to the succession (Dr. Rembert Süß et al., 2020). In all cantons, the acquired assets through an endowment on death are taxable by the tax of inheritance (Prof. Dr. Wolfgang Burandt et al., 2019). Furthermore, in all cantons the tax levies only on the net-assets which the acquirer receives. This means that debt and liabilities can be deducted from the received assets. In the case of succession, most cantons require to establish an assets-inventory to determine the assessed value of the tax (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019). Real estate is valued by the earnings value or the market value or with a combination of both assessments of value. In Zurich, for example, the real estate is valued by the market value (Dr. Max Troll et al., 2019). In principle, the acquired assets are measured by the market value. (Dr. Peter Mäusli-Allenspach, 2010) If beneficiary heirs are appointed, the value determination differentiates between a legal appointment or every other. As already mentioned before, with a beneficiary heir, the value determination follows different

principles. The legal appointment of a beneficiary heir under art. 488 ZGB states that the pre-heir gains the capital value of the acquired assets. Therefore, the concerned value is net value. The beneficiary heir has to state the unencumbered assets. Already mentioned, most cantons view this procedure of taxation as a violation of the principle of economic capacity and double-taxation. (Prof. Dr. Wolfgang Burandt et al., 2019) Therefore, some cantons, like Solothurn and Basel-Land, credit the already paid taxes. If the beneficiary heir is appointed to the rest and not legally, both heirs have the full power of disposition about the complete asset (Obergericht Zürich, 2020). In this case, the taxation applies on both taxable acquisitions to the full extent. The jurisdiction in Zurich advises not to install a beneficiary heir in any way because the implementation and estate planning is quite cost-intensive and complicated. It is more efficient to install a testamentary contract with each involved person. (Obergericht Zürich, 2020) In canton Zurich, the value determination is stated in the law of taxation of inheritance and gift duty. Paragraph 13(1) ESchG specifies that all acquired assets are valued with the market value (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987). This value is the usually realised price on the valuation date of a general financial year (Kanton Zürich Steueramt, 2015). It is possible that this assessment comes to different results than the assessment of direct taxes (Kanton Zürich Steueramt, 2015). The exception to the assessment with market value are agricultural, and forestry used properties, which are valued under the regulations of §§ 15 ff. ESchG, with the earnings value (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987). For corporations, some exceptions might apply as well. For example, in Zurich, the business operational assets are disencumbered by valuations discounts of up to 80% (Dr. Max Troll et al., 2019). Furthermore, valuation discounts and tax reductions can apply under certain conditions for company succession (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987).

2.2.3 Calculation of the tax

As mentioned before, the basis for the calculation of the tax is generally the market value of the estate, with certain expectations (Dr. Rembert Süß et al., 2020). As the net-value is used, all debts, except the tax of inheritance, are deductible (Ernst Höhn & Robert Waldburger, 2008). Additionally, in many cantons, 30-day palimony is deductible, for the persons who lived together with the successor (Schweizerisches Zivilgesetzbuch, 1912). The tax tariffs are mostly progressive and connected with the degree of relationship between the concerned individuals and the value of the acquisition (Prof. Dr. Wolfgang Burandt et al., 2019). All cantons have the regulations that all grants to public corporations within the own canton are exempted from tax. This is valid for federal government, cantons and communes (Dr. Rembert Süß et al., 2020). Tax-exemptions also apply to spouses and registered partners in all cantons (Prof. Dr. Wolfgang Burandt et al., 2019). Most of the cantons, except Vaud, Neuchatel, Lucerne and Appenzell Inner Rhoden, also exclude children from the taxation (Dr. Rembert Süß et al., 2020). However, most cantons have a system of tax-free amounts in which acquisitions of children are included, next to tax exemptions for alimony, education, household effects or dowry (Dr. Rembert Süß et al., 2020). The highest tax is paid by not related persons with almost 50%, for example in the canton Basel-Stadt. (Dr. Peter Mäusli-Allenspach, 2010)

The tax tariffs are very different in each canton, but all of them show a progression. The cantons Uri, Nidwalden, Appenzell Ausser Rhoden, St Gallen and Appenzell Inner Rhoden, apply linear tax-rates in regard to the degree of relationship between the legator and heir. (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019) Within the scope of the transition of an estate, some acquisitions are exempted from the tax in canton Zurich (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987). Paragraph 18 specifies for example dispositions which are not included in the tax liability: transitions due to successions or settlement of an estate, boundary adjustment or agricultural or forestry property, if the proceeds are used for listed acquirements. Further deductions are listed in paragraph 19 ESchG ZH. Debts of the legator, debts in regard to the inheritance, the running costs for the burial and testament enforcement. Furthermore, in canton, Zurich, personal allowances for related persons are specified as well. These allowances start at 15.000 CHF up to 230.000 CHF. For the tax tariffs canton Zurich follows the following rules: (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987)

Table 4: Tax tariffs

The first taxable	30.000 CHF	2%
The following taxable	60.000 CHF	3%
The following taxable	90.000 CHF	4%
The following taxable	180.000 CHF	5%
The following taxable	480.000 CHF	6%
The following taxable	660.000 CHF	7%
Amounts over	1.500.000 CHF	6%

For some acquisitions that cross the canton's borders, and do not go to a person who is entitled to any preferential treatment, the tax tariff is 12%. Depending on the degree of relationship between the involved individuals, some additions might apply. (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987)

Table 5: Additions in regard to the degree of relationship

parents	The simple amount
Grandparents and stepchildren	The doubled amount
siblings	The tripled amount
stepparents	The quadruple amount
Uncles, aunts, nieces and nephews	The quintuple amount
Every other non-related or entitled person	The sextuple amount

Furthermore, other rules for the calculation apply. If there are more than one acquisitions from the legator to the same person, the tax is calculated with the total amount of all acquisitions. In the case of separated tax liability between different cantons, the total amount of the acquisition is used to calculate the tax tariff. Moreover, if the payment of the tax is imposed on the inheritance by the legator, the grants and further additions for the calculation are increased by the corresponding tax amounts. (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987)

2.2.4 Tax assessment

In general, the taxation of inheritance is a one-off payment. In most cantons, it is framed as a tax which is levied on the single part of the inheritance for each heir. There are some exceptions. For example, additionally to this taxation, the canton Solothurn levies an estate tax on the inheritance as a whole. The canton Graubünden only levies an estate tax, but the communes are able to levy a tax of inheritance in addition to the estate tax. (Eidgenössische Steuerverwaltung Direktionsstab & Dokumentation und Steuerinformation, 2019) All cantons require an inventory statement of all involved assets in the case of succession (Prof. Dr. Hans Rainer Künzle, 2018). This process follows the cantonal laws, but it is also in relation to the law of income tax. In the case of succession, the law of income tax lists the inventory as a monitoring instrument (Bundesgesetz Über Die Direkte Bundessteuer (DBG), 1990). If the inventory is not completed, the heirs, executors or inheritance custodians can only enact about the assets or externalise any documents or certificates, if the inventory authority gives their permission. The inventory authority is further entitled to a prohibition on disposition and development freezes (Dr. Peter Mäusli-Allenspach, 2010).

Furthermore, all cantons deliver an official assessment decree to the heirs, where the exact value of the assets and the tax is stated. (Prof. Dr. Hans Rainer Künzle, 2018) Again, the assessment and the reference of the taxation follows cantonal laws. The used method is often similar to the levy of income or wealth taxation. Significantly, the obligation to maintain confidentiality and the principle of legal and administrative cooperation between the tax offices are essential to the system (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987). In many situations, the acquirers are liable to submit a notification about the inheritance. It either needs to be submitted within three months or at the end of the year in which the succession happened.

Additionally, every involved person is required to assist the process and to follow their obligation to cooperate (Dr. Peter Mäusli-Allenspach, 2010). As well as the individuals, the involved court and administration offices have to assist the process and report any case which might not be handled correctly (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987). This is the exception of the obligation to maintain confidentiality because in this case, to correct taxation ranks higher. Again, similar to the income tax, the inheritance tax is assessed and paid to the tax office in charge (Prof. Dr. Hans Rainer Künzle, 2018). It is possible to file an objection to the assessment note with the tax office in charge. If this process is declined, the next stage of filing an objection is with the cantonal administrative court.

If the process is declined again, the next stage leaves the cantonal competence and is filed with the federal court. This last stage is only possible if federal law has been violated or if the inter-cantonal laws are not being perceived. The exact process of the assessment, explained with the example of canton Zurich, is as following: The responsible commune tax office examines the inventory lists and the tax declaration of the departed for any mistakes on formality and correctness. If everything is correct, the commune transfers all documents to the cantonal tax office, directly to the department of inventory-control and inheritance tax. This department is assigned to examine all inventory statements and requests for refunds, the determination of additional taxes, the determination of taxation of the succession and the determination of the tax period for the surviving spouse or registered partner starting from the death date of the departed: the inventory statement and the tax declaration of the departed form the basis of the tax calculation. The process usually starts when the department of inventory-control and inheritance tax gives a list to an executor who then can examine the list and check if there are any changes that need to be taken into account. Again, every involved individual is required to assist during the whole process. The procedure is completed if the tax assessment note is delivered. The department inventory-control and inheritance tax issues the note in the name of the finance department of Zurich. The note gives information about the tax base, the calculation and about the legal remedies and payments. If the tax assessment note is addressed to more than one person, it is enough if one person receives the note. In the case, that the tax liable persons claim to not have received the assessment, it is possible to issue a new note and to restore the period for objection. (Kanton Zürich Steueramt, 2015)

2.2.5 Implementation

The implementation of the law is given by each cantonal authority. Generally, all inheritance laws underlie the right to a referendum. The exact date of implementation is given by the senior civil servants. In canton Zurich, the date of implementation is the 1st January 1987 with the law from the 28th September 1986 (Kanton Zürich Steueramt, 2015). With that date, the preceding law from 1936 went out of power. For inheritances and tax assets that accrued before the new law was inaugurated, the law from 1936 is still in power. The regulations about the assessment, the procedural law, the appeal procedure and the change of tax notes are applicable to the new law, even if the time of death happened before the inauguration. Furthermore, the sanctions stated in the law are applicable for any violation of the law that happened after the law was

inaugurated and even if the time of the acquisition was before the 1st January 1987. (Erbschafts-Und Schenkungssteuergesetz (ESchG), 1987)

2.3 Double tax-agreement

The double-tax agreement between Germany and Switzerland is to avoid a double-taxation of natural individuals and legal persons in regard to the taxation of income, wealth and inheritance. The application of a double-tax agreement is justified if any earnings are taxable by the domestic law of two different states. (Prof. Dr. Bernd Heuermann et al., 2020)

2.3.1 Germany

Germany has bilateral treaties with Denmark, France, Greece, Sweden, Switzerland and the United States (Bundesfinanzministerium, 2020). Germany used to have agreements with Israel and Austria, but as these countries no longer levy the taxation of inheritance, the agreements were not renewed (Hermann-Ulrich Viskorf et al., 2017). In perspective to the double-tax agreements regarding the general income and not only the taxation of inheritance but the agreements about inheritance are also rather low in their number. Especially on the level of the European Union, it is surprising that there are not more treaties effective, because the member states are actually obliged to negotiate whenever an agreement is essential. For many countries, it is difficult to adapt an agreement which is similar to the OECD-Model Convention because the domestic laws are much different from the model provisions from 1966 and 1982. In some agreements, there are articles which comply with the OECD-Model Convention, for example, in the agreement between Germany and Switzerland, article 5.

Generally, there are two methods to avoid double taxation. The first is the tax-credit method, where an overall tax burden occurs on the higher level of both contracting states, as the tax is credited to the amount of the domestic tax (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). The second method is the exemption method, where the liability level is only measured by the tariff-regulations of the state with the right of taxation. Therefore, it can happen that the tax liable person might benefit from lower tax-rates (Hermann-Ulrich Viskorf et al., 2017). However, most states use the progression of proviso when the tax exemption method is used. Therefore, the exempted amount is still included in the calculation of the tax-rate and takes an impact on the assessment basis. The preponderant method used to avoid double-taxation in regard to the taxation of inheritance is the tax credit method. Paragraph 21 ErbStG is implemented and the domestic law, especially paragraph 21 ErbStG, plays a big role in the

avoidance of double taxation. However, if the domestic law and the double-tax agreement collide, the double-tax agreement maintains the priority (Hermann-Ulrich Viskorf et al., 2017).

2.3.2 Switzerland

Earlier, the double-taxation ban between the cantons in Switzerland was mentioned (Bundesverfassung Der Schweizerischen Eidgenossenschaft, 2000). This ban only applies to the cantons but not on the relations of Switzerland to other states (Prof. Dr. Wolfgang Burandt et al., 2019). Switzerland has double-taxation agreements with Denmark, Germany, Finland, Great Britain, United States, Sweden, the Netherlands and Austria (Dr. Max Troll et al., 2019). All of these agreements include the taxation of inheritance, but only the agreement with Finland includes the taxation of gifts (Schweizerische Doppelbesteuerungsabkommen, 2020). The agreement with France was resigned on the end of 2014, and until today, there is not a new agreement between the two countries, and no new negotiations are taking place (Dr. Max Troll et al., 2019). In Switzerland, there are declarations of reciprocity on the cantonal stage applying on the taxation of inheritance in relation to Germany, France, Israel, Lichtenstein and the United States. Generally speaking, the cantonal laws do not include regulations or tax credit methods to ban international double-taxation. The only regulation the cantons have to follow is given by the federal court. The taxation of the cantons is not allowed to offend the elementary public international law, and they cannot levy a tax on foreign real estate if it was already taxed in the situs state. (Prof. Dr. Wolfgang Burandt et al., 2019) These regulations are not always sufficient enough to avoid complete double taxation (Dr. Max Troll et al., 2019).

In Switzerland, the primary method used to avoid a double-taxation is the exemption method with progression (Dr. Stephan Scherer & Dr. Jochen Kotzenberg, 2018). The Swiss federal department of finance issued a paper about the requirements for tax reliefs because of a double-tax agreement. These requirements include that the person needs to be a resident of Switzerland in the sense of the double-tax agreement, the person needs to hold the absolute right about the earnings for which a tax relief is requested and all other requirements that are listed in the double-tax agreement. Switzerland further lists abuse regulations of any double-tax agreement. If a tax reliefs is used by a natural or legal person or business partnership who have their place of residence or place of business in Switzerland, it can be an abusive use, if the persons that are directly or indirectly benefited by the tax relief are not holding a treaty entitlement. (Eidgenössisches Finanzdepartement EFD, 2017) There is four matter of facts with which an

abusive claim can be assumed. These four matters of facts are profit hoarding, trusteeship, foreign-controlled companies and ownership transfer. In every individual case, it is investigated if one of these elements occurs. If none of these elements occurs, the general suspicion of an abusive claim is insignificantly. (Eidgenössisches Finanzdepartement EFD, 2017)

If the Swiss tax offices recognize that a tax relief of foreign withholding tax was unjustly claimed they could implement certain measures. They can demand the payment of the unjustly used tax relief, and they can halt the process of application or withhold any certifications. Furthermore, the Swiss tax offices can inform foreign tax offices about the abusive use of the agreement to prevent the abuse of the foreign tax system. To clarify any process, all involved individuals have to assist the Swiss administration and give them all necessary information, documents and certificates. The individual, who is accused of a violation, is informed in written form about all measures that are taken in force. The legal action in this process can appeal up to the Swiss federal court. If a violation occurs the sanctions from the withholding tax law apply. (Eidgenössisches Finanzdepartement EFD, 2017)

2.3.3 Double tax agreement between Germany and Switzerland

Certainly, the double-tax agreement between Germany and Switzerland has a big impact on the taxation of inheritance of individuals and legal persons (Franziska Bur Bürgin et al., 2009). The Double-tax agreement between Switzerland and Germany is only applicable for acquisitions through succession (Hermann-Ulrich Viskorf et al., 2017). It was adopted on 30th November 1978 and is first applicable for tax cases after the 24th April 1980 (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980). The main principle for the double-tax agreement is the place of residence of the legator. Furthermore, special regulations apply for an immovable property or business properties in the situs state (Dr. Stephan Scherer & Dr. Jochen Kotzenberg, 2018). Germany integrated many additional tax jurisdictions in the agreement with Switzerland. This concerns emigrants from Germany in Switzerland, legators with a double place of residence and further regulations regarding the place of residence of German citizens. As mentioned before, in Germany, the tax credit method is generally applied, and in Switzerland, the exemption method with progression is applied to avoid a double-taxation. (Dr. Stephan Scherer & Dr. Jochen Kotzenberg, 2018) Before the agreement from 1980 was effective, the

policies and procedures between Germany and Switzerland were recorded in 1931. In these regulations, the mainly used principle to avoid double taxation in Germany was also the exemption method with progression (Dr. Max Troll et al., 2019). This changed with the new agreement following OECD-standards from 1980. The agreement came in practice when the legator had the place of residence in one of the contracting states at the time of death. It follows the principle that movable property, as long as it is not business property, is taxable at the last place of residence of the legator and the immovable property in the situs state. (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980) Therefore, the principles of the double-tax agreement follow the same principles like the Swiss taxation laws (Dr. Max Troll et al., 2019).

The additional tax jurisdiction of Germany occurs, when the acquirer holds his place of residence or his habitual abode in Germany, at the time of death. The tax jurisdiction because of limited and unlimited tax liability in Switzerland is not violated with the additional tax jurisdictions of Germany (Dr. Rembert Süß et al., 2020). The same entitlement to Germany appears even with an unlimited tax liability in Switzerland, if the legator had his place of residence for at least five years in Germany or if he relocated in the sense of Art. 4 (4) double-tax agreement (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980). Hence, the fiscal tie in Germany is larger than in Switzerland because the German tax jurisdiction involves not only the legator but also the inheritor (Franziska Bur Bürgin et al., 2009).

In the case of unlimited tax liability in Germany, the tax credit method is used to avoid the double-taxation. The result of this is an "umbrella taxation" (Prof. Dr. Jens Peter Meincke et al., 2018). Furthermore, a natural person with its place of residence in Switzerland is unlimited tax liable in Germany if they have a permanent home or their habitual abode of at least six months in the inland. Therefore, the taxation of the person keeps pristine in Switzerland, and Germany avoids the double-taxation with the tax credit method. The same is applicable for companies that have their company management in Switzerland but hold their place of business in Germany. (Eidgenössisches Finanzdepartement EFD, 2017) No matter the circumstances, the interests of Switzerland cannot be harmed, and the exceptions to the unlimited tax liability are the following: if the legator and inheritor are Swiss nationals or the relocation was of a Swiss national, or if the relocation happened because of an employment contract in Switzerland

of the legator or a marriage with a Swiss national (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980). If the acquirer appointed to the place of residence in the inland because of official purposes, they cannot assert that the place of residence did not exist (Prof. Dr. Jens Peter Meincke et al., 2018). The complete relation between Switzerland and Germany and the regulations of the agreement are rather complex, because of the combination of the different methods to evaluate the taxation. Additionally, the special rules to consider all interests of the states, for example, the regulations for unlimited tax liable individuals that are living in Switzerland, to avoid tax flight, make the complete agreement very specific (Prof. Dr. Jens Peter Meincke et al., 2018). Furthermore, the deduction of liabilities follows two different but combined methods. If the liabilities are in direct economic relation to a certain asset, they can be deducted from the value of the asset (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980).

The remaining liabilities are deducted in the state of residence. An exception is the liabilities that are in relation to the taxable assets in Germany because they are divided proportionally into the two contracting states. If the agreement uses terms that are not further defined, they can be interpreted by domestic law (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980). Furthermore, the way the value of the assets are evaluated and the tax is calculated also interpreted by domestic law (Dr. Max Troll et al., 2019). The exchange of information is also regulated in the double-tax agreement. Following Art. 13, both states are obligated to exchange all information that is important to implement the agreement correctly and to follow the regulations. Other than that, no personal information is exchanged, and the contracting states are not helping each other to enforce the implementation of tax claims and coercive measures (Franziska Bur Bürgin et al., 2009). From the point of the German side, the concerned tax was levied by the cantons and the communes or communal additions (Prof. Dr. Wolfgang Burandt et al., 2019). To conclude, the agreement between Germany and Switzerland does not apply on gift tax, except when the transfer of assets happened because of the case of a succession (Prof. Dr. Wolfgang Burandt et al., 2019).

Other than that, the domestic laws apply and need to be followed, and in regard to Switzerland, the cantonal differences need to be considered (Hans Flick et al., 2020).

2.4 Example case and comparison of the tax systems

To compare taxation, I want to examine two example cases. One case is situated in Germany and is liable to German taxation, and the other example case is situated in Zurich, Switzerland and is therefore liable to Swiss taxation. For the examples, I decided to explain a trivial case, which occurs very often. Therefore, I want to examine the case of succession, when a person dies and leaves a registered partner or spouse and a child at the age of 24 behind. In the example cases, the parties are named the following: Anton, the departed person, Britta, the surviving wife and Christoph, the surviving son of Anton and Britta. Anton leaves his family a series of assets behind. The basic inventory states 500.000 EUR from his savings account, household effects with a value of 50.000 EUR, a one-family house with a property value of 450.000 EUR which Anton and Britta build but now rent out, as their son moved out and a collection of coins with a value of 10.000 EUR. Furthermore, Anton held a share of the LUCK-Company with a fair market value of 90.000 EUR. On the day of his death, Anton had a debt of 50.000 EUR in his name.

2.4.1 Germany

For the German example case, Anton, Britta and Christoph are all unlimited tax liable to the German inheritance law. As Britta was the wife of the deceased and Christoph the son, they both belong to the first tax class. Anton did not leave behind a special testament, and there are no other persons who hold a hereditary title.

1. Preliminary consideration

As said before, the concerned individuals are part of tax class I. Because Anton did not leave a last will or testament, 50% of the inheritance go to his surviving wife, and the other 50% belong to his son. If Anton had left behind a testament, he would have been able to adjust these percentages, but the wife and the child always hold a compulsory portion. For the wife, this portion is at least 25% of the inheritance, and for the children, the percentage is at least 37,5%. Therefore, the separable portion with a testament is also 37,5% of the inheritance. This means that if Anton had left a testament behind, he could have allocated 62,5% to his son and the remaining 37,5% to his wife. However, he did not, so the inheritance belongs to equal parts to the wife and children.

2. Value determination

As mentioned in the part of value determination in Germany, the inheritance is evaluated with all its single components. After that, the exemptions and tax-free amounts are deducted. To visualize, the following scheme shows the exact determination of the total value.

Table 6: Value determination

Enrichment of the acquirer evaluated by §12 ErbStG
./. profit-sharing by § 5 ErbStG
./. objective tax exemption by §§ 13, 13a-d ErbStG
./. the personal tax-free amount by § 16 ErbStG
./. social security benefits by § 17 ErbStG
= taxable acquisition (rounded up on full 100 € by § 10 (1) s. 6 ErbStG) The basis for assessment for the tax rate by § 19 ErbStG

For our example, the evaluation of the assets goes by the following:

The positive decedents' estate

- 500.000 EUR in the savings account with the nominal value after §12 (1) ErbStG
- 50.000 EUR household effects with the fair market value after §12 (1) ErbStG
- 450.000 EUR family house with the property value after §12 (3) ErbStG
- 10.000 EUR coin collection with the fair market value after §12 (1) ErbStG
- 90.000 EUR company share with the fair market value after §12 (2) ErbStG

= 1.100.000 EUR inheritance value

The negative decedents' estate

- 50.000 EUR debt which is directly related to the inheritance after §10 (5) no.1 ErbStG
- 10.300 EUR succession expenses standard amount after §10 (5) no.3 ErbStG

= 1.039.700 EUR inheritance value

Value for wife Britta

- 50% of 1.039.700 EUR = 519.850 EUR
- Exemption for profit sharing after § 5 Abs. 1 ErbStG; R E 5.1 ErbStR 2011; H E 5.1 ErbStR 2011 as the part of the inheritance was adjusted by 25% in regard to the profit sharing in a marriage after §1371 (1) BGB = 50% of 519.850 EUR = 259.925 EUR
- Exemption of the household belongings after §13 (1) no.1a ErbStG = 41.000 EUR
- 50% of 41.000 EUR = 20.500 EUR
- 259.925 EUR – 20.500 EUR = 239.425 EUR
- Personal tax-free amount for spouses = 500.000 EUR
- The calculated value of the inheritance is 238.425 EUR and therefore is within the tax-free amount of 500.000 EUR
- Hence, the social security benefit from §17 ErbStG does not need to be used by Britta
- Basis for calculation of tax = 0 EUR

Value for son Christoph

- 50% of 1.039.700 EUR = 519.850 EUR
- Exemption of the household belongings after §13 (1) no.1a ErbStG = 41.000 EUR 50% of 41.000 EUR = 20.500 EUR
- 519.850 EUR – 20.500 EUR = 499.350 EUR
- Personal tax-free amount for children = 400.000 EUR
- 499.350 EUR – 400.000 EUR = 99.350 EUR
- As Christoph is within the age range of 20 to 27, he can deduct a social security benefit after § 17 (2) no.5 of 10.300 EUR
- 99.350 EUR – 10.300 EUR = 89.050 EUR
- Rounded up after §10 (1) s. 6 ErbStG to 89.100 EUR value of inheritance
- Basis for calculation of tax = 89.100 EUR

3. Calculation of the tax

As seen earlier, the basis for calculating the tax for wife Britta is zero Euro. Therefore, the taxation has no basis, and no tax will be levied on the inheritance of Britta. The calculation for son Christoph is different. As the basis for the calculation is 89.100 EUR and Christoph belongs to the first tax class, the percentage of the tax tariffs is 11%. (§19 (1) ErbStG) The tax results to 89.100 EUR * 11% = 9.801 EUR

4. Result

The result of this example case is that the complete inheritance with a value of 1.039.700 EUR is being taxed with 9.801 EUR. The example shows how direct family benefits from the tax-exemptions and tax tariffs.

2.4.2 Switzerland

For Switzerland, I use the same initial position. Anton, the deceased person with the same number of belongings he leaves behind, his surviving wife Britta and their son Christoph, who is aged 24. As the currency in Switzerland is CHF, I will determine the value in the domestic currency and calculate the value of the Euro to CHF. The values are calculated on the 4th of July 2020.

1. Preliminary consideration

The tax liability exists if the deceased held his place of residence in the canton. In our example, this is the case. Therefore the inheritance is taxable in the canton Zurich. As earlier mentioned, the canton Zurich does not levy any taxation of inheritance on spouses or registered partners and direct heirs, such as children. (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987)

2. Value determination

In canton Zurich, the assets are valued with the market value (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987).

The positive decedents' estate

- 531.100 CHF in the savings account with the nominal value
- 53.110 CHF household effects with the fair market value
- 477.990 CHF family house with the property value
- 10.622 CHF coin collection with the fair market value
- 95.598 CHF company share with the fair market value

= 1.168.420 CHF inheritance value

In canton, Zurich the direct debts and liabilities to inheritance and a standard amount of 12.000 CHF for the succession expenses can be deducted from the value of the assets (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987).

The negative decedents' estate

- 53.110 CHF debt which is directly related to the inheritance
- 12.000 CHF succession expenses standard amount

= 1.103.310 CHF inheritance value

3. Calculation of the tax

The tax would be calculated with the inheritance value of 1.103.310 CHF, after tax-free amounts and tax exemptions would be deducted. Because of the regulations in the inheritance law of canton Zurich, the spouses, registered partners and children are not liable to any taxation of inheritance. Therefore, the basis for the calculation of the tax I zero. As a result, the calculated tax for Britta and Christoph, from our example, is zero CHF.

4. Result

The result of this example case is that the spouses and the direct descendants are not liable to any taxation of inheritance in canton Zurich. Therefore, Britta and Christoph do not need to pay any tax for the assumed inheritance of 1.103.310 CHF of the example case.

2.4.3 Comparison

As seen in our example cases, one of the most significant differences between the taxation in Germany and the taxation in Switzerland (Zurich) is that spouses, registered life partners and children benefit in both countries from the degree of relatedness, but in Zurich, the exemption is far bigger in relation to Germany. In Germany, only tax-free amounts apply, as in Zurich the total value of the inheritance does not matter for the transfer to surviving partners and children, because the complete inheritance is exempted from the taxation. Furthermore, the value determination is different in the example cases. In Zurich, the value is only determined with the market value as in Germany, different values for different goods and estates are used. Additionally, currency-difference is a factor that needs to be considered. As the living-costs and general prices are far higher in Switzerland than in Germany, the higher amount of the standard expenses for succession can be explained with these circumstances or structural differences between the two countries.

2.4.4 General comparison

One of the main differences between the two tax systems is the level of fiscal jurisdiction. In Germany, the fiscal jurisdiction is unitary for the whole country and therefore, only one law applies for the taxation of inheritance. As in Switzerland, the fiscal jurisdiction lies with each canton, and therefore, 26 different laws are in order. Other differences can be found with the tax classes, tax tariffs, tax-free amounts, the value determination and the general tax liability. The differences with the tax classes in Switzerland (Zurich) and Germany are the general classification and the rating within the classes. In Germany, there are three stated tax classes and the tax class of limited tax liable persons. The first class includes all spouses and registered partnerships, children and stepchildren, children of the children and stepchildren and parents. (Dr. Max Troll et al., 2019) The second class includes parents if the acquisition is not of the reason of death, siblings, children of the siblings, stepparents, children in law, parents in law and divorced spouses (Erbschaftsteuer- Und Schenkungsteuergesetz (ErbStG), 1974). Every other person that is not named in the first two classes is part of the third tax class. This includes non-related individuals. In Switzerland (Zurich), the law does not describe an exact classification in tax classes. There is also a differentiation on the degree of the relatedness. This is perceivable in the tax-free amounts and in the calculation of the tax tariffs. In Zurich, parents

have a tax-free amount of 200.000 CHF, life-partners who have lived together for more than five years an amount of 50.000 CHF and for siblings, grandparents, fiancé and fiancée, the stepchildren, godchild and children of the registered life-partners 15.000 CHF. This classification is not into tax classes, but the calculation of the tax-tariffs can be viewed as such. From the calculated tax-tariffs, parents owe the single amount, grandparents and stepchildren the doubled amount, siblings the tripled amount, stepparents the quadruple amount, aunts, uncles and nephews and nieces the quintuple amount and all other individuals the sextuple amount. Therefore, another difference is the calculation and progression of tax-tariffs. In Switzerland, the progression is based on the amount of the taxable inheritance. The first 30.000 CHF are taxed with 2%. The next 60.000 CHF are taxed with 3%, the next 90.000 CHF are taxed with 4%, the next 180.000 CHF are taxed with 5%, the next 480.000 CHF are taxed with 6% and the next 660.000 CHF are taxed with 7%. For all taxable amounts over 1.500.000 CHF, the tax is 6% of the total value. (Erbschafts- Und Schenkungssteuergesetz (ESchG), 1987) As mentioned earlier, these percentages are adjusted, multiplied, depending on the degree of relatedness between the legator and heirs. The following table shows the percentages:

Table 7: Tax rates in regard to the degree of relationship in Switzerland (Zurich)

CHF	parents	Grandparents & stepchildren	siblings	stepparents	Uncles & aunts, nieces & nephews	All other individuals
The first 30.000	2%	4%	6%	8%	10%	12%
Following 60.000	3%	6%	9%	12%	15%	18%
Following 90.000	4%	8%	12%	16%	20%	24%
Following 180.000	5%	10%	15%	20%	25%	30%
Following 480.000	6%	12%	18%	24%	30%	36%
Following 660.000	7%	14%	21%	28%	35%	42%
Over 1.500.000	6%	12%	18%	24%	30%	36%

In Germany these tax-tariffs depend on the tax-class and also on the value of the inheritance.

Up to EUR	I	II	III
75.000	7 %	15 %	30 %
300.000	11 %	20 %	30 %
600.000	15 %	25 %	30 %
6.000.000	19 %	30 %	30 %
13.000.000	23 %	35 %	50 %
26.000.000	27 %	40 %	50 %
over 26.000.000	30 %	43 %	50 %

These tables show that the span of the value of inheritance in Switzerland (Zurich) is smaller in the beginning, and therefore, smaller amounts but, non-existing as soon as the inheritance has a higher value than 1,5 Mio. CHF. This shows that especially high-value inheritances are far less taxed in Switzerland (Zurich) than in Germany. Furthermore, the tax-tariffs as such are smaller in Switzerland (Zurich) than in Germany. The highest percentage in Zurich is 42% and only on an amount of 660.000 CHF, but in Germany, the highest percentage is 50% for all high-value inheritances starting at 13 Mio. EUR. Similar differences can be seen with the tax-free amounts. Again, in Germany, the tax-free amount relies on the tax class of the individual. In Zurich, the tax-free amount relies on the degree of relatedness. The following tables show the tax-free amounts in comparison.

Table 8: Tax-free amounts in Switzerland (Zurich)

Spouses, registered partners & direct descendants	no taxation
Parents	200.000 CHF
Siblings & grandparents	15.000 CHF
Fiancé & fiancée	15.000 CHF

Stepchildren, children of the registered partner, godchild and domestic workers for more than 10 years	15.000 CHF
Life partners, who lived together for more than five years	50.000 CHF
Unable to work or eligible for benefit persons	30.000 CHF

Table 9: Tax-free amounts in Germany

Tax class I – spouses and registered partners	500.000 €
Tax class I – children and children of deceased children	400.000 €
Tax class I – children of living children	200.000 €
Tax class I – remaining	100.000 €
Tax class II	20.000 €
Tax class III	20.000 €
Person with limited tax liability	2.000 €

As the tables show, the main difference is the tax exemption of spouses, registered partners and direct descendants in Zurich. As usually, these persons are involved in successions the most often, this tax-exemption in Switzerland makes a big difference in inheritance within families. The other tax-exemptions are little higher in Germany than in Switzerland and therefore, benefit non-blood-related or non-related persons more. Next to the tax-tariffs and tax classes, the value determination differs as well. In Germany, the value of the inheritance is evaluated by different values for different assets. In comparison, in Zurich, all assets are valued by the fair market value. Therefore, the value determination can differ for equal assets. To round the comparison up, the differences begin with the general tax liability. In Switzerland (Zurich), the tax liability of the inheritance depends on the legator and his residence in the canton. Hence, the taxation is not concerned by limited or unlimited tax liability of the involved heirs. This is different in Germany. Here, the tax liability of every involved individual matter for taxation. To conclude, the tax systems are structured differently and focus on other factors.

Generally speaking, the taxation in Switzerland is cheaper, the more money is involved or, the higher value the inheritance holds.

3 Tax-planning approaches

Generally speaking, most people wish to reduce their tax liability and safe money wherever they can. This thesis wants to give approaches on how the systems of the two countries could be improved and what projections can be made for people affected by both tax systems, so-called cross-border cases.

3.1 Approaches for Germany

The taxation of inheritance in Germany is often discussed concerning its unconstitutionality because once the tax-free amounts are overstepped, the progression of the tax rate can lead to an incisive interference in the personal total assets (Dr. Steffen Huber et al., 2017). The last reform of the taxation was in 2016, with coming into effect on 1st July 2016 (Gesetz Zur Anpassung Des Erbschaftsteuer- Und Schenkungsteuergesetzes an Die Rechtsprechung Des Bundesverfassungsgerichts, 2016). With tax reforms, the government wants to achieve a more equitable jurisdiction and eliminate laws or regulations which put certain tax subjects better off. The centrepiece of the last government draft was a change in the administration assets test. It no longer is supposed to be determined with a catalogue of assets that are not subject to the tax but is now determined in a positive way (Dr. Steffen Huber et al., 2017). However, this draft was declined by the Federal Council. Instead, it proposed to change the administration assets test according to the regulations of the Federal Constitutional Court. The compromise between the proposal took a while, and it went back and forth until the 14th October 2016. Furthermore, it was debated whether the exemption of operational business assets is unconstitutional, but the judgment of the Federal Constitutional Court ruled, that the exemption is needed, to protect businesses and jobs. (Dr. Steffen Huber et al., 2017)

Nevertheless, there are some assets which are not exempted from taxation. In this regard, it is possible to draft tax-planning approaches for operational business assets. One approach is to restructure the assets and liabilities structure by changing the nature of the assets. Following values are important to restructure:

- The market value of the eligible asset
- The market value of the favoured assets
- The market value of the financial resources and young financial resources
- The market value of the other administrative assets

- The market value of the net-administrative assets
- The market value of the young administrative assets

A restructuring of the assets and liabilities structure can be performed by the acquisition of favoured assets and with that turning financial resources into favoured assets as well. Additionally, a restructuring can be achieved by turning harmful administrative assets into financial resources by the sale of the property, parts of the property, rights equivalent to property and buildings which are used by third parties. Moreover, it is possible to restructure the assets by allocating private property to the favoured assets. (Dr. Steffen Huber et al., 2017)

After analysing both tax systems, the German system appears to be connected to more detailed and more severe regulations. An approach for the general tax system would be to simplify the system as a whole. Interconnected to the simplification of the system is the ethical point of view. In Germany, the tax-free amounts are certainly high for a large part of the general public. However, the taxation of parents after losing their child is morally questionable. Significantly, the tax-free amount of 100.000 EUR is not as high as the tax-free amounts of other close relatives. Therefore, in an approach to simplify the system, it could be taken into consideration to make it more ethical as well. To extend the tax-free amounts for parents would be a step into that direction. As of now, to find a morally correct approach which suits every individual being is a difficult task on its own.

An approach for married couples in Germany is the "Berliner Testament". It is often chosen by couples to structure their estate. However, the "Berliner Testament" is an instrument which has to be used with care and consideration. If the circumstances arise, the use of the "Berliner Testament" can degrade the tax base and the tax liability can end up higher as without any additional contracts. The "Berliner Testament" is a form of a joint testate and the spouses often appoint each other as heirs. After the death of both spouses, a third party is installed as a final heir of the mutual estate, following § 2269 BGB. Often, the final heirs are the shared children. However, this can also be achieved by forming a contract of inheritance and leaving it with a notary. (Christoph Wenhardt, 2019) Testate can follow two different principles. The first is the principle of unity, by which the spouses put each other as the single full heirs and their children as final heirs. By doing so, the children do not inherit any estate when one parent dies but the right to a compulsory portion equal to half of the legal inheritance (Bürgerliches Gesetzbuch (BGB), 1900).

With the taxation of inheritance in consideration, it may be appropriate to claim the compulsory portions in agreement with the surviving spouse. The assets of the deceased spouse and the assets of the surviving spouse are combined into a single estate. The same regulations can be applied on registered life partnerships, but engaged couples or life-partners cannot use the "Berliner Testament". The second principle is the separation principle which states that the surviving spouse does not become the full heir but only the pre-heir of the first deceased spouse. As a result, the final heir becomes the beneficiary heir of the first deceased spouse. If the surviving spouse also dies, the heir receives two estates.

On the one hand, the estate of the first deceased spouse as a beneficiary heir and. On the other hand, the estate of the last deceased spouse, but from the latter as a full heir. In this scenario, the final heir can only perform the right to a compulsory portion of the legal inheritance when rejecting the inheritance (Bürgerliches Gesetzbuch (BGB), 1900). Following the separation principle, the estates of the spouses are not joint but stay separated through the whole inheritance process. A disadvantage is that the surviving spouse cannot rule about the estate. Advantages of the principle of unity are the following: The estate is not divided up, and the final heir receives the inheritance as a whole after both spouses have died. After the death of the first spouse, the surviving spouse holds a strong legal position as the heir of the complete estate. The surviving spouse can dispose of the inheritance and is only obliged to follow the reciprocal dispositions bound by death after § 2271 (2) BGB. A disadvantage of the unity principle is that after the death of the first spouse, the inheritance is subject to the children's compulsory portion. Furthermore, the spouse who dies first has no influence on how the survivor deals with his or her assets. Additionally, the testate cannot be changed after one spouse dies. Another approach can be the usufruct solution. In this case, the descendants become full heirs upon the death of the first-deceasing spouse, and the surviving spouse receives usufruct of the estate. The "Berliner Testament" holds different clauses, which the spouses need to consider. An example, which is used quite often is the remarriage-clause. This clause appoints that in the event of remarriage, the estate of the first deceased is to pass immediately to the shared children or that the surviving spouse is to deal with the shared children or other relatives in accordance with the principles of legal succession. Such a remarriage clause prevents the assets of the first deceased spouse from passing to the new spouse or children resulting from this marriage. As already mentioned, the "Berliner Testament" should not be installed when very high values are being inherited. Furthermore, with the joint testate is it possible that the personal tax-free amounts cannot show the full

advantage. It is also possible that a progression disadvantage occurs. (Christoph Wenhardt, 2019)

Concluding, it can be said that tax-planning approaches are instead needed when high-value inheritances, such as real estate, businesses or high financial resources, are concerned. Because of the tax-free amounts and notable exceptions for families or other benefited persons, outstanding high payments can be avoided as such. The last approach which can be taken into consideration about avoiding taxation is the renouncement of the inheritance. By doing so, the heir does not receive the inheritance, and therefore neither is liable to the taxation.

3.2 Approaches for Switzerland

As mentioned earlier, Switzerland has 26 different cantonal legal regulations about the taxation of inheritance. Therefore, tax-planning approaches can target the cantonal differences. One approach, to adjust or shift the tax liability, is to change the place of residence within Switzerland to a canton, which levies lower tax rates. This affects all assets which are inherited expect for properties, as they are always taxable in the canton where they are based. The taxation of inheritance in Switzerland is, as explained before, focused or contingent upon the place of residence of the decedent. (Prof. Dr. Wolfgang Burandt et al., 2019) Further approaches can be made about the status of relation. For example, if a person with no direct descendants can adopt the person that they want to place as an heir. In nearly all cantons, adopted children are treated the same way as biological children. Therefore, the tax-exemption amounts and the tax-rates change in regard to the new relationship. For children, the tax-rates and tax-free amounts are higher than for non-related heirs (Franziska Bur Bürgin et al., 2009). For couples, it makes sense to consider marriage, if they know that within the next years, they might be subject to the taxation of inheritance. Spouses are treated in a special way in most cantons, and only in a few, betrothed couples or life-partners are treated with adjusted tax rates and tax-free amounts. For example, in Zurich, life-partners can use a tax-free amount of 50.000 CHF. For higher inheritances, the tax rate applies, if a person inherits about 250.000 CHF in canton Zurich the taxation of inheritance rounds up to about 42.000 CHF. In Switzerland, next to marriage and registered life-partners it is also possible to form a contract for concubinage. These concubinages are treated like spouses in the cantons Grisons, Nidwalden, Obwalden, Uri, Schwyz and Zug and therefore, benefit from the tax-exemptions. If couples that do not want to marry but benefit from the tax-free amounts of married couples can form a concubinage contract

and move to one of the before listed cantons. Otherwise, unmarried couples can reduce taxes through real estate. Regarding the taxation of gifts, it is possible to pass on properties and not pay the full tax, even without being married. For example, a house can be given away to the partner, whereby the usufruct, which can be entered in the register of real estate, remains with the previous owner. The tax base is reduced by the value of the usufruct. By doing so, an amount up to 50% of the tax can be saved, depending on the canton and the value of the usufruct. Again, here it can be useful to choose a canton as a place of residence, where the tax rate is low.

A very general approach, but quite fundamental for a country like Switzerland, is the expansion of double-tax agreements. Switzerland is an inner land, surrounded by France, Italy, Austria, Liechtenstein and Germany and not part of the EU. Therefore, Switzerland status in the middle of Europe has always been special. It is important for the country to maintain good relationships with all surrounding countries, due to the economic but also cultural dependency. However, Switzerland is an extremely wealthy country with one of the most developed infrastructures and general systems in the world, so the general public wants to maintain the high standards and rely on the system even with connections to other countries. For this reason, the double-tax agreements in regard to the taxation of inheritance should be expanded, similar to the double-tax agreements about the income tax. For Switzerland or the Swiss population, a double-tax agreement with France would simplify many processes. Many families in the border regions have connections to both countries and therefore, are liable to both tax systems in the case of a succession. Without a double-tax agreement, both countries impose a tax jurisdiction and tax the assets according to their tax system without special regard to other taxations of the same assets. Hence, double taxation is unavoidable in many cases. France cancelled the agreement with Switzerland in 2014, after France tried to change the agreement in benefit of the French tax system. The Swiss government did not accept the changes, so the agreement became invalid starting from the 1st January 2015. The termination shows the absence of international tax rules in the field of succession. Another approach to save tax, especially when very high values are concerned, is to install foundations as heirs. (Prof. Dr. Wolfgang Burandt et al., 2019) This installation is not regarded as concealment but as a measurement to estate planning. Especially when heirs are not living in Switzerland and taxable in other countries, this installation is a smart way to save tax. Another reason for the installation is if the very high values are inherited, and the heirs are not used to handling a high amount of money it makes sense to store the money with a foundation and therefore put the estate planning strategy on long-term asset protection.

Due to the cantonal differences, the tax system in Switzerland is compartmentalised. To unify the system a standard approach in regard to the tax collection could be implemented. The areas without any taxation could be aligned to the general majority of cantons which levy a tax, or the tax collection could be unified. Another part where it would be possible to unify is the number of taxable assets and the specification about which persons regard to which degree or tax class and therefore the level of taxation. Another idea could be the raise of the tax rates, as Switzerland is seen as a tax haven from the outside. The need for a raise, however, could be questioned as the inheritance tax only makes up a small part of the tax revenue and not many communities in Switzerland have to deal with shortness of funding. Indeed, such a unified approach would encounter resistance as the “Kantönligeist” or translated literally “cantonal spirit” is a big part of the swiss culture and something the Swiss general public takes quite seriously.

3.3 Approaches for cross-border cases

The first approach for any cross-border case is the use of a double-tax agreement. Between Switzerland and Germany, a double-tax agreement is in force and is used for inheritances that regard both countries. As Switzerland only has eight agreements in force and Germany only six, it would make sense to establish more tax-agreements and be more up-to-date and concerned with the well-connected world that we live in today. It is not unusual that heirs and descendants are not living in the same country and therefore, are taxable in two different tax systems. As mentioned before, an agreement between France and Switzerland would solve many problems or difficulties for families which are interconnected within the two countries, especially as the French part of Switzerland is deeply connected to France on a cultural and economic level. Analysing the double-tax agreement between Germany and Switzerland, it is possible to frame tax-planning approaches within the regulations of the agreement. In Germany, the fact of having a place of residence during the last five years before the time of death creates a taxable connection. Following Art. 8 and Art. 10, the resulting double taxation is avoided by crediting the swiss tax on the Germany tax, as Switzerland holds the primary tax jurisdiction. Moreover, a taxable connection occurs on the part of the heirs if an heir who is not a Swiss national had a permanent residence in Germany at the time of the testator's death. For the place of residence, it is not necessary to fulfil a specific period. Besides this, Germany also holds a tax jurisdiction in the case of an expatriation, when the testator had a residence in Germany for a period of at least five years during the last ten years before giving up the last residence. (Gesetz

Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980)

This means that a person leaving Germany, without maintaining a place of residence in Germany, and dies within the next year, it is not compulsory, that Germany holds the full tax jurisdiction. If the testator had maintained a permanent residence in Germany for only two years before moving to Switzerland, the criteria under Article 4 DTA DE-CH are not met. On the other hand, the German tax jurisdiction applies if the testator had a permanent residence in Germany for eight years before moving to Switzerland and only gave it up two years before his death in the course of a move to Switzerland. However, since it is intended to sanction tax-motivated expatriation away from Germany, it can be avoided by providing that the move is based on comprehensible reasons such as taking up employment in Switzerland or marrying a Swiss national. (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980)

As mentioned earlier, usually the really wealthy persons are exposed to taxation, and this also regards the allowances within the double-tax agreement. A competing German tax levy is most likely to be effective if heirs are subject to unlimited tax liability in Germany so that the tax authorities are aware of the inheritance at all. As a matter of fact, the heirs are not obliged to notify the German tax authorities about the inheritance. An interesting part in regard to tax-planning approaches is the taxation of immovable property in the case of succession. This topic is relevant in practical use and deals with competing taxation. Following Art. 5 DTA DE-CH, the situs state holds the tax jurisdiction and Art. 10 DTA DE-CH specifies that the double taxation in the state where the testator had his last place of residence, either through exemption in Switzerland or through crediting in Germany, is avoided. (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980)

This means, if a Swiss property is passed on by a testator who died in Germany to a German heir, the result is the German taxation of inheritance liability, while in the opposite case Switzerland exempts the German property from the domestic inheritance tax. The German crediting method is not applicable if the testator was a Swiss citizen at the time of death. If this is the case, Germany also utilises the exemption method (Gesetz Zu Dem Abkommen Vom 30.

November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980).

The result is, that by these regulations it is possible to construct active design before the time of death. Therefore, Swiss nationals can acquire Swiss real estate if an heir or heirs live in Germany and pass the properties on to them. In the case of large assets which are above the German tax-free amounts, it is yet possible to achieve a transfer practically free of inheritance tax. For assets, which are joint to a permanent establishment, the same rules for properties apply. After Art. 6, the situs principle applies here, although the implementation with regard to permanent establishments is not used in Swiss tax law. However, the supposed missing tax base in Switzerland is not important for tax-planning approaches because a permanent establishment of a German descendant that is located in Switzerland will be taxed in Germany when the assets are transferred to German or Swiss heirs. Due to the method article, all inheritance taxes are credited. Certainly, the not in Switzerland levied taxes, and the result is the German level of taxation (Franziska Bur Bürgin et al., 2009). From a reverse point of view, if a permanent establishment, located in Germany, is passed on by a German testator to a Swiss heir, there is no tax base for taxation from the Swiss side. Because of the German location, the permanent establishment is subject to the German inheritance tax, and there are no advantages through tax-planning approaches. All other assets, which are not included in properties, real estate or permanent establishments, are taxed in the country in which the testator held its last place of residence. (Gesetz Zu Dem Abkommen Vom 30. November 1978 Zwischen Der Bundesrepublik Deutschland Und Der Schweizerischen Eidgenossenschaft Zur Vermeidung Der Doppelbesteuerung Auf Dem Gebiet Der Nachlass- Und Erbschaftsteuer, 1980)

Nevertheless, the implication that the exclusive attribution of a right of taxation to the country of the last residence indicates that the other country has no right of taxation and the Method Article does not apply. Nevertheless, Germany reserves itself the right to assume a competing right of taxation and to apply the credit method and disregard the allocation rule. The only exception, as already explained, are Swiss properties which are passed on by a Swiss testator. (Franziska Bur Bürgin et al., 2009) Concluding, the jurisdiction of the comprehensive taxation in the case of residence or departure from Germany does not affect Switzerland's right of taxation, even though, after leaving Germany, the Swiss citizenship excludes the comprehensive taxation in Germany in the case of departure of the testator.

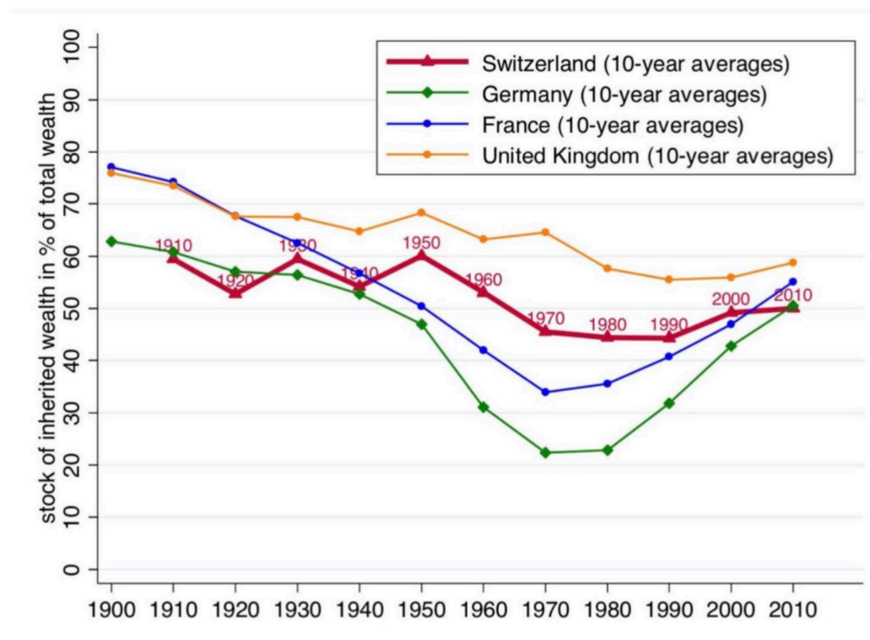
Regarding general tax approaches between Switzerland and Germany, there are many processes that could be simplified. For example, the taxation of the pension in the double-tax agreements is rising each year and leaves open questions about further development. However, this regards a different topic than the taxation of inheritance.

One final approach which can be formulated for cross-border cases regarding the taxation of inheritance follows the European idea. As the European Union creates an economic unity, the question arises why this unity is not expanded to the tax systems. It is reasonable that it is not possible to form one system for all countries due to traditions, different economic values and power and cultural differences. However, it could be tested to form double-tax agreements for all European member states, suitable for all taxable situations. Significantly, the taxation of inheritance is a field with only a few agreements in force. It could be an approach to form, similar to the agreements about income tax, more agreements with other closely connected countries and tax systems. At least, the direct neighbouring countries should prepare such agreements with deeper ambitions, as especially in border areas, families and businesses do not stop where the countries frontier start.

4 Conclusion

The taxation of inheritance is a justice tax. In Germany, 300 billion assets resulted in about 6 billion tax revenue in 2018 (Peter Zeitschel, 2020). Therefore, the discussion about the inequality about the distribution of wealth arises in relation to the tax levitation as it shows how much money and assets are passed on in the country.

The comparison between Switzerland and Germany shows that the tax systems do have similarities in their structure but are very different in the core elements. The end tax liability is lower in Switzerland than it is in Germany, due to the higher tax-exemptions and lower tax rates. Furthermore, the taxation of inheritance has a different construction in Switzerland, as it is levied by the communes and not by the Federal Government. Due to the 26 different cantonal regulations, it depends a lot on where in Switzerland the testator holds its place of residence and where the properties lie that is being passed on. In Germany this is less important as only one system is in place and it is in force for the country as a whole with no regional differences. The unconstitutionality of taxation is a far more discussed topic in Germany than in Switzerland, as the impact of taxation is higher, but the proportions are similar. It is safe to say that further reforms of the taxation will come in the future, and the system might be changed profoundly.



Notes: Data points are 30-year moving averages, reported every 10 years. See text for Swiss data sources. Data for France and Germany from Alvaredo *et al.* (2015).

Figure 4: Cumulative stock of inheritances as a fraction of private wealth (researchgate.net, 2018)

The figure shows the amount of the inherited wealth in relation to the whole wealth of the country. By comparing Switzerland and Germany, the figure shows that the gap between the countries narrowed since the early 2000s. Before, the gap of inherited wealth was more extensive, even though the overall percentage decreased in both countries. This figure shows that a very high amount of wealth is being passed on within families. Therefore, to receive a gain in assets through an inheritance, the family must already be wealthy. Through this, the term, that wealth is only being passed on by inheritance has been imprinted on the injustice of wealth distribution through Europe.

It is difficult to shape the taxation in a way which is beneficial for a big group of individuals and to formulate tax-planning approaches the specific situation and the value of the involved assets are crucial. However, successful tax-planning must be installed before the case of succession. After the case of death, it is difficult to implement new structures in the legal order of succession and the will of the testator cannot be changed other than in regard to statutory provisions. This shows the other big difference, between Germany and Switzerland, whereas in Germany it not only relies on the testator but further on the heir in regard to the tax liability. Therefore, the unlimited tax liability only occurs when the testator holds the place of residence in Switzerland, and the limited tax liability when a property is passed on, which lies in Switzerland. Hence, the tax jurisdiction in Germany goes further than in Switzerland and Germany also insists on further jurisdiction when it comes to the double tax agreement between the two countries.

From my point of view, it is not possible to determine a “better” system, because Switzerland and Germany are entirely different structured. The differences between the systems make sense and are understandable. Due to these differences, it would not be possible to harmonise the two systems.

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6 List of abbreviations

AO	Abgabenordnung
AStG	Außensteuergesetz
BewG	Bewertungsgesetz
BFH	Bundesfinanzhof
BGB	Bürgerliches Gesetzbuch
CHF	Swiss francs
DBG	Bundesgesetz üder die direkte Bundessteuer
DStRE	Deutsches Steuerrecht - Entscheidungsdienst
DTA DE-CH	Double tax agreement between Germany and Switzerland
EFD	Eidgenössiches Finanzdepartement
ErbStDV	Erbschaftssteuer-Durchführungsverordnung
ErbStG	Erbschaftssteuer- und Schenkungssteuergesetz
ErbStR	Erbschaftssteuer-Richtlinien
EschG	Erbschaft- und Schenkungssteuergesetz
EStG	Einkommensteuergesetz
EU	European Union
EuGH	Europäischer Gerichtshof
EUR	Euro
GDR	German Democratic Republic
GG	Grundgesetz für die Bundesrepublik Deutschland
ISTR	Internationales Steuerrecht
OECD	Organization for Economic Co-operation and Development
ZEV	Zeitschrift für Erbrecht und Vermögensnachfolge
ZGB	Zivilgesetzbuch

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