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Circular no. 40: Unconstitutional, state-approved multiple taxation

Dear Sir or Madam,

With this newsletter we would like to inform you about jurisdiction concerning reimbursement of tax at source on capital gain (withholding tax). This affects the income tax of individual persons.

In the past, the office of securities at the tax administration reviewed the securities income that had been entered in the tax declaration and discussed any possible issues with the tax payer. This meant there were enquiries by the tax administration and additions or amendments by the tax payer. The aim was to get fair and just taxation via cooperation between both the taxpayer and the tax administration.

Via Circular number 40, the tax administration said good-bye to what has been called the mixed method. As a consequence there is no longer an obligation on the tax administration to cooperate. It can rely solely on the tax declaration, and, should any mistake be discovered, they will be attributed to the taxpayer and no-one else. In the area of qualified capital gains, i. e. in situations when a taxpayer has received an increase in shares held, or an increased income from investments, the new practice now means the taxpayer forfeits any claim for tax refund if for example there has been a clerical error or insufficient information by the stock company. However, there is no forfeit on the right to taxation for the tax authority which in the end leads to a tax burden on capital gain twice to even four times higher than the tax burden that had been legally planned. With this Circular (an administrative order by the federal government) the tax administration is bound to do absolutely nothing and just wait for genuine declaration errors by the taxpayer, and the administration is then obliged to enforce consequences from these errors against the tax payer's good faith. The Federal Supreme Court has endorsed this enrichment of the state. Please also read [the article](#) released by publishing house WEKA (in German).

Conclusion

Thanks to Circular #40, the state is filling its coffers even more than before. On the one hand it refuses the reimbursement of any withholding tax, on the other hand dividends are still taxed. Circular #40 is unconstitutional and a completely unjustified enrichment of the state. A statutory provision is required now that the Federal Supreme Court has endorsed this form of theft by the government. A one-time taxation of

dividends is just and fair and is also within the law. A taxation of income twice or four times as high as it should be constitutes unlawfulness.

Coming presentations by Mr. Dr. iur. Bernhard Madörin:

Monday, 29. February

Book reading crime novel "Tanja"

Bibliothekbar Basel

Friday, 6. May

"Swiss tax report"

European-tax-conference Morison International, Bucharest

Wednesday, 11. Mai

"Grenzüberschreitende Sozialversicherungen"

Arbeitgeberverband Basel

Wednesday, 18. May

"Steuern und Grundeigentum"

GV von HEV Binningen-Bottmingen-Oberwil

Tuesday, 24. May

"Steuerfallen für Unternehmer"

Gewerbeverband Basel-Stadt

Tuesday, 7. June

"Sozialversicherungen für Unternehmen und Unternehmer"

Gewerbeverband Basel-Stadt

Wednesday, 8. July

"Pensionierung"

Arbeitgeberverband Basel

Tuesday, 8. November

"Jahresplanung für Unternehmer"

Gewerbeverband Basel-Stadt

Friday, 11. November

"Swiss tax report"

World-tax-conference Morison International, Mexico City

Kind regards

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