

Non-Swiss residents can own several holiday homes in exceptional cases

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The Federal Supreme Court recently decided a case concerning a non-Swiss resident who, as legal heir according to Swiss law, inherited a Swiss real property and already owned another Swiss real property.⁽¹⁾ Both properties were holiday homes. The court considered whether he had to sell one of the properties due to restrictions governing the acquisition on Swiss real estate by non-Swiss residents.

Legal framework

Foreign investments in Swiss real estate are governed by a federal law known as the '*Lex Koller*'⁽²⁾ and additional cantonal rules. The law restricts the acquisition of residential real property by non-Swiss residents, although they are free to invest in any type of business premises, including offices, retail properties, warehouses, hotels, restaurants and hospitals.

With regard to holiday homes, as a general rule, non-Swiss residents may acquire such premises with approval if:

- the property is located in a designated tourist area;
- a quota is available;
- the apartment or house and land does not exceed a certain size; and
- the purchaser does not already own a holiday home in Switzerland.⁽³⁾

If the purchaser, his or her spouse or a child younger than 18 already owns a holiday home in Switzerland, then the *Lex Koller* authority must refuse approval. The law does not allow non-Swiss residents to own more than one holiday home in Switzerland.

According to Swiss law, an exemption applies regarding legal heirs: they are generally exempt from the approval requirement when acquiring by way of inheritance any type of Swiss real property that is subject to the restrictions. In contrast, non-legal heirs are subject to the approval requirement. However, non-legal heirs have a preferred legal position, as they can obtain approval even if they already own a holiday home in Switzerland. In such case approval will be granted with an obligation to sell the property within two years.

Facts

The *Lex Koller* authority of the Canton of Vaud granted the successor (a non-Swiss resident who already owned a Swiss holiday home) approval to acquire the inherited property (a holiday home). The authority obliged the successor to sell the inherited property within two years.

On appeal, the Vaud Administrative Court held that the exemption for legal heirs applied and therefore the acquisition of the second holiday home was not subject to approval. Nevertheless, the

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court held that the successor had to sell one of his two holiday homes within two years – he was free to determine which property.

The successor appealed.

Supreme Court decision

The Federal Supreme Court confirmed that as legal heir according to Swiss law, the successor did not require approval to acquire the inherited property, regardless of whether he already owned another holiday home in Switzerland.

Based on a detailed analysis of the law, the court also held that there is no statutory basis to prevent legal heirs from acquiring a second holiday home based on the exemption. In particular, the Supreme Court held that this may not be prevented with reference to the purpose of the law. Rather, the legislature expressly created a special rule for legal heirs. The clear wording of the relevant legal provisions (Articles 7 and 12) and the statutory system do not deviate from this special rule.

Accordingly, there was no legal basis to oblige the successor to sell one of the two properties within two years. As a result, the appeal was granted.

Comment

The general rule that non-Swiss residents may acquire only one holiday home in Switzerland does not apply to legal heirs according to Swiss law.

Legal heirs are exempt from the approval requirement by operation of law. They may acquire additional holiday homes by way of inheritance, even if they already own such a property in Switzerland. They may keep such additional properties and cannot be forced to sell them.

This exemption applies only to legal heirs and the sequence of the acquisitions is relevant. The exemption applies only to the acquisition of additional properties by way of inheritance. In contrast, if a non-Swiss resident first acquires a holiday home through inheritance, there is no scope to acquire a second holiday home by way of purchase.

Given the result of this particular case, the Supreme Court did not take a position on whether the law allows a non-legal heir to decide which property to sell. The Vaud Administrative Court granted the concerned successor this choice.

In view of the law's wording (Article 8), the question arises as to whether there is sufficient legal basis to grant non-legal heirs this choice. The law clearly provides that the successor must resell the inherited property within two years. Nevertheless, for reasons of proportionality, it may be justified in exceptional cases to grant a non-legal heir the choice over which property to sell within the deadline.

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Endnotes

- (1) Federal Supreme Court, BGer 2C_10/2014, September 4 2014.
- (2) Federal Act on the Acquisition of Real Property by Non-Swiss Residents, SR 211.412.41.
- (3) For further details please see "[Latest developments in foreign real property investments](#)".