DEPIGEST SA

société fiduciaire

Taxation: overview of capital tax in Switzerland and in Geneva

The capital tax is deducted in Switzerland by cantons and municipalities at greatly varying rates. This tax is therefore paid to a greater or lesser extent according to where the taxpayer lives.

1 Introduction

Along with France, Switzerland is the only country in the world with a capital tax. This tax is deducted by the cantons at the same time as income tax, based on the annual tax return filled by taxpayers. Overview of this system and its impact on the tax burden in the Canton of Geneva.

2 Legal bases

When it comes to taxes that are directly on natural persons, Article 128 of the Swiss Federal Constitution exhaustively provides for the Confederation deducting an income tax. The authority tacitly left to cantons when it comes to capital tax is made concrete in the individual legislations of the 26 cantons. The general principles governing this cantonal tax are nonetheless set in the Federal Act on the Harmonisation of Direct Taxation (LHID). Articles 13-14a of the LHID thus set the basic principles regarding the subject of the tax and evaluation of capital.

3 Subject of the tax

The general subject of the capital tax is the entire net capital (Article 13 Paragraph 1, LHID).

When capital is subject to usufruct, only the usufructary is taxed (Para. 2). Household furnishings and personal effects in common use are nonetheless not taxed (Para. 4). It therefore logically follows from this exhaustive exclusion that all other items of property are taxable. Examples include vehicles, jewellery and any other object with an objective value. However, several cantonal legislations expressly exclude certain types of properties from the tax base. In the Canton of Geneva for example, art and science collections are not affected by the tax. So highly valuable paintings for instance can "escape" the tax.

4 Assessment of capital

According to Article 14 of the LHID, capital is assessed at market value. Nevertheless, the capitalised income value can be appropriately taken into consideration.

" capital is assessed at market value ".

The market value of a property may be understood as the amount that could be obtained if the property in question were to be sold to a third party. It is thus the sale price on a free market. If the market value of certain properties can be

@ copyright Depigest SA. Tous droits réservés textes et photos
pour en savoir plus : www.depigest.ch

DEPIGEST SA
société fiduciaire

easily determined (this is especially the case with shares and other listed securities, precious metals etc.), the task is more laborious and in fact impossible for others. Indeed, must the market value of a collection of rare wines, stamps or a carload of collections be assessed each year, and if this is necessary, how should that be done? Regarding real estate, all the cantonal tax authorities seem to admit, rightly, that the market value of a real estate property does not have to reassessed every year depending on the state of the market or, if a property is bought abroad, the exchange rate.

Moreover, as the law indicates, "the capitalised income value can be appropriately taken into consideration". This legal clarification is in particular a return to rules regarding assessment of unlisted securities. Indeed, the related circular issued by the Swiss Federal Tax Administration, applied in the same way as the law, expressly provides for a company's estimated capitalised income value being taken into consideration to evaluate the value of shares that it has issued.

" the capitalised income value can be appropriately taken into consideration ".

However, this leads to results that often plainly do not match reality. Most of the time, the amount resulting from output achieved by the company over a given period does not effectively match the "free" price that a buyer, even if one existed, would be prepared to pay. (This will soon be the subject of a "theme" at www.depigest.ch.)

It should still be noted that in the Canton of Vaud, the law regarding "taxable chattels" (naturally excluding securities that have just been at issue) provides for a flat-rate system that "as a rule" fixes the value of these at 50% of the total value of the fire insurance, less an amount of CHF 50'000,00 "in accordance with the value of household furniture and personal effects in common use; "*this deduction is doubled for spouses living in the same household*".

5 Rate and calculation of tax

The tax rate is generally progressive. However, it varies greatly between cantons. The capital tax rate is thus 1% in the Canton of Geneva, while it is only 0.17% in the Canton of Schwyz. The tax is deducted for the entire fiscal year by the canton where the taxpayer lives on 31 December of the year in question. Even if someone changes their residence within Switzerland during the year, only the canton they move to has the authority to deduct the tax for the entire year.

" the capital tax rate is thus 1% in the Canton of Geneva, while it is only 17% in the Canton of Schwyz ".

6 Situation in Geneva

To calculate net capital in the Canton of Geneva, there is a tax exemption of CHF 82'839,00 for single people and CHF 165'678,00 for married couples. This tax exemption is increased by CHF 41'420,00 for every dependent child (as of 2014). Beyond this tax exemption, the bill is inflated since the maximum capital tax rate is one of the highest in Switzerland. Indeed, this rate peaks at 1.04% in the municipality of Thônex. Even within the canton, there are big differences since this rate "only" amounts to 0.92% in the canton's least expensive municipality, Genthod. Because the capital tax has the potential to almost become confiscatory based on these facts, the Canton of Geneva has followed the example of other cantons and set up a "tax cap" system. This system anticipates that the total tax burden (including cantonal, income tax and capital) must not exceed 60% of taxable income. Nevertheless, to carry out this calculation, the net capital income must be equivalent to (virtually if the actual yield is insufficient) a minimum of 1% of the taxable net capital (before deduction of the aforementioned tax exemptions). A strict interpretation of the law

@ copyright Depigest SA. Tous droits réservés textes et photos
pour en savoir plus : www.depigest.ch

nonetheless leads to the conclusion that taxable income, after this minimum net capital yield of 1% has been taken into account, may be lower assuming that the taxpayer is able to make other deductions such as dependants, medical expenses or second-pillar buybacks. Following this logic, taxable income may thus amount to CHF 0,00, thus making the tax cap very effective since it quite simply reduces the cantonal tax (income and capital) to nothing.

" Because the capital tax has the potential to almost become confiscatory based on these facts, the Canton of Geneva has followed the example of other cantons and set up a "tax cap" system ".

At this time however and based on an extensive interpretation of the law, the Genevan administration is systematically fixing taxable income at a minimum of 1% of net capital and thus refusing all other deductions. It must nevertheless be stated that this practice goes against the very intention of the law, which is to reduce the blow to the guarantee of property provided for by the Constitution as much as possible, for want of being able to suppress it completely. Note that the problem is the same in the Canton of Vaud.

7 Concluding summary

A capital tax is a distinctive feature of Switzerland that can greatly inflate the tax bill depending on which canton a taxpayer lives in. Moreover, it creates difficulties with putting it into practice that can lead to situations of sometimes shocking inequality that are barely justifiable. Generally speaking, this tax is probably acceptable to the extent that Switzerland does not tax capital gain of private wealth and the majority of cantons do not tax estates between spouses and heirs in a direct line. Despite the systems (tax caps) that have been set up, especially by the cantons with the highest taxes like Geneva and Vaud, this burden remains very heavy and is increasingly becoming a reason to shift house, either within Switzerland or abroad. A quick intervention would therefore be judicious in order to stop this "exodus" of taxpayers which, as things stand, seems unavoidable. The next reform of corporate taxation (RIE III, expected by 2019 at the earliest) that threatens to harm cantons' finances (mainly Geneva and Vaud again ...) could be a good "excuse" to keep this capital tax. However, it would be an inspired move for Switzerland to completely overhaul its tax system, which would let it guarantee its long-term fiscal attractiveness for not only companies but also natural persons.

Depigest SA, octobre 2015
Author : Cyrille Tardin, lawyer
Email : ctardin@depigest.ch

@ copyright Depigest SA. Tous droits réservés textes et photos
pour en savoir plus : www.depigest.ch