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By PwC Deutschland | 19 August 2022

# Swiss inheritance tax to be credited against German gift tax

**If a gift is subject to inheritance tax under foreign law (here: Switzerland) because the donor dies within a short period of time after the donation, the tax is to be credited against the German gift tax pursuant to Section 21 Inheritance Tax and Gift Tax Act. With this decision, the Duesseldorf Tax Court upheld the claim of the plaintiff, who had residences both in the Canton of Lucerne and in Germany.**

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## Background

The claimant works for a Swiss employer and maintains residences in both Switzerland and Germany. On 15 January 2021, she received CHF 500,000 from the Swiss resident donor. The claimant filed a gift tax return in February 2021. The German tax office assessed gift tax of €132,840 against the claimant in a notice from 22 Feb. 22, 2021. The Swiss donor died in March 2021. In April 2021, the Swiss authorities issued an assessment against the claimant for inheritance tax of CHF 190,000.

In March 2021, the claimant appealed the assessment for German gift tax and requested that the Swiss tax be credited in accordance with section 21 of the German Inheritance and Gift Tax Act (IHGTA). This would exceed the German tax burden, and the German tax was to be reduced to zero. The tax office rejected the claim, and the case found its way to the Duesseldorf Tax Court. The tax office maintained that the principle of equality (principle of correspondence) of Sec. 21 (1) Sentence 1 IHGTA was not fulfilled since the German gift tax contrasted with a Swiss inheritance tax.

## Decision

The Duesseldorf Tax Court took a different view regarding the interpretation of the first sentence of Section 21(1) and upheld the appeal.

The donation of a cash amount is equivalent to a donation covered by the German IHGTA as both the legal consequences and the economic effects must be comparable to a (otherwise) chargeable (taxable) event under German inheritance tax law. This was the case here.

According to Section 21(1) Sentence 1 IHGTA a tax credit is possible for unlimited taxpayers who are subject to a tax corresponding (equivalent) to German inheritance tax on their foreign assets in a foreign country. However, the above-mentioned principle for equivalence requires mainly that the taxation in both countries relates to the same tax object and not to the (type of) tax charged.

This applies despite the proviso contained in Section 21(1) Sentence 4 IHGTA, after which the foreign tax is creditable only if the German tax was incurred within five years of the date on which the foreign tax arose. The court concedes that this wording could also be interpreted to mean that a credit would be excluded if the German tax - as is the case here – was incurred before the foreign tax arises. However, it is wrong to conclude that a tax credit be refused as long if the aforementioned equivalence clause is satisfied. In this context, the Düsseldorf Fiscal Court refers to a corresponding - legally binding - ruling from 2011 by the Cologne Tax Court.

## Source:

Tax Court of Duesseldorf, decision of 4 May 2022 (4 K 2501/21 Erb). - Appeal was allowed but not filed by the tax administration. The judgment is therefore final and legally binding.

## Keywords

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inheritance and gift tax, tax credit