

Levy on added value of land resulting from planning measures

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Introduction

Swiss legislation provides for adequate compensation for considerable advantages and disadvantages resulting from spatial planning measures.

In particular, land that is newly allocated to a building zone substantially increases in value. Owners of such land will benefit from spatial planning activities without any contribution on their part. For reasons of fairness, these benefits are subject to a levy which is supposed to 'skim off' part of the added value.

This update summarises the federal law requirements on the levy and discusses the current status of implementation by the Cantons of Berne, Vaud, Zug and Zurich.

Legal framework

In May 2014 the Federal Spatial Planning Act⁽¹⁾ was amended by a detailed regulation on skimming off the added value of land resulting from planning measures.

Pursuant to the revised act, any added value resulting from a new and permanent allocation of land to a building zone must be subject to a cantonal levy. In addition, the cantons may apply the levy to further planning measures such as re-zoning and up-zoning of land (ie, allocating land to a higher building zone (re-zoning) and allowing an increased use of land within a particular building zone (up-zoning)).

The levy is based on the added value, which is equivalent to the difference between the land value before and after the implementation of the relevant spatial planning measure. For land that is newly allocated to the building zone, the act requires the cantons to skim off at least 20% of such added value, and the cantons are free to apply a higher rate. Pursuant to the act, the levy falls due when the land concerned is overbuilt or sold.

The act obliges cantons to use revenue from the levy primarily for financing material expropriation and for other spatial planning measures. As the relevant provision is quite broad, it gives the cantons and communities significant scope for the use of such revenues.

Implementation by cantons

The relevant provision in the Federal Spatial Planning Act is not directly applicable to landowners benefitting from value increases. Therefore, the cantons must implement the levy in their laws by observing the proper legislative process. The act provides for a five-year transition period and requires all cantons to implement the legal framework for skimming off the added value of land no

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later than the end of April 2019. Should a canton not comply, it will be prohibited from creating new building zones until the federal requirements are met.⁽²⁾ One year before the end of the transition period, 20 of the 26 cantons have already amended their building regulations to the federal requirements.

Generally, the cantons may freely determine how they implement the new requirements of federal law and, in particular, whether their levy just covers the minimum required by federal law (ie, 20% of the added value resulting from the new and permanent allocation of land to a building zone) or whether they prefer a broader approach and also apply the levy to added value resulting from other planning measures (eg, re-zoning and up-zoning of land).

The preferred approach largely depends on:

- the current size of the building zones;
- the reserves of building land in a canton; and
- the expected need for compensation payments for material expropriation, should a canton be obliged to reduce the current amount of building land.

The cantons' expected need for building land in the next 15 years is decisive for the preferred approach. Oversized building zones must be reduced, which will lead to compensation payments.⁽³⁾

Certain cantons (ie, Basel-Stadt, Geneva, Neuchatel, Thurgau and Vaud) provided specific regulations on the compensation of added value before the Federal Spatial Planning Act was revised. These cantons must assess whether there is a need for further adaption to the revised act.

Canton of Berne

In the Canton of Berne, the new federal regulations were implemented by an amendment to the Cantonal Building Act, which entered into force on April 1 2017.⁽⁴⁾ According to the amended act, the levy amounts to between 20% and 50% of the added value for land that is newly allocated to a building zone and between 20% and 40% for re-zoning and up-zoning of land.

While a levy for newly allocated building land is compulsory, the communities may decide whether to impose the added-value levy on re-zoning and up-zoning. If so, the communities will have discretion to determine the applicable amount of the levy within the aforementioned range.

Any added value below Sfr20,000 is exempt from the levy, while any added value above Sfr20,000 is entirely subject to the levy. Thus, the amount is a tax threshold and not a tax allowance.

Canton of Vaud

In the Canton of Vaud, the government provided a draft amending the Law on Spatial Planning and Construction of the Canton of Vaud.⁽⁵⁾ According to the draft, an added-value levy of 20% is due if land is newly allocated to a building zone. The same is proposed for re-zoning and measures regarding densification and exemption permits outside the building zone. Added value below Sfr10,000 is exempt from the levy.

The amendment is subject to approval by the cantonal parliament. As it also covers topics other than skimming off added value, it is highly disputed and is not expected to enter into force before May 1 2019.

Canton of Zug

In the Canton of Zug, the government proposed amending the Cantonal Planning and Building Act in order to fulfil federal requirements. The key elements of the proposal included an added-value levy of 20% for land that is newly allocated to a building zone and for land that is re-zoned from a zone of public interest to a building zone. Further, the proposal entitled communities to introduce a 20% levy on added value of more than 50% resulting from re-zoning and a 20% levy on added value resulting from up-zoning and development plans, provided that these planning measures lead to land use increases of more than 50%. Such a communal levy was to be charged in particular contracts with the landowners concerned.

However, the cantonal parliament rejected the proposal in January 2018. The most disputed points

were:

- the amount of the added-value levy for the new allocation of land to the building zone; and
- the question of whether an added-value levy should also be imposed on re-zoning and up-zoning.

Another disputed topic was the fact that the levy may be passed on by investors to buyers and tenants, making an increase the price of housing likely.

Thus, the government must submit a new proposal and get it through the cantonal parliament by the end of April 2019.

Canton of Zurich

In the Canton of Zurich, the government provided a draft of a new Added-Value Compensation Act.

(6) It is expected that the act will enter into force on April 30 2019.

The proposal focuses on the improvement of the location and size of building zones. In addition, it aims to limit urban sprawl and make the consistent use of building zones at the right place possible. New building capacities will be created by up-zoning and re-zoning if necessary.

The draft provides a 20% levy of the added value for land that is newly allocated to a building zone and a 5% levy for up-zoning and re-zoning. The revenues are paid to a cantonal fund that may be used for compensation payments if oversized building zones must be reduced. The fund may also be used for other spatial planning measures.

In addition, the communities may provide for a communal levy of up 15% on added value resulting from up-zoning and re-zoning.

Any added value below Sfr30,000 is exempt from the levy, while added value above Sfr30,000 is entirely subject to the levy.

Comment

If the April 2019 deadline for the cantonal implementation of the new federal regime on compensation of added value resulting from spatial planning measures is not met, the respective canton will be prohibited from creating new building zones until the federal requirements are met. Such prohibition could affect the planning and building industry. It is to be expected that the six cantons which do not yet comply with the federal act will implement at least a minimum solution by the end of April 2019.

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Endnotes

(1) Article 5 of the Federal Act on Spatial Planning, SR 700.

(2) Article 38a of the Federal Act on Spatial Planning, SR 700.

(3) Article 15 of the Federal Act on Spatial Planning, SR 700.

(4) Articles 142 and following of the Building Law of the Canton of Berne, BSG 721.0.

(5) The Law on Spatial Planning and Construction of the Canton of Vaud, RSV 700.11.

(6) The Added-Value Compensation Act of the Canton of Zurich.

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