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Real Estate

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The Added Value Levy on Real Estate

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Key Take-aways

- 1.** The cantonal and communal provisions on the added value levy vary greatly from canton to canton.
- 2.** The added value levy is due not only upon the sale of a property, but also upon the realization of an added value in case of realization of a project.
- 3.** The collection of the added value levy in addition to the real estate capital gains tax leads to a (partially) multiple burdening of the same gain.

1 Introduction

Due to the scarce supply of building land, the spatial planning of Swiss municipalities has a considerable influence on the value of an individual plot of land. An adjustment of the spatial plan and the associated **change in the possibilities of use** can significantly increase or decrease the value of a plot of land. The revision of the Spatial Planning Act (**SPA**), which came into force in its revised form in 2014, created the basis for the mandatory introduction of a cantonal added value compensation, which can be applied in the case of zoning in, rezoning, upzoning and dezoning. The exact implementation is to be determined by the cantons. In the meantime, **all cantons have introduced** such **added value compensation**.

If a change of the spatial plan (in particular zoning into the building zone or upzoning with higher utilization) leads to a significant increase in the value of the property concerned, a **levy** is imposed. In view of the structural densification in Switzerland, rezoning or upzoning will probably be the most common cases of application in the foreseeable future, for example when an area is rezoned from an industrial to a residential zone or from a zone with two-storey buildings to a zone with three-storey buildings.

2 The Operation of Added Value Compensation

2.1 Principle

Pursuant the SPA, as a principle, **a change in the value is compensated**, i.e. increases in value are subject to a **levy**, while decreases in value can trigger a **compensation**.

The income from the value-added levy shall be paid into an earmarked fund, which may be used for spatial planning measures, such as the design of public spaces or, in rare cases, to compensate for planning disadvantages.

2.2 Compensation

A **claim for compensation** of the owner in the case of dezoning exists if there is a **material expropriation** due to a change of the spatial plan. This is only the case if, in a specific case, there is a material restriction on land ownership use (i.e. if the previous or foreseeable future use of the land is prohibited or severely restricted) and, in the case of the restriction of future use, there is a high probability that the land could have been developed in the near future.

2.3 Levy

The **added value levy** is levied on (significant) **increases in the value of real estate** due to planning advantages. There is some uncertainty as to whether the levy is mandatory only in the case of zoning in or also in the case of rezoning or upzoning. Not all cantons currently provide for the levy in the case of rezoning or upzoning. However, according to the case law of the Federal Supreme Court, this would be mandatory.

The levy is based on the **difference between the value** of a property **before and after a change of the spatial plan**. According to the provisions of the SPA, the levy must be at least 20% of the increase in value, whereby the cantons are allowed to levy up to 50% of the increase in value.

In order to determine the added value in individual cases, the competent authority may make use of appropriate cantonal valuation methods or third-party appraisals.

The added value arises directly at the time of the change of the spatial plan and is bindingly determined at this time in most cantons. However, the levy itself is only collected or due when the added value is realized. A particularity is that not **only the sale of a property is considered** as realization, but also the **realization of the added value** in case of a realization of a project, i.e. the "use" of the change of the spatial plan by the **current property owner**. Furthermore, in the case of a sale, the due date usually occurs irrespective of whether the added value is actually realized in the course of the transaction or not. Thus, in many cantons, the levy is due even if neither the seller nor the buyer realizes the added planning value (e.g. does not build the additional possible storey in the new zone).

In principle, the levy is **owed** by the **landowner** at the time of the planning benefit. If it is not a matter of classic sole ownership, e.g. in the case of co-ownership, communities of heirs or construction right properties, it can be complex to determine the debtor of the levy.

Cantonal peculiarities must be observed.

3 Critical Aspects

3.1 Cantonal Differences and Uncertainties

Since the SPA leaves the implementation of the added value levy to the cantons, the **cantonal and communal regulations**, including the procedures for assessing and collecting the levy, **differ greatly**.

Caution is required in the case of **gifts, inheritances** or transfers under **matrimonial property law**, as not all cantons provide for an explicit deferral of the levy in the case of such transfers and the definition of the tax-triggering "disposal" is **inconsistent**. Furthermore, some cantons also impose the added value levy on the sale of a majority interest in a real estate company. For these reasons, it is essential to analyze potential added value levy consequences for all types of real estate transactions.

The added value levy is still a relatively young instrument, and case law is still developing. It remains to be seen to what extent the cantons will adapt and refine their practice and, if necessary, their legislation. Recently, at the **national level**, further **adaptations** were decided (see below).

As already mentioned, there is disagreement as to whether the collection of an added value levy is mandatory in the case of rezoning and upzoning. The Federal Supreme Court held in 2022 that also in case of upzoning the added value levy is mandatory. However, the subsequent parliamentary consultations indicate that this was not the intention of the legislator due to possible negative incentives - it therefore remains to be seen when this regulation will be specified and adapted by the **cantonal or municipal** legislator. In the

fall of 2023, the National Council and the Council of States decided that rezoning and upzoning should **not mandatorily** be subject to the added value levy and that the cantons and municipalities are allowed to determine this. The publication and entry into force of the revised version of the SPA is not yet communicated due to a pending initiative.

The involvement of an independent expert can be useful.

3.2 Multiple Taxation

The collection of the added value levy at the time of construction (before the monetary realization) and independently of the effective realization in the case of a sale contradicts generally applied and known principles of the law of taxes and levies.

Furthermore, the levy leads to **multiple burdening of the same profit**. It is permitted to deduct the added value levy paid when calculating the real estate capital gain. However, since not all of the added value can be exempted from the real estate capital gains tax and the added value levy cannot be directly deducted from the real estate capital gains tax, this leads to a partial **double burden of the same profit with both the added value levy and the real estate capital gains tax**.

The added value levy fits into an already complex system of real estate taxation. Both the taxable property owners and the municipalities, who have to levy these charges, are confronted with a considerable administrative burden.

In the context of sales and transfers of real estate, it is essential that any **deferred added value levy is considered** when determining the purchase price or the imputed value.

3.3 Procedure

Although the **procedure varies from canton to canton**, it can be outlined as follows for the majority of cantons:

- The added planning value is not determined at the time of the sale of the property, but already at the **time of the planning measure**, usually by means of an assessment. Pending realization, the change of the spatial plan leads to a corresponding land register entry in some cantons.
- At the time of realization (either by realization of a project or by sale), the levy becomes due and is collected by the community.

A minority of cantons calculate and assess the value-added levy at the time of realization.

The **added planning value** is determined by the **authorities** on the basis of **expert opinions or recognized valuation methods**. This can be problematic in practice, as often no comparable third-party transactions take place at this time and thus **no effective market price is** (yet) available. Furthermore, such estimates may not consider the specifics of individual properties (e.g., heritage protection), which is why consulting an independent expert and contesting the determination of the

added planning value can be useful.

If the levy is determined by means of a contestable assessment at the time of the change of the spatial plan, **legal actions** must already be taken **at that time** - in the absence of established practice and case law, it cannot be ruled out that it will no longer be possible to contest the amount of the planning-related added value when the levy is collected at a later date.

For this reason, it is essential to **examine the appropriateness of** the added value determined by the authorities already **at the time of the change of the spatial plan**, within the period regulated by the canton, and, depending on the circumstances, to **take legal action**.

4 Examples of Cantonal Implementation

To illustrate the cantonal differences in the implementation of the added value levy, the regulations in the cantons of Zurich and Geneva are briefly summarized below.

The added value is often already determined at the time of the plan revision.

4.1 Canton of Zurich

In the canton of Zurich, a cantonal added value levy of 20% is charged for zoning in. In the case of rezoning or upzoning, charging the levy (including the determination of the levy rate between 0% and 40% or the alternative conclusion of urban development contracts) is in the competence of the municipality concerned, although a complete waiver of the levy will not be approved until further notice.

The amount of the levy is already determined at the **time of the change of the spatial plan**, but the levy is only charged at the time of the **sale** or when **construction is approved**. A staggering of large-scale developments is taken into account; however, the entire added value levy becomes due after ten years at the latest.

The transfer of a property due to inheritance advancement donation or matrimonial property division is explicitly excluded from the definition of sale and therefore does not trigger an added value levy.

4.2 Canton of Geneva

In the canton of Geneva, a cantonal added value levy of 20% is only provided for in the case of **zoning in** (to the construction or development zone). However, based on the Federal Supreme Court decision and the recent legislation of the Federal Parliament, it remains to be seen whether the municipalities (or the canton) will also impose an added value levy on other spatial planning measures.

The **assessment** is made at the time of levy: either at the time of sale of the real estate or at the time of issuance of the building permit.

5 Conclusion

Due to the cantonal differences in the implementation of the added value levy, it is essential to examine the consequences for the affected landowners and the appropriateness of the determined added value in each individual case. Since the levy may be determined in a binding manner long before it is actually due, this examination must already be carried out at the time of the change of the spatial plan and considering the cantonal deadlines for an appeal.

As the levy is still relatively new, developments in case law, legislation and practice are of particular importance and must be followed closely.



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