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Introduction to Swiss Tax Law

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Fiscal Sovereignty in Switzerland: 3 Levels of Taxation

- **Confederation**
Authority in all areas in which it is empowered by the Federal Constitution → the Confederation is only allowed to levy taxes to which it is authorised by the Federal Constitution
- **Cantons (26 Cantons)**
Authority in all areas that are not reserved to the Confederation → the cantons are authorised to levy any type of tax as long as they do not infringe upon the exclusive authority of the Confederation or upon the Federal Constitution and Federal Law
- **Municipalities (approx. 2'200 Municipalities)**
Authority in all areas that are entrusted to them by the Canton
→ the municipalities are only allowed to levy taxes within the limits of the respective cantonal constitution and laws

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Main Taxes at the federal level

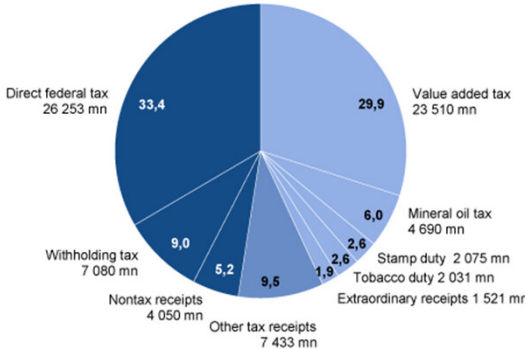
<p>Taxes on income</p> <ul style="list-style-type: none"> • Income tax (individuals) • Tax on net profit (legal entities) • Withholding tax on certain items of income of certain taxpayers (e.g. salary income of short term residents without Swiss citizenship and of non-residents) • Withholding (Anticipatory) tax on certain types of income on movable capital assets 	<p>Taxes on goods and services</p> <ul style="list-style-type: none"> • Value Added Tax • Stamp duties • Tobacco tax • Beer tax and tax on distilled spirits • Mineral oil tax • Motor vehicle tax • Customs duties
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Federal Revenue: 2022 Ordinary Receipts (Budget)



Category	Percentage	Amount (mn)
Direct federal tax	33,4	26 253
Value added tax	29,9	23 510
Other tax receipts	9,5	7 433
Withholding tax	9,0	7 080
Mineral oil tax	6,0	4 690
Nontax receipts	5,2	4 050
Stamp duty	2,6	2 075
Tobacco duty	2,6	2 031
Extraordinary receipts	1,9	1 521

Source: https://www.efv.admin.ch/efv/en/home/finanzberichterstattung/bundeshaushalt_ueb/einnahmen.html

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Main Taxes at the cantonal or/and municipal level

Taxes on income and on net wealth	Taxes on goods and services
All cantons	Not all cantons
<ul style="list-style-type: none">• Income and net wealth tax (individuals)• Tax on net profit and on capital (legal entities)• Real estate capital gains tax• Withholding tax on certain items of income for certain taxpayers	<ul style="list-style-type: none">• Taxes on transfer of immovable property• Motor vehicle tax• Stamp duties• Dog tax• Entertainment tax• Visitor's tax (or Tourist Tax)
Not all cantons	
<ul style="list-style-type: none">• Inheritance and gift tax• Lottery income tax• Real estate tax	

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Main International Agreements

- **Double Taxation Treaties:** Wide net of double taxation treaties concluded by Switzerland (more than 100 treaties on income taxes, some of them including net wealth taxes, 8 treaties on inheritance taxes)
- **Bilateral Agreements with the European Union; relevant from a tax perspective are in particular:**
 - Bilateral Agreement on the free movement of persons (AFMP)
 - Agreement on Automatic Exchange of Information, in force since 1 January 2017 (replaced former agreement on taxation of savings income)
- **Multilateral Convention on Mutual Administrative Assistance in Tax Matters (in force as of 1 January, 2017):** Obligation to grant exchange of information on request, automatically and spontaneously
- **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (in force as of 1 December, 2019):** Amendment of the double taxation treaties based on the BEPS project containing a minimal standard and optional provisions

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Most relevant Federal Tax Acts

- Federal Act on the Federal Direct Tax (FDTA) of December 14, 1990 (Bundesgesetz über die direkte Bundessteuer [DBG], SR 642.11)
 - Individual income tax
 - Net-profit tax (corporate income tax)
- Federal Act on the Harmonisation of Direct Taxes of Cantons and Municipalities (FTHA) of December 14, 1990 (Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden [StHG], SR 642.14)
 - Federal guidelines on the cantonal taxes on income and net-wealth, net-profit and capital as well as on real estate capital gains
- Federal Withholding [Anticipatory] Tax Act (WHAT) of October 13, 1965 (Bundesgesetz über die Verrechnungssteuer [VStG], SR 642.21)
- Federal Value Added Tax Act (VATA) of June 12, 2009 (Bundesgesetz über die Mehrwertsteuer [MWStG], SR 641.20)

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Constitutional Principles of Taxation (I)

Art. 127 Federal Constitution of the Swiss Confederation

- 1 The main structural features of any tax, in particular those liable to pay tax, the object of the tax and its assessment, are regulated by law.
- 2 Provided the nature of the tax permits it, the principles of universality and uniformity of taxation as well as the principle of taxation according to ability to pay are applied.
- 3 Intercantonal double taxation is prohibited. The Confederation shall take the measures required.

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Constitutional Principles of Taxation (II)

- Principle of universality
 - Prohibition of a privileged treatment of certain taxpayers or group of taxpayers
 - Prohibition of discrimination and of more burdensome taxation of certain taxpayers or group of taxpayers
- Principle of equality and ability-to-pay principle
 - Each taxpayer must contribute to the fiscal revenue of the state according to his/her economic and personal resources
 - Horizontal equality: taxpayers who are in the same economic and personal situations and derive the same amount of taxable income must be taxed identically
 - Vertical equality: taxpayers who are in different economic and personal situations and derive a different amount of taxable income must be taxed differently

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Constitutional Principles of Taxation (III)

- Ability-to-pay principle: Examples of ongoing discussions in Switzerland (I)
 - Equal treatment of married couples and cohabiting couples ("*Heiratsstrafe*")
 - Married couples are taxed together (family taxation; article 9 and 36 FDTA); cohabiting partners are taxed separately (single taxation), because of the progressive income tax rate married couples who live in the same economic and personal situation than cohabiting couples may pay more income taxes (calculations show that approx. 450'000 married couples are actually concerned)
 - Equal treatment is not solved with regard to the federal income tax
 - For years, different solutions are discussed in the Swiss Parliament in order to solve that inequality
 - At the moment, a proposal for an individual taxation of spouses (each spouse is taxed separately) is pending in the Parliament.

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Constitutional Principles of Taxation (IV)

- Ability-to-pay principle: Examples of ongoing discussions in Switzerland (II)
 - Exemption of capital gains on private assets from the taxable income tax base: article 16 (3) FDTA
 - Lump-sum taxation of non-Swiss citizens who do not work in Switzerland: article 14 FDTA
 - Reduction of the double tax burden on dividend distributions; partial dividend taxation: article 18b and 20 (1^{bis}) FDTA

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Prohibition of Intercantonal Double Taxation (I)

- Prohibition of intercantonal double taxation: actual and potential double taxation
- Principle of non-discrimination:
 - a taxpayer who is only taxable in a canton with a part of his income shall not be treated differently from a taxpayer who is taxable with all of his income in that canton
 - Applicable for both the canton of residence and the canton of source

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Prohibition of Intercantonal Double Taxation (II)

- Main allocation rules
 - Immovable property may only be taxed by the canton where the property is situated
For example: A. living in Zurich owns a real estate in Davos:
 - The Canton of Graubünden is allowed to tax the net income derived from the real estate whereas the Canton Zurich must exempt that income
 - Both cantons are however allowed to take into account A.'s entire income for calculating the applicable tax rate (exemption with progression)
 - A permanent establishment or an enterprise (carried out by a sole proprietor or a partnership) may only be taxed by the canton where the permanent establishment or enterprise is situated
 - All other kinds of income may only be taxed by the canton where the taxpayer is a resident of (including income from employment and income from movable assets)

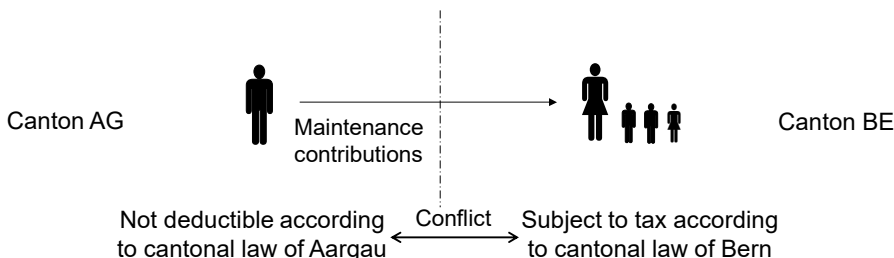
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Prohibition of Intercantonal Double Taxation - Example: Federal Supreme Court 4 Dec. 1992, ATF 118a I 277


Divorced couple, payment of maintenance contributions from one canton to another



The Federal Supreme Court ruled that the Canton of Aargau must deduct the maintenance contributions and the Canton of Bern is allowed to tax them

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Harmonisation of Direct Taxes (I)

Art. 129 Federal Constitution of the Swiss Confederation

- 1 The Confederation shall set out principles on the harmonisation of the direct taxes imposed by the Confederation, the Cantons and the communes; it shall take account of the efforts towards harmonisation made by the Cantons.
- 2 Harmonisation shall extend to tax liability, the object of the tax and the tax period, procedural law and the law relating to tax offences. Matters excluded from harmonisation shall include in particular tax scales, tax rates and tax allowances.
- 3 The Confederation may issue regulations to prevent unjustified tax benefits.

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Harmonisation of Direct Taxes (II)

**1 January 2001:
Federal Tax Harmonisation Act (FTHA) took effect**

Coordination only based on constitutional principles:
cantonal tax law differed considerably


↓

Coordination based on the FTHA →

<ul style="list-style-type: none">• Prohibition of intercantonal double taxation• Principle of equality• Ability-to-pay principle	<ul style="list-style-type: none">• Harmonisation of tax subject, tax object, tax period, tax procedure, tax penal law• Harmonisation both at the horizontal and vertical level• No harmonisation of tax allowances and tax rates
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Harmonisation of Direct Taxes (III)


No harmonisation of tax allowances and tax rates → the tax rates of the cantons and municipalities differ considerably

Example 1: Assumption: single person, taxable income CHF 100'000 (Option 1) or CHF 300'000 (Option 2); tax year 2021

Taxable income	CHF 100'000	CHF 300'000
Federal income tax: (maximum tax rate: 11.5 %)	2.87 %	8.92 %
Cantonal income tax (incl. municipal income tax)		
• Wollerau (Canton Schwyz)	7.65 %	9.56 %
• Hergiswil (Canton Nidwalden)	10.39 %	11.43 %
• Zurich (City of Zurich)	13.81 %	21.49 %
• Bern (City of Bern)	20.73 %	25.45 %

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Harmonisation of Direct Taxes (IV)


Example 2: Assumption: Corporation with a taxable profit of CHF 1'000'000; statutory tax rates 2021

Federal corporate tax	8.5 %
Cantonal corporate tax (incl. municipal and parish tax)	
• Zug	5.0 %
• Nidwalden	5.1 %
• Zurich	16.0 %
• Bern	17.8 %

It should be noted that the effective tax rates are lower than the statutory tax rates since Swiss corporate tax law allows the deduction of paid taxes (effective tax rate federal corporate tax minus approx. 1 %, effective tax rates cantonal corporate tax minus approx. 1 - 4% depending on the individual situation)

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Federal Income Tax

Legal basis: Federal Act on the Federal Direct Tax (FDTA) of December 14, 1990 (Bundesgesetz über die direkte Bundessteuer [DBG], SR 642.11)

- Federal income tax on the income of individuals
- Federal corporate tax on the net profit of legal entities
- Source Tax levied on the income of certain individuals and legal entities

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Federal Individual Income Tax (I)

Subjects to the Federal Individual Income Tax – Two categories of taxpayers (I)

- Taxpayers with **personal** attachment → Swiss residents → **unlimited** tax liability («world-wide income tax principle»), 2 forms of attachment:
 - Swiss residence (art. 3 (1) FDTA): central place of living is in Switzerland
 - Abode of at least 30 days (with gainful activity) or 90 days (without gainful activity) in Switzerland (art. 3 (3) FDTA)
- Exception from the world-wide income tax principle: enterprises, permanent establishments and real estate situated abroad are unilaterally exempt from income taxes (article 6 (1) FDTA)
 - Unilateral exemption method with progression (article 7 (1) FDTA)
 - Exemption even if no double taxation treaty applies

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Federal Individual Income Tax (II)

Subjects to the Federal Individual Income Tax – Two categories of taxpayers (II)

- Taxpayers with **economic** attachment → non-residents → **limited** tax liability («source principle») (art. 4 and 5 FDTA): several attachments:
 - real estate in Switzerland
 - permanent establishment in Switzerland
 - gainful activity without temporary abode
 - board members or directors of Swiss corporations
 - pensions and similar remunerations paid by Swiss institutions/insurances
- Taxation of the Swiss source income
- Ordinary tax assessment or source tax, e.g. salary source tax for any dependent work in Switzerland or for sportspersons and artists

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Federal Individual Income Tax (III)

Taxable income

Principle of taxation of the overall income (no baskets, no schedules), including:


- income from dependent and independent services (incl. compensatory income)
- income from movable and immovable property
- income from insurances and seniority allowances

Exceptions

- capital gains on movable and immovable assets if not realised on business assets, i.e. realised on private assets (art. 16 (3) FDTA)
- Inheritance and gifts (= subject to cantonal gift and inheritance tax); some kind of insurance payments; financial aids for people with low income (art. 24 FDTA)

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Federal Individual Income Tax (IV)

Deductible Expenses and Allowances

- All expenses related to the earning of income, e.g. professional expenses; expenses for the maintenance of immovable property; expenses for the administration of securities, etc.
- Interest payments, particularly mortgage interest payments
- Payments to company pension plans; insurance fees (partly)
- Allowances for children, dependents and double-income couples

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Federal Individual Income Tax (V)

Deductible Expenses: Example of work-related expenses (Art. 26 FDTA)


Peter lives in Bern and works in Zurich. He commutes by train from Bern to Zurich. He is a young attorney-at-law and decides to attend an English evening course in order to improve his chances to work for an international law firm.

Peter may deduct from his taxable income:

- Train costs (effective costs up to an amount of CHF 3'000 per year)
- Costs of taking lunch out of home (lump-sum amount of CHF 15 per day, total per year CHF 3'200): costs for meals can be deducted if it is not reasonable for the taxpayer to go home for lunch
- Costs of the language course as costs of further education: educational costs are deductible if they are directly connected to the current profession of the taxpayer

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Federal Corporate Income Tax (I)

Types of legal entities – Two categories

- Corporations: Share Company (AG/SA), Limited Liability Company (GmbH/Sarl), Cooperative Society
- Other legal entities: Association, foundation and other entities that are treated as legal entities, e.g. investment trusts with direct real estate ownership
- Not partnerships: in Switzerland partnerships are not considered legal entities; their income is attributed to the partners (transparent taxation)

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Federal Corporate Income Tax (II)

Subjects to the Federal Corporate Tax – Two Categories of taxpayers

- Taxpayer with **personal** attachment → Swiss residents → **unlimited** tax liability (art. 50 FDTA); except of enterprises, permanent establishment and real estate abroad (Art. 52 (I) FDTA)
 - Registered office (statutory seat)
 - Place of effective management
- Taxpayer with **economic** attachment → non-residents → **limited** tax liability (art. 51 FDTA)
 - real estate in Switzerland
 - permanent establishment and enterprises (carried out by sole proprietor or partnership) in Switzerland

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Tax Reform of 2019 (in force since 1 January 2020) (I)

- For many years, Switzerland was under pressure by the EU and the OECD to abolish several criticised tax regimes (e.g. regimes for holding, administrative and mixed companies; finance branches); these regimes were abolished as per 31 December 2019
- As per 1 January 2020, Switzerland has introduced other measures that are in line with EU law and the OECD project on Base Erosion and Profit Shifting (BEPS)
- Most amendments only concern the cantonal corporate taxes:
 - Introduction of a patent box
 - Introduction of tax incentives for research and development expenses
 - Introduction of a notional interest deduction on equity capital (only for certain cantons)
 - Rules regarding the disclosure of built-in gains
 - General reduction of cantonal ordinary corporate income tax rates for all companies to a competitive level depending however on the cantonal financial situation

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Tax Reform of 2019 (in force since 1 January 2020) (II)

- Importance of innovation through research and development is internationally recognised; two different groups of tax incentives are principally possible:
 - **Out-put incentives:** encouraging research at the level of taxable income by lowering the tax burden on income generated from patents → Introduction of a patent box
 - **In-put incentives:** encouraging research and development activities by allowing to deduct (more than) the cost of those activities → Introduction of tax incentives for research and development expenses
- Patent box (Art. 24a and Art. 24b Tax Harmonisation Act)
 - Only open for registered patents and some similar rights, not for software
 - Cantons are obliged to introduce a patent box, are however free to decide on the amount of relief, deduction of the qualified taxable income of up to 90% possible
 - Calculations of the qualified income follows the OECD BEPS Report Action 5
- Super-deduction of research and development expenses (Art. 25a Tax Harmonisation Act)
 - Costs for research and development may be deducted up to 150% of the effective amount
 - Cantons are free to introduce the super-deduction

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Withholding (Anticipatory) Tax (I)

- Legal basis: Withholding Tax Act of October 13, 1965 (Bundesgesetz über die Verrechnungssteuer [VStG], SR 642.21)
- Tax Rate on dividends and interest: 35 %
- Tax objects: dividends distributed by Swiss companies to Swiss and foreign shareholders; interest paid by Swiss residents on savings accounts, debentures and bonds
- Requirements for a full or partial refund of the withholding tax:
 - Swiss residents: if they correctly and timely fill in their tax returns
→ full refund
 - Swiss non-residents: if they are entitled to a double taxation treaty or if article 15 of the Agreement on Taxation of Savings Income between Switzerland and the EU applies
→ full or partial refund according to the tax treaty or the Agreement

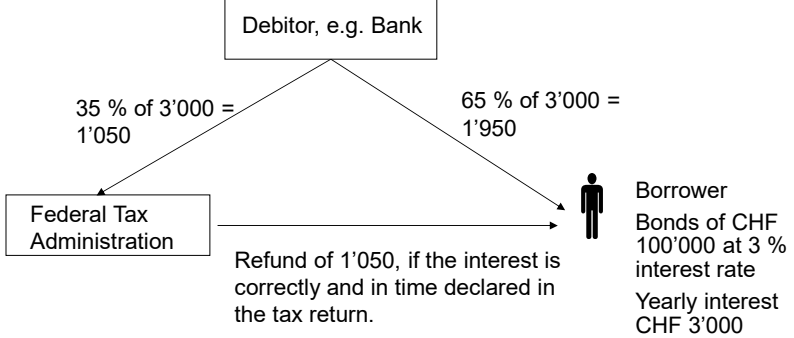
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Withholding (Anticipatory) Tax (II)

Concept of the Swiss Withholding Tax on Dividends and Interests



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graph TD; Debitor[Debitor, e.g. Bank] -- "35 % of 3'000 = 1'050" --> FTA[Federal Tax Administration]; Debitor -- "65 % of 3'000 = 1'950" --> Borrower[Borrower]; FTA -- "Refund of 1'050, if the interest is correctly and in time declared in the tax return." --> Borrower;
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Borrower
Bonds of CHF 100'000 at 3 % interest rate
Yearly interest CHF 3'000

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Legislative proposal for a reform of the withholding (anticipatory) tax

- Reasons for the reform:
 - Withholding tax is an obstacle for the Swiss capital market, especially for interest-bearing investments (bonds), since the deducted withholding tax is not or often only partially refunded (provided that a double taxation agreement applies)
 - Swiss multinationals organise their financing abroad, usually by setting up a finance company abroad. Financing in Switzerland is not attractive
 - Switzerland today grants automatic exchange of information to many states; withholding tax is no longer necessary to combat tax evasion
- Proposed amendments (approved by the Parliament in September 2021, however, referendum likely):
 - Abolishment of the withholding tax on interest, except of interest on bank accounts held by Swiss residents
 - Withholding tax on dividends, in contrast, remains unchanged

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Stamp Tax

- Legal basis: Stamp Tax Act of June 27, 1973 (Bundesgesetz über die Stempelabgaben [StG], SR 641.10)
- Three kind of stamp taxes
 - Stamp tax on the issuance of shares in Swiss corporations
 - Stamp tax on the transfer of domestic and foreign securities
 - Stamp tax on insurance premiums
- Tax rate on the issuance of shares: 1 %
- Tax rate on the transfer of securities: 0.3%
- Tax exemption in the case of reorganization, e.g. spin-offs, mergers, change of the legal structure, etc.

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Value Added Tax (VAT)

- Legal basis: Value Added Tax Act of June 12, 2009 (Bundesgesetz über die Mehrwertsteuer [MWStG], SR 641.20)
- Consumption tax mainly following the principles of the EU directive on VAT levied on all phases of production and distribution as well as on the import of goods, domestic service industry and the import of services from abroad
- Tax rates 2020
 - Standard tax rate 7.7%
 - Reduced tax rate on certain categories of goods, e.g. food, medicine, books 2.5%
 - Special tax rate for hotel and lodging industry 3.7%
 - On-going parliamentary discussion: simplification of the VAT, e.g. only two tax rates instead of three, abolishment of certain exemptions, etc.

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Inheritance and Gift Tax (Cantons)

- Taxpayer: Beneficiary of the inheritance or the gift
- Assessment basis: market value of the assets (reduced values for real estate and businesses)
- Spouses are exempt from the inheritance and gift tax in all Cantons
- Descendants are exempt from the inheritance and gift tax in all Cantons, except of 4 Cantons
- Tax rates depend on the degree of relatedness of the deceased/donor to the beneficiary and on the amount of the inheritance/gift; maximum tax rate up to 40 % for non-related persons

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