

## Tax return for property gains tax

### Explanation / Method of calculation

After the transfer of ownership to land or similar transaction (e.g. Sale of shares in a Real Estate stock company, the taxpayer (person selling) must provide the Municipal capital gains tax office with all necessary information and facts for the assessment and taxation of profits gained on the capital.

### Property /Capital gains

The property gain is the difference between the proceeds of the sale and the cost of the original investment.

### Sales Proceeds

The sale proceeds are the purchase price, including all other payments by the buyer / acquiring person.

### Investment costs (More detailed explanation on p.3)

Investment costs are calculated using the acquisition price at the time with deduction of the costs of services and eligible expenses of the acquiring person.

**Eligible expenses** apply in particular as value adding expenditure.

These refer primarily to the costs of building, renovation and other permanent improvements that are undertaken to increase the value of the plot, also to the costs of connecting the plot to streets and public services.

**Expenditure, already been claimed as a deduction from income tax, is not eligible.** This includes in particular the ordinary repair and maintenance costs such as facade renovation, new wall-coverings, painting, roof repairs, replacement purchases and construction loan interest.

### Calculation of tax rate

Total return:

Property gain X 100

Investment costs

Return per year

(Maximum 5 years period of ownership)

    Total return X 12    

Period of ownership in months

Return per year

(Period of ownership exceeding 5 years)

    Total return    

Period of ownership in years

Return per year = Tax rate, **subject:**

– Minimal tax rate = 10% (as long as yearly return is less than 10%)

- Maximum tax rate = between 60% and 25%, depending on the reduction according to the period of ownership. The reduction in the maximum tax rate is 2.5% points per year from a qualifying period of ownership of 12 years, to a maximum of 35% points.

**The maximum tax rate incl. reductions for ownership exceeding 12 years is valid only in cases where the rate of return per year reaches or exceeds this rate. The same is true in reverse for the minimum tax rate. Otherwise, the tax rate corresponds to the rate of return per year.**

#### **Procedural obligations of the taxpayer**

The taxpayer is obliged to provide the Municipal property gains office with accurate information and the necessary documents required for the correct preparation of the assessment. (§ 200 in conjunction with §§ 125 ff. Tax law).

#### **Consequences for failure to submit the tax return**

Taxpayers failing to fulfil their obligations despite receipt of a reminder will be assessed using reasonable discretion (§ 187 Abs. 1 in conjunction with § 130 Abs. 3 Tax law).

#### **Criminal consequences for failure to comply**

Contravention of the provisions of the Tax Act or the arrangements taken pursuant to this Act will be penalised according to the rules on tax avoidance.

Taxpayers considered to have provided incorrect information will be subject to a penalty as well as having to pay the tax. Judicial punishment should be expected in suspected cases of tax fraud (§ 187 Abs. 1 in conjunction with §§ 203 ff. Tax law).

**Please read on**

**Necessary information for levying capital expenses /investment costs.**

**Page 3**

**Capital gains tax (Extract from law)**

**Pages 4 - 11**

#### **Information required for levying capital expenses (investment expenses)**

Please pay attention to the following points and documents required for completion of the Capital gains tax return

**Period of ownership less than 25 years**

if you have owned the property for sale for less than 25 years, please provide a copy of the contract of sale and the available construction costs.

**Period of ownership more than 25 years**

if you have owned the property for sale for more than 25 years, an **extract from the Zug Buildings insurance** is required, showing evidence of **the insured value from 25 years before**.

The commission uses this information for the calculation of the commercial value. (Zug Building Insurance, Tel. 041 726 90 90).

If sale of the land was more than 25 years ago, the commission will determine the calculation based on similar comparisons. Alternatively, a copy of the contract of sale is to be enclosed.

- **Value adding expenditure.**

These are costs for building, renovation and other improvements, which increase the value of the plot also contributions to connecting the property to the road and public services.

- **Expenditure, already been claimed as a deduction from income tax, is not eligible.** This includes in particular the ordinary repair and maintenance costs such as facade renovation, new wallcoverings, painting, roof repairs, replacement purchases and construction loan interest.

Entry of the value-enhancing expenses are to be listed on page 2 of the tax return with **copies of the invoices** included as enclosures.

**Agency commission**

To enable calculation of agency and advertising costs, we require copies of the receipts. Agency costs are calculable at a maximum of 3% plus VAT.

**Replacement purchases**

(Only eligible in owner occupied properties)

In the event of a claim for replacement purchase, a copy of the sale document for the replacement object is required.

We will refer to the explanation made in the tax return. In addition, the legislative text in the Cantonal Tax laws §187 to §202.

We thank you in advance for your cooperation. We remain at your service for any questions or information.

## EXTRACT FROM THE TAX LAWS

25th May 2000

*The Cantonal parliament, in accordance with § 15 and § 74 of the Cantonal constitution, decrees:*

### CAPITAL GAINS TAX

#### § 187

##### *General provisions, Assessment*

1

The provisions of the Cantonal tax laws are subject to and applicable to the following deviations.

2

The preparation and assessment is to be carried out by the municipality of residence.

3

The conditions laid down by the cantonal tax authority for income or profit tax assessment are binding for the assessment of capital gains tax

4

The Land Registry and Land Surveyors office shall issue information from its files. It will notify the responsible Capital gains tax authority of legal transactions, which have not been registered through a municipal notary.<sup>1</sup>

#### § 188

##### *Plots of land*

1

Plots of land are for the purposes of the following provisions defined as:

- a) Properties;
- b) Registered as independent and with permanent rights in the Land registry;
- c) Joint ownership share.

2

Annexes are not considered.

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<sup>1</sup> Amended in accordance with changes as of 30 March 2006 (GS 28, 859); into force on Jan 1 of 2007.

## § 189

### Chargeable event

1

Profit achieved from the sale of land / private property or of shares in such are subject to Capital gains tax.

2

Capital gains tax is also applicable to:

- a) Profits from the sale of agricultural and forestry plots of individuals
- b) Profits from the sale of commercial plots of individuals, when limited tax liability on property exists in the Canton.
- c) Profits from the sale of land belonging to corporations shall be exempt from tax liability in accordance with § 57 letters e-h.

3

Changes of ownership to property equate to:

- a) Legal transactions, regarding the power to dispose of a piece of land effectively and economically act like a change of ownership;
- b) The transfer of land and shares from it, from private assets to business assets of the taxpayer;
- c) The burden of land with private law easements or public law restrictions on landownership, a fee must be paid when these affect the unrestricted management or the realizable value of the property permanently and significantly.
- d) The transfer of dominant shareholder rights of private assets of the taxpayer to property companies.

## § 190

### *Tax deferral*

a) In general

Capital gains tax is deferred if:

- a) Change of ownership is due to Inheritance (Succession, division of estate, bequest), anticipatory succession or gift;
- b) Change of ownership with spouses in connection with marital property law, as well as compensation for an extraordinary contribution to a spouse for family maintenance (Article 165 of the Civil Code.) and decision of legal claims, as long as both spouses agree.
- c) Re-appropriation of land for the purpose of consolidating property, usage and special-use planning, regulating boundaries, rounding agricultural estates, as well as land re-appropriation for expropriation or impending compulsory purchase ;<sup>1</sup>

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<sup>1</sup> <sup>1</sup> Edition according to change from 30th March 2006. (GS 28, 859); In force on 1st January 2007.

- d) Restructuring within the meaning of Act § 62 by corporations in accordance with § 57 let. e-h of this law shall be exempt from tax liability.

## § 191

### b) Replacement purchases

1

Entitlement to a tax deferral exists with property transfers for the reason of replacement purchases for properties with the same use in Switzerland

- a) complete or partial sale of agricultural or forestry property, provided that the disposal proceeds as a rule, 1 within 2 years before or after the change of ownership to acquire a self-managed replacement land used to improve their own, self-managed agricultural or forestry properties in Switzerland.
- b) Sale of permanently and exclusively owner-occupied property in the domicile of the taxpayer, as far as the sale proceeds as a rule within 2 years before or after the change of ownership, inheritance or building of a same use replacement property in Switzerland.

2 As far as the profit after deduction of previous investment costs and any third-party services not in accordance with Para. 1 is used, is carried out for this part of the profit taxation at the tax rate of total profit.

## § 192

### **Taxable entity**

1

The person transferring is taxable.

2 Multiple taxable persons are liable to pay the tax according to their shares under joint liability

## § 193

### **Taxable entity**

#### a) Capital gains

1 Capital gains is the amount by which the revenue exceed the investment cost (purchase price and deductible expenses transferred into private assets and taxed profits).

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2

The last taxable property transfer, which was not eligible for tax deferral is crucial for the calculation of profit and the period of ownership.

#### § 194

##### b) Revenue

The revenue is considered as the purchase price and all further benefits to the acquiring person. If no price is evident, a clearly lower price is indicated, or an exchange occurs, the market value valid at the time of the sale will be used as revenue.

#### § 195

##### c) Acquisition price

1

The acquisition price is the purchase price and all other services of the acquiring person.

2

If the decisive change of ownership occurred more than 25 years ago, then the taxpayer should take into account the market price valid 25 years previously, instead of the purchase price. In this case, the calculable period of ownership is also 25 years.<sup>1</sup>

3

If the property is acquired through a tax deferred transfer or as a replacement purchase, the purchase (acquisition) price will be based on the last taxable transfer.

4

If the taxpayer acquired the property during foreclosure process and will thereby face a loss as a pledge creditor or mortgage guarantor, they may use the acquisition price at the time of acquisition as the market value.

#### § 196

##### d) Expenditure

1

Eligible expenditure is:

a) Expenditure for building, renovation, land improvement, development costs and expenditure that makes a permanent and value adding improvement to the plot.

Decisive are the amounts effectively paid to third parties by the owner;

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<sup>1</sup> <sup>1</sup> *Edition according to change from 30th March 2006. (GS 28, 859); In force on 1st January 2007..*

- b) Costs for planning, in particular development plans, planning applications and investigations and pre-projects that have been submitted to an authority or for preliminary authorization
- c) Compensation for the establishment of Easements and basic charges in favor of the land or for the replacement of easements and basic charges on the property;
- d) Costs associated with the setting up of promissory notes and mortgage prescriptions and for official property estimation fees.
- e) Landowners contributions, in particular to factory line, sewer or perimeter charges)
- e) Designated brokerage commissions for the purchase and sale as well as the reported costs of insertion and prospectus for selling.
- g) Associated fees linked to the transfer of ownership.
- h) Costs for the drafting of contracts in particular preliminary, main contracts, apartment regulations, constitution for freehold apartment.
- i) Previously recorded profits for capital gains tax in accordance with § 191 Abs. 2;
- k) In accordance with the Federal Court jurisdiction of real estate canton in inter-cantonal relation to accepting expenses, unless the deduction is not a result of the provisions above.

2

Not eligible is:

- a) The value of own work which has not been or will not be taxed as income during a complete taxable period in Switzerland.
- b) Expenditure already accounted as a deduction from the income tax (other than building loan interest).

3

All possible insurance benefits and contributions from the Federation, Canton, Municipality and other third parties are to be excluded from deductions as expenditure.

4

Expenses incurred in the relevant period of ownership are eligible.

#### § 197<sup>1</sup>

e) Total transfer

If plots or shares acquired at different times are sold as such together, the profit of each plot and each share shall be determined separately.

#### § 198

f) Partial transfer

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<sup>1</sup> Edition according to change from 30th March 2006. (GS 28, 859); In force on 1st January 2007.



1

If the transfer is made plot by plot the total purchase price is to be credited proportionately by the value ratios at the date of acquisition.

2

Expenses are chargeable, insofar as they concern the plot sold; inseparable expenses are proportionally charged.

3

Losses from partial transfers are to be charged proportionately, calculating gain with expenses per plot after full transfer of the property.

## § 199

### *Tax rates*

1

The tax rate corresponds to the converted annualized percentage ratio of the capital gains profit to the investment costs.

2

The evaluation of the tax rate follows a period of ownership.

- a) Up to 5 years in consideration of the months, wherein, partial months will be counted.
- b) In excess of 5 years based on the number of years of ownership, wherein a partial year will be included.

3

The tax rate is thus

- a) Minimum 10 Percent;
- b) Maximum 60 Percent. It reduces at an annual rate of 2.5 percentage points over a qualifying ownership period of 12 years and at 25 percent for an ownership period exceeding 25 years.

4

Property gain profits not exceeding 5000 francs are tax exempt.

## § 200

### *Tax declaration*

The taxpayer must submit a tax return to the assessment authority within 60 days after registration of the change of ownership in the Land Register or upon transfer without title deeds after execution of the transaction.

§ 201  
*Levying of taxes*

1

The assessment authority will submit a provisional tax invoice after the taxable event.

2

The tax is due upon receipt of the provisional invoice and must be paid within 30 days. After the due date, default interest will be charged.

3

Any difference between definitive and provisional tax amount is subject to interest from the 31st day after the provisional invoice

§ 202  
*Liability, deposit*

1

The taxpayer and the buyer of the property are jointly liable for the payment of the capital gains tax.

2

During public notarisation a deposit is to be paid or an appropriate security to be provided for the anticipated amount of tax due.

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Note: Decisive is the text of the Tax Act in accordance with official collection of laws and regulations of the canton.