

Crypto-assets and digital assets in succession planning

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Crypto-assets and digital assets have become a regular part of the estates that wealth planners in Switzerland handle, and the author advises on them as one of the fields of his practice. Their peculiarity lies in access. A bank account can be found by the executor through correspondence and confirmed by the bank, whereas a crypto-asset held on a private wallet is controlled by whoever holds the private key or the seed phrase. If the key is lost when the owner dies, the asset is in practice lost as well, even though the heirs are its legal owners.¹

Planning therefore begins with a record of the assets and a secure arrangement for transmitting access. Families use sealed instructions deposited with a lawyer or notary, multi-signature wallets that require the cooperation of several persons, or custody with a regulated institution. A will should identify the crypto-assets and digital assets, name an executor who is able to deal with them and authorise that executor to use technical service providers. Since an executor who receives the keys can move the assets at once, the choice of person matters more here than for most other assets.

Swiss law offers a supportive framework for custody. The Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force in stages since 2021, introduced ledger-based securities and allowed crypto-based assets held by a custodian to be segregated in the custodian's bankruptcy, provided they are attributed to the client at all times.² Several Swiss banks and specialised institutions supervised by FINMA now offer custody of crypto-assets, which allows a family to hold such assets within the same structure as its other investments.

The tax treatment follows general principles. For a private investor resident in Switzerland, capital gains on crypto-assets held as private assets

are generally tax-free, while income such as staking rewards is taxable. Crypto-assets are subject to the cantonal wealth tax. For their valuation, the Federal Tax Administration publishes year-end values for the most common crypto-assets, which the cantons apply.³ The exemption of private capital gains can be lost if the tax authority qualifies a taxpayer as a professional securities dealer, which depends on criteria such as holding period, volume and the use of borrowed funds. For tokens that are not listed, valuation is harder and may require an expert opinion or a ruling, a step that families should take before the death of the holder makes the question urgent.

1 Notes

1. On the technical control of crypto-assets through private keys and seed phrases and the risk of permanent loss on the death of the holder, see the specialist literature on crypto-assets and digital assets in succession law. To be verified. ↩
2. On the Federal Act of 25 September 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT Act), in force in stages from 1 February and 1 August 2021, and the segregation of crypto-based assets in bankruptcy under Art. 242a SchKG, see the federal records. To be verified. ↩
3. On the tax treatment of crypto-assets for private individuals in Switzerland (tax-free private capital gains, taxation of income, wealth tax on the year-end value according to the price list of the Federal Tax Administration), see the working paper of the Federal Tax Administration on crypto-assets and the cantonal practice. Status to be verified. ↩

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