SALE OF HOUSES · APARTMENTS · PLOTS
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SPG Residential Sales

NEWSLETTER N° 1

EDITORIAL

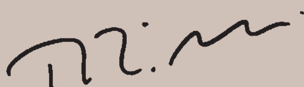
The Canton of Geneva is undoubtedly well-known for its quality of life, but not necessarily for its moderate taxation. In addition, the Geneva taxman is excessively fond of real estate, so much so that he more often than not taxes this asset fairly heavily (supplementary real-estate tax, wealth tax, property transfer taxes, etc.).

Yet there is one survivor who emerges from this bleak picture: the person who owns his private residence at the time of resale, but subject, of course, to certain conditions.

It has to be acknowledged that the rate of the tax on real-estate gains applicable to the owner of a house or apartment used as a main residence is at least reasonable, if not favourable. It reflects a desire to be fair and balanced: short-term gains are heavily taxed (50%), while long-term ownership (over ten years) allows one to benefit from a considerably reduced tax rate (10%). The tax situation will be different – but that is not the subject of this newsletter – for any person deemed to be a real-estate professional, who will then have to pay tax at a rate of between 40% and 50% (not to mention retirement pension contributions...).

The deferral of tax when purchasing a new main residence is also a significant (though justified) facility.

One can therefore consider that the owner of his/her own home is a special case that is treated fairly. This is probably helping – together with low mortgage rates – to fuel the desire to own one's own home, which has been increasingly reflected in the market for a number of years.



Thierry Barbier-Mueller
Chief Executive Officer of the SPG Group

Explanation of capital gains tax on real estate in the Canton of Geneva

The Canton of Geneva levies a tax on the gains realized upon the transfer of any real-estate asset located in the Canton. The owner of a house or an apartment held in Geneva as part of his/her private wealth will therefore be taxed on the net profit made when selling it.

The tax rate is degressive and depends on the length of time for which the seller has owned it and may even reach 0%, depending on the number of years for which it was owned before being sold. Finally, there are some exceptions to the levying of the tax, especially when the gain is re-invested in the purchase of a new property, in which case taxation can sometimes be deferred.

What is the tax levied on?

The tax on real-estate gains is levied mainly on the gains made when selling real estate located in the Canton of Geneva. Thus the net profit deriving from the sale of real estate or from other deeds conferring ownership of, or the right to derive economic benefits from, real estate is liable for the tax. The sale of shares in real-estate companies ("société immobilière" / "SI") is also subject to tax.

What is the tax rate?

The tax rate decreases in proportion to the length of time for which the property has been owned. As Geneva law stands at the present time, it varies from 50% for a period of ownership of less than two years to 0% when the duration of ownership is greater than 25 years.

Thus the tax rate is 40% when the seller has owned the property for a period of two to three years, 30% for an ownership period of between four and five years, 20% for between six and seven years, and 15% for between eight and nine years. Then for any sale after ownership lasting at least ten years but less than 25 years, the tax rate is 10%.

On what base is the tax calculated?

The tax is levied on the difference between the selling price and the purchase value of the property.

The purchase value corresponds to the price paid to buy the property plus some expenses such as the costs directly related to its purchase (notary's fees, etc.) and the expenses that have increased its value. If the purchase was made more than ten years before the sale, it is possible to claim its fiscal value ten years before the sale plus 30%, or its fiscal value five years before the sale if it is a rental property.

As for the sale value, it is the selling price, less the expenses incurred in connection with the sale.

If work creating an important added value has been undertaken since acquiring the property, such as an enlargement of the house, the gain on this work is taxed separately. The rate applicable to that portion of added value is then determined according to the completion date of this work.

Who has to pay the tax?

The tax is owed by the vendor or the beneficiary of the gain. The latter is liable for the tax even if he is domiciled outside the Canton of Geneva.

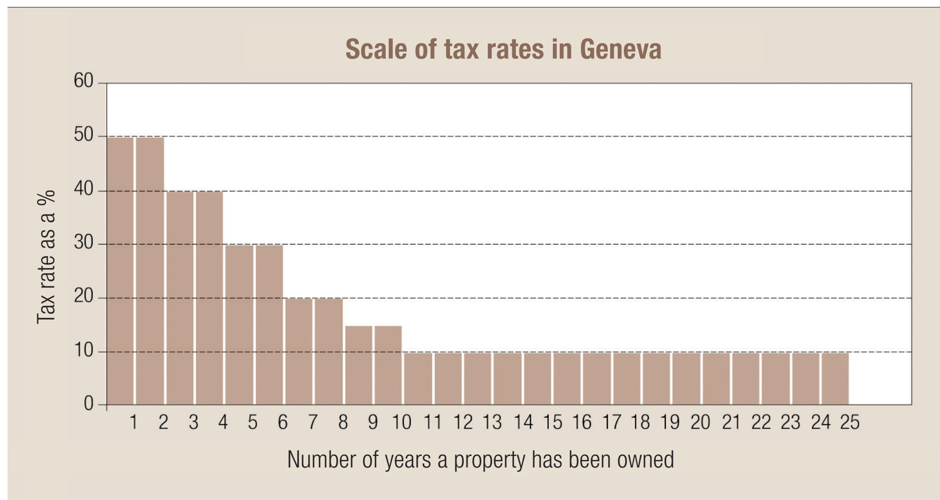
SALE OF REAL ESTATE FORMERLY OWNED BY A REAL-ESTATE COMPANY

When the transferred property has been acquired by the vendor as part of the liquidation of a real-estate company, it is important to distinguish between two situations. The gain made by the former shareholder on the subsequent sale of the property to a third party may in fact be subject to tax on property gains under different conditions, depending on whether the property was acquired in an ordinary or a facilitated liquidation.

In the first case, in order to determine the taxable gain, the purchase value used as a base corresponds to the value of the property on the date of transfer to the shareholder, and not to the purchase value of shares acquired by the latter. As for the holding period of the real estate on which the rate of tax on the gain will be set (between 50% and 0%), it is calculated from the date of the company's liquidation, regardless of the time during which the shareholder has owned the shares of the real-estate company.

On the other hand, the situation is different when one is dealing with a so-called facilitated liquidation. For the record, in order to encourage the liquidation of real-estate companies, the federal and Geneva tax authorities decided to grant tax relief in favour of real-estate companies and their shareholders if they were liquidated between January 1, 1995 and December 31, 2003. However, the gain made on the subsequent sale of any real estate acquired during such liquidation also benefits from privileged treatment.

If the sale occurs within eight years of liquidation, the practice of the Geneva tax administration is to tax the gain only at the rate of 15%. In this case, however, the amount of allowable disbursements is limited. Finally, it should be specified that the taxpayer has to expressly request that these measures be applied.



Can the seller benefit from tax incentives if he uses the proceeds of the sale to purchase real estate?

When the seller uses the proceeds of the sale to re-invest in a new dwelling, he may, under certain conditions, request a refund of the tax paid. This is known as re-investment of the real-estate gain. However, it is not an exemption, since the refunded tax will then become payable when the replacement building is in turn sold.

If the conditions for a case of re-investment are to be met, the profit generated must first of all come from the sale of a house or an apartment occupied by the seller. In addition, the seller must, within a maximum period of five years, use the proceeds of the sale to purchase, construct or convert real estate of a similar nature. If these conditions are met, the seller can request reimbursement of the tax up to the amount of the profit that was actually invested, in addition to the amount of the purchase value of the property sold.

It should be specified that the Geneva law provides for other cases of re-investment, particularly when selling a farm operated by the vendor or his family, or when a property is transferred to the State for reasons of public or general interest.

What else should be taken into account ?

It is important to note that the above preliminary indications are only general in nature and that an analysis of each individual case is necessary, in particular during re-investment of the real-estate gain.

In addition, it should be specified that the tax on real-estate gains may apply to situations other than those mentioned above and that, for example, the transfer of real estate by inheritance or donation receives special treatment, which has in fact been the subject of a recent change in practice. In addition, other taxes may become payable, such as transfer taxes or gift and inheritance taxes.

Finally, it should be noted that the principles outlined here are based on the legal rules and administrative practice in force today, and that they are liable to change in the future. It should be pointed out here that Geneva law has not undergone any adjustment following the entry into force of the Federal Act on Harmonization of direct cantonal and municipal taxes (LHID), but that the Geneva tax administration has nevertheless adapted its practice on some points. ■

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