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### Caution with property sales

Dear Sir or Madam,

After two years of ownership, one of our customers resold his house, for which he then received a bill for property gains tax amounting to 60% of the profit he had realised. He certainly had not seen that one coming.

Real estate has the unpleasant characteristic that it cannot easily be transferred into another canton, nor can it be hidden in any manner if the owner does not agree with the taxation on it. On top of that, there is usually a great deal of money involved when it comes to property deals. Thus, the tax authorities exorbitantly milk the owners.

Not only are real estate owners in Switzerland taxed for a fictitious income, the so-called imputed rental value, in their tax declaration, but they are again heavily taxed once they sell their property.

In hindsight there is not much that can be salvaged, thus a sale of real estate must be carefully planned.

Listed below are the most important issues which you need to have looked at carefully at least once before you plan to sell your house.

#### **Property transfer tax**

In most cantons, a so-called property transfer tax becomes due once real estate has changed hands.

Under the term "property transfer" the tax authority considers, for instance, the transfer of real estate or part thereof, but also the transfer of the majority of shares in a real estate stock company (so-called economic property transfer), the conveyance of building rights for parcels of land, or the charges for real estate with easements under private law, or restrictions under public law on ownership against payment.

The selling price serves as a calculation base. This includes all deliverables by the buyer for the acquired property. Depending on the canton a certain percentage of this selling price will be due as property transfer tax, with one half of it to be paid by the seller, the other half by the buyer. There are isolated restrictions when it comes to taxation of owner-occupied property, and these restrictions can also vary from canton to canton.

As this (property transfer) tax is only raised by the cantons and not on federal level, provincialism is thriving.

### **Property gains tax**

Although the principles have been defined by the Federal Government, the implementation of the property gains tax still differs very significantly:

The Federal Government has given the cantons the specific order to impose a tax on all profits made by selling real estate which are on an equal footing with legal transactions of divestiture (e.g. transfer from private property to corporate assets and conveyance of participation rights), and that property gains realised on a short-term basis need to be significantly taxed.

Value-increasing investments can be deducted from profit, just like any buying or selling expenses. The regulations here are also clear and concise.

However, it is completely up to each and every canton what tax rate they are going to impose on profits made by selling property, what effects the duration of ownership has on property gains tax, and which of the expenses can be considered as selling or buying expenses or can be accepted as value-increasing investments.

Basel-Stadt puts heavy emphasis on duration of ownership (up to 3 years, tax rate 60%, after 25 years, still 12%). Basel-Land, on the other hand, sets the tax rates according to the absolute amount of profit and only levies a surcharge at less than 5 years of ownership.

Basically, the following formula is applied for the calculation of the taxable profit made from property sale:

**Proceeds** (selling price incl. all further services by purchaser)

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- **Sale expenses** (notary, agent, property transfer tax)

- **Value-increasing investments**

- **original purchase price / building costs**

- **Purchase expenses** (notary, agent, property transfer tax)

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**= Property gain liable to tax**

## **One country, two systems – even in Switzerland**

The cantons have two options to raise property gains tax for legal entities and on properties which are part of corporate assets:

### The monistic system:

Under the monistic system, not only are profits from conveyance of private assets liable to property gains tax, but also the so-called value-increase income on properties that are part of corporate assets. Thus under the monistic system, property gains by corporate assets are only insofar liable to the general income and profits tax, as these represent depreciations that have been reversed. The monistic system is applied in the following cantons: Bern, Basel-Land, Basel-Stadt, Jura, Nidwalden, Schwyz, Ticino, Uri and Zurich.

### The dualistic system:

Under the dualistic system, basically only profits that are made from conveyance of property that is part of private assets will be affected by property gains tax, whereas accounting profits made from the conveyance of real estate that is part of corporate assets are liable to income and profit tax. This system is applied in the following cantons: Aargau, Appenzell-Innerrhoden and -Ausserrhoden, Fribourg, Geneva, Glarus, Graubünden, Lucerne, Neuchâtel, Obwalden, St. Gallen, Schaffhausen, Solothurn, Vaud, Valais and Zug.

In both systems, federal income and profit tax apply to accounting profits.

## **Exceptions confirm the rule**

Property gains tax is either not raised or is deferred in instances of inheritance, division of inheritance, bestowals, change of ownership among spouses or so-called replacement purchases.

Considered as replacement purchases are the sale of owner-occupied properties, agricultural or forest land and of operating assets, as long as the proceeds are being used for the acquisition of replacement property or real estate which will equally be owner-occupied.

Here too, though, the following applies: the definition of how long you need to owner-occupy a property to fulfil the condition of "exclusive and lasting owner-occupation" is entirely up to the cantons. Taxes are also always due where the property is located, and entirely according to the regulations in this particular canton.

With many years of experience in the field of taxation of real estate artax as a matter of course would be gladly at your disposal to support you bringing clarity to the jungle real estate taxation and to plan the future sale of your property.

Kind regards

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