Switzerland

Tax Developments in the Canton of Geneva: Tax Credits versus Social Allowances

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INTRODUCTION

The Swiss cantons had to bring their cantonal (and, where applicable, their municipal) tax laws in line with the Federal Law on the Harmonization of Cantonal and Municipal Direct Taxes of 14 December 1990 (*Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden*, or: StHG) by 1 January 2001.[1] As the StHG is a framework law, the cantons are still free to determine their own rates and deductions.

Under Swiss tax law the cantonal tax laws usually only fix the cantonal tax rates as basic rates, which, after being applied to taxable income or net wealth, result in the basic tax. In order to easily adapt the effective tax levied to the financial requirements of the cantons, the cantons establish coefficients by which the basic tax, as calculated according to the basic rate, is multiplied, resulting in the effective tax. The effective rates are, thus, fixed annually when the competent authority establishes the coefficients by which the basic taxes are multiplied. The municipalities usually do not impose taxes based on municipal laws. Municipal taxes are normally levied in the form of a surcharge on the cantonal tax. This surcharge is equal to the basic cantonal tax multiplied by a municipal coefficient. In addition, a parish tax is levied in some cantons by way of a surcharge; the parish coefficient is fixed annually.

For example: Canton A levies individual income tax at a basic rate of 10%. The cantonal coefficient for the year is 1.7. Municipality Y imposes a surcharge that is a multiple (1.3) of the basic cantonal tax. The parish tax is 0.15 of the basic tax. Thus:
- the cantonal income tax is 1.7 x 10% = 17%;
- the municipal income tax is 1.3 x 10% = 13%;
- the parish tax is 0.15 x 10% = 1.5%;
- the total income tax (excluding federal tax) is 17% + 13% + 1.5% = 31.5% of taxable income.

Taxable income is normally defined as the gross income realized less expenses necessary to earn the income and less deductions and allowances granted. Some cantons no longer grant allowances, but take into consideration a taxpayer's economic capacity by including the allowances in the tax rates.[2] The canton of Geneva, for instance, no longer grants social allowances. In Geneva, however, a taxpayer is granted a tax credit that has the same effect as a social allowance.[3]

TAX DEVELOPMENTS IN THE CANTON OF GENEVA AS FROM 1999

Reduction in cantonal tax burden

Due to the high tax burden in the canton of Geneva, the population of Geneva decided in the cantonal vote of 26 September 1999 to reduce the cantonal income tax for individuals, excluding the municipal taxes, by 12%.[4] According to the cantonal law on the reduction of the individual income tax (*Loi relative à la diminution de l'impôt sur le revenu des personnes physiques)* of 26 September 1999, the 12% reduction is being implemented in three stages between 1999 and 2005:
- 5% with retroactive effect from 1 January 1999;
- 4% to be introduced before 1 January 2003; and
- 3%, subject to the cantonal budget being balanced, by 1 January 2005 at the latest.

Prior to the year 2000, a 5% reduction was granted for cantonal taxes. Effective 2001, the full 12% reduction applied even though the canton of Geneva was not yet obliged to do so.

Harmonization with the StHG

Until 31 December 2000 the legal basis for the taxation of individuals resident in Geneva was, in principal, the cantonal General Law on Revenue of 9 November 1887 (*Loi générale du 9 novembre 1887 sur les contributions publiques*), amended by the Executive Regulation in respect thereof of 30 December 1958 (*Règlement d'application du 30 décembre 1958 de diverses dispositions de la loi générale sur les contributions publiques*). When adopting the compulsory provisions of the StHG, the legislator of the canton of Geneva replaced the old legislation by the following five new laws:
- The law on the object of tax (*La loi 8152 sur l'imposition des personnes physiques* (LIPP-I): *Objet de l'impôt – Assujettissement à l'impôt*);[5]
- The law on the assessment period (*La loi 8153 sur l'imposition dans le temps des personnes physiques* (LIPP-II));[6]
- The law on the net wealth tax (*La loi 8154 sur l'imposition des personnes physiques* (LIPP-III) – *Impôt sur la fortune* (D 3 14));[7]

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1. For an overview of the implementation of the tax harmonization law in the canton of Bern, see Toni Amonn, "Tax Harmonization" 41 *European Taxation* 4 (2001), p. 132.
2. E.g. the canton of Zurich.
3. See Micheline Calmy-Rey, President of the Ministry of Finance of Geneva (*Conseillère d'Etat, Présidente du département des finances*, "La nouvelle loi sur l'imposition des personnes physiques – Ce qui change"), p. 11.
4. For more information concerning the popular vote of 26 September 1999, see www.geneve.ch/votations/19990926/Info0.html#comin, Objet N 1. See also Micheline Calmy-Rey, note 3, p. 6.
5. www.geneve.ch/df/pdf/lipp1.pdf.
6. www.geneve.ch/df/pdf/lipp2.pdf.
7. www.geneve.ch/df/pdf/lipp3.pdf.

– The law on the income tax (*La loi 8178 sur l'imposition des personnes physiques* (LIPP-IV) – *Impôt sur le revenu (revenu imposable)* (D 3 13));[8] and
– The law on the determination of taxable income and the calculation of the tax credit (*La loi 8202 sur l'imposition des personnes physiques* (LIPP-V) – *Détermination du revenu net – Calcul de l'impôt et rabais d'impôt – Compensation des effets de la progression à froid* (D 3 16).[9]

The LIPP-I regulates, in 18 provisions, the direct taxes to be levied on individuals (e.g. individual income tax and net wealth tax) and individual tax liability (i.e. unlimited tax liability v. limited tax liability). The LIPP-II concerns the tax period; the law consists of ten articles. Net wealth tax is regulated in 18 provisions in the LIPP-III. In the LIPP-IV (13 articles) the rules to determine the taxable income of individuals are defined. Finally, the LIPP-V regulates, in 21 articles, the determination of net income, the calculation of the tax, the tax credit granted and compensation for the effects of progression. The new tax laws are applicable effective the 2001 tax period.

THE CALCULATION OF THE TAX BURDEN IN THE CANTON OF GENEVA

The calculation of cantonal and municipal taxes

Art. 1 of the LIPP-IV stipulates that individual income tax is levied on all revenue and benefits, whether non-recurring or recurring and whether or not in kind, before granting deductions.[10] Art. 1 of the LIPP-V defines net income as the sum of the total gross income minus the general deductions and minus the expenses mentioned under Arts. 2-8 of the LIPP-V.[11] The deductible expenses mentioned under Arts. 2-8 of the LIPP-V are:
– expenses for social security, pension plans, life insurance, etc. (Art. 2 LIPP-V);
– expenses connected to a gainful activity (Art. 3 LIPP-V);
– expenses for health and accident insurance or expenses caused by illness, accident or invalidity (Art. 4 LIPP-V);
– alimony that has been paid (Art. 5 LIPP-V);
– general expenses or expenses connected with wealth (Art. 6 LIPP-V);
– expenses for child care costs (Art. 7 LIPP-V); and
– donations to charitable or public bodies (Art. 8 LIPP-V).

Art. 1 of the LIPP-IV defines taxable income; it does not, however, refer to gross or net income. What could the legislator mean in stating: "*L'impôt sur le revenu a pour objet tous les revenus, prestations et avantage du contributable, (...), avant déductions*" (The object of income tax is all income, (...), prior to granting deductions)? Does a taxpayer have to pay taxes on gross income as the income is taken into consideration before granting deductions? Or does the provision define gross income from which deductions will be granted? One can guess that it should – using rather poor wording – define gross income. Art. 1 of the LIPP-V then defines net income by stating that net income is calculated by deducting from the total gross income the general deductions and the expenses mentioned in Arts. 2-8: "*Le revenu net se calcule en défalquant du total des revenus bruts les déductions générales et les frais mentionnés aux articles 2 à 8.*" Gross income, however, is not defined in LIPP-I to LIPP-IV. It can be assumed that Art. 1 of the LIPP-IV provides the definition of gross income. It is evident, in comparing Art. 1 of the LIPP-IV with Art. 1 of the LIPP-V, that the wording used with respect to these two provisions is not harmonized. For a taxpayer unfamiliar with tax law the combination of the two different laws (LIPP-IV and LIPP-V) mixed with inconsistent wording is confusing. Furthermore, in respect of the general deductions mentioned in Art. 1 of the LIPP-V, there is no special article granting these general deductions (apart from the deductible expenses mentioned under Arts. 2-8 LIPP-V). Art. 6 of the LIPP-V, however, mentions deductible general expenses. Again, the drafting of the law is inconsistent in that it makes specific reference to the general deductions and, at the same time, includes these general deductions in the deductible expenses mentioned in Arts. 2-8 of the LIPP-V.

What is of greater assistance is an explanatory statement of the President of the Financial Department of the Canton of Geneva.[12] According to this statement the taxable income is calculated as follows:

Gross income minus deductions for social security, pension plans, life insurance, etc.
= net income, minus deductions necessary to earn income and minus other deductions
= taxable income

Once the taxable income is determined, it is applied to the tax rates as fixed in the LIPP-V resulting in an "intermediary tax".[13] Arts. 11 and 12 of the LIPP-V distinguish between rates applicable 1) to married taxpayers and single, widowed, separated or divorced taxpayers who are granted a *charge de famille* (family allowance) and 2) to others. The law states in Art. 11 of the LIPP-V that for other taxpayers (i.e. the taxpayers to which *barème A* is applicable) the minimum tax rate is 0.22% and the maximum tax rate is 19%. By referring in Art. 12 of the LIPP-V to Art. 11 of the LIPP-V the same minimum and maximum rates apply to married taxpayers and single, widowed, separated or divorced taxpayers who are granted a family allowance. For the exact calculation of the rates the law refers to Annexes A and B, which contain mathematic formulae to calculate the rates. The tax rates so calculated are adjusted yearly for inflation. The formula for this adjustment is found in Annex C. The cantonal tax authorities publish the adjusted tax rates yearly.[14]

On the tax calculated after applying the tax rates, i.e. on the "intermediary tax" a tax credit (*rabais d'impôt*) is

8. www.geneve.ch/df/pdf/lipp4.pdf.
9. www.geneve.ch/df/pdf/lipp5.pdf.
10. Art. 1 LIPP-IV: *L'impôt sur le revenu a pour objet tous les revenus, prestations et avantages du contribuable, qu'ils soient uniques ou périodiques, en espèces ou en nature et quelle qu'en soit l'origine, avant déductions.*
11. Art. 1 LIPP-V: *Le revenu net se calcule en défalquant du total des revenus bruts les déductions générales et les frais mentionnés aux articles 2 à 8.*
12. See Micheline Calmy-Rey, note 3, p. 8.
13. The term intermediary tax has been invented by the author to make the different steps in the calculation easier to understand.
14. For the 2001 tax rates, see www.geneve.ch/df/pdf/pp_bar01.pdf.

granted. No coefficients are applied at this level. The credit replaces the social allowances that were granted under the old law. The tax credit must ensure that a minimum amount of income is not subject to tax. The tax credit is equal to the tax due on the credit amounts (*rabais*) granted to a taxpayer. Thus, instead of granting social allowances, the amount of the allowances granted is applied to the tax rate, which results in the amount that is deductible from the "intermediary tax". The credit is intended to compensate for the unfair effect of deductions in a tax system with progressive rates.[15] The credit amounts granted (*rabais*) are:[16]

– CHF 27,500 for married taxpayers. If both spouses have earned income or if one spouse is working in the business or profession of the other, the credit is increased by CHF 5,000 if the total gross income does not exceed CHF 50,000, and by CHF 3,500 otherwise;
– CHF 27,500 for widowed, separated, divorced or single taxpayers with minor children, children younger than 25 years of age studying or learning a trade, or other dependants; and
– CHF 15,000 otherwise.

For taxpayers with children younger than 12 years of age, the credit is increased by CHF 1,250 for married taxpayers and CHF 2,500 otherwise. For persons receiving an old age, survivor's or disability pension, the credit is increased by 30% – 50% depending on other taxable income realized by the taxpayer.

For minor children, children who are studying, children learning a trade or other dependants a credit is granted if:

– with respect to a minor child, his income does not exceed CHF 6,800 (full allowance (*charge entière*)) or CHF 10,200 (partial allowance (*demi-charge*));
– with respect to a child younger than 25 years of age, his net wealth does not exceed CHF 25,000, he is studying or learning a trade and his income does not exceed CHF 6,800 (full allowance) or CHF 10,200 (partial allowance); or
– with respect to other dependants, his net wealth does not exceed CHF 10,000 and his income does not exceed CHF 6,800 (full allowance) or his net wealth does not exceed CHF 20,000 and his income does not exceed CHF 10,200 (partial allowance).

The amount of the credits granted are:

– CHF 2,250 for the first full allowance;
– CHF 3,250 for any subsequent partial allowance;
– CHF 4,500 for the first full allowance; and
– CHF 6,500 for any subsequent partial allowance.

All credit amounts (*rabais*) granted are added together. The income tax rates are applied to the sum of all credit amounts (*rabais*); no coefficients apply. The amount so calculated is called the tax credits (*rabais d'impôt*). From the "intermediary tax" the tax credits are deducted resulting in the "basic tax".

As mentioned in the introduction, a taxpayer is, apart from federal taxes, which are calculated differently, liable to pay taxes to the canton, the municipality and in some cantons to the parish. To calculate the cantonal tax due in the canton of Geneva, the basic tax is multiplied by a cantonal coefficient (1.475 for 2001)[17] resulting in the "cantonal tax". As the population of the canton of Geneva decided in a popular vote in 1999 to reduce cantonal taxes by 12%, the "cantonal tax" is reduced accordingly.[18] Thus, the basic tax multiplied by the cantonal coefficient is then multiplied by 0.88 resulting in the "effective cantonal tax".

In addition to the effective cantonal tax, a cantonal surcharge for home care (*centime additionnel cantonal supplémentaire pour l'aide à domicile*) of 0.01% of the "basic tax" is levied.[19] In 1992 the population of Geneva decided in a popular vote to pay this surcharge for the reorganization of public finances. The 12% reduction is not granted by the cantonal tax administration on this surcharge. It argues that the commission raising the initiative concerning the 12% reduction in 1999 did not include this cantonal surcharge for home care in the proposal and therefore no reduction must be granted.[20] Art. 1 of the cantonal initiative[21] states that the cantonal individual income tax shall be reduced by 12%, excluding municipal surcharges. In reading the explanatory notes of the initiative commission[22] no statement can be found that the cantonal surcharge for home care should be excluded from the 12% reduction. The arguments of the cantonal administration in support for not granting the 12% reduction are questionable, but are not discussed further in this article.

Finally, municipal taxes are levied in the form of a surcharge on the cantonal basic tax. This surcharge is equal to the basic tax, multiplied by a municipal coefficient. The coefficient of the capital city Geneva is 0.455 (for 2001). The 12% reduction is not granted. No parish tax is levied in the canton of Geneva.

Summary

The calculation of taxes in the canton of Geneva may be summarized as follows:

Gross income minus deductions for social security, pension plans, life insurance, etc.

= net income, minus deductions necessary to earn income and other deductions
= taxable income

– application of the tax rates (*barèmes*) to taxable income resulting in intermediary tax
– calculation of the credit amounts granted (*rabais*)
– application of the *rabais* to *barèmes* resulting in the *rabais d'impôt*

15. See Micheline Calmy-Rey, note 3, p. 11. The credit, as granted in the canton of Geneva, is a new approach and is unique in Switzerland as it takes into account the economic power of a taxpayer.
16. See Art. 14 LIPP-V.
17. www.geneve.ch/df/pdf/bu_loi01.pdf.
18. The full 12% reduction is granted as from the tax period 2001 even though the obligation to reduce the tax was structured in three stages to be completed 1 January 2005.
19. See Art. 3 of the *Loi (8311) établissant le budget administratif de l'Etat de Genève pour l'année 2001* (D 3 70); www.geneve.ch/df/pdf/bu_loi01.pdf.
20. See www.geneve.ch/df/html/une_afc1.html, under *Centime "aide à domicile"* and www.geneve.ch/votations/19990926/Info0.html#01, under *OBJET N 1, C, Explications du Conseil d'Etat*.
21. Initiative populaire cantonale «Réduisons les impôts» (IN 111); see www.geneve.ch/votations/19990926/Info0.html#01, under *OBJET N 1, A, Le texte de l'initiative*.
22. www.geneve.ch/votations/19990926/Info0.html#01, see under *OBJET N 1, B, Texte fourni par le comité d'initiative*.

– deduction of *rabais d'impôt* from intermediary tax resulting in the basic tax

Cantonal tax	*Aide à domicile*	*Municipal tax*
Basic tax multiplied by cantonal coefficient	Basic tax multiplied by 0.01	Basic tax multiplied by municipal coefficient
minus 12% reduction	No 12% reduction	No 12% reduction
Effective cantonal taxes		Effective municipal tax

Effective taxes levied in the canton of Geneva

Example 1: **Married couple, both with gainful activities and a total net income of CHF 45,000**

Tax due in 2001 on taxable income of CHF 45,000

- calculation of the intermediary tax: CHF 45,000 applied to *barème B*, 2001: CHF 3,839.70
- *rabais* granted (2 x CHF 13,750 + CHF 3,500 = CHF 31,000): CHF 31,000
- *rabais d'impôt*: *rabais* of CHF 31,000 applied to *barème B,* 2001: CHF 2,192.80
- calculation of the basic tax (intermediary tax minus *rabais d'impôt*): CHF 1,646.90

Cantonal tax	*Aide à domicile*	*Municipal tax*
Basic tax multiplied by 1.475 = CHF 2,429.20	Basic tax multiplied by 0.01 = CHF 16.45	Basic tax multiplied by 0.455 = CHF 749.35
12% reduction = CHF 291.50	No 12% reduction	No 12% reduction
Cantonal taxes = CHF 2,154.15		Municipal tax = CHF 749.35

Effective taxes levied in the canton of Geneva = CHF 2,903.50

Example 2: **Married couple, both with gainful activities and a total net income of = CHF 75,000**

Tax due in 2001 on taxable income of CHF 75,000

- calculation of the intermediary tax: CHF 75,000 applied to *barème B*, 2001: CHF 8,028.65
- *rabais* granted (2 x CHF 13,750 + CHF 3,500 = CHF 31,000): CHF 31,000
- *rabais d'impôt*: *rabais* of CHF 31,000 applied to *barème B,* 2001: CHF 2,192.80
- calculation of the basic tax (intermediary tax minus *rabais d'impôt*): CHF 5,835.85

Cantonal tax	*Aide à domicile*	*Municipal tax*
Basic tax multiplied by 1.475 = CHF 8,607.90	Basic tax multiplied by 0.01 = CHF 58.35	Basic tax multiplied by 0.455 = CHF 2,655.30
12% reduction = CHF 1,032.95	No 12% reduction	No 12% reduction
Cantonal taxes = CHF 7,633.30		Municipal tax = CHF 2,655.30

Effective taxes levied in the canton of Geneva = CHF 10,288.60

Example 3: **Single taxpayer with a net income of CHF 25,000**

Tax due in 2001 on taxable income of CHF 25,000

- calculation of the intermediary tax: CHF 25,000 applied to *barème A*, 2001: CHF 2,233.15
- *rabais* granted (15,000): CHF
- *rabais d'impôt*: *rabais* of CHF 15,000 applied to *barème A,* 2001: CHF 1,041.75
- calculation of the basic tax (intermediary tax minus *rabais d'impôt*): CHF 1,191.40

Cantonal tax	*Aide à domicile*	*Municipal tax*
Basic tax multiplied by 1.475 = CHF 1,757.30	Basic tax multiplied by 0.01 = CHF 11.90	Basic tax multiplied by 0.455 = 542.10
12% reduction = CHF 210.90	No 12% reduction	No 12% reduction
Cantonal taxes = CHF 1,558.30		Municipal tax = CHF 542.10

Effective taxes levied in the canton of Geneva = CHF 2,100.40

Example 4: **Single taxpayer with a net income of CHF 210,000.**

Tax due in 2001 on taxable income of CHF 210,000

- calculation of the intermediary tax: CHF 14,300 applied to *barème A*, 2001: CHF 31,139.60
- *rabais* granted (CHF 15,000): CHF 15,000
- *rabais d'impôt*: *rabais* of CHF 15,000 applied to *barème A*, 2001: CHF 1,041.75
- calculation of the basic tax (intermediary tax minus *rabais d'impôt*): CHF 30,097.85

Cantonal tax	*Aide à domicile*	*Municipal tax*
Basic tax multiplied by 1.475 = CHF 44,394.35	Basic tax multiplied by 0.01 = CHF 301	Basic tax multiplied by 0.455 = CHF 13,694.50
12% reduction = CHF 5,327.30	No 12% reduction	No 12% reduction
Cantonal taxes = CHF 39,368.05		Municipal tax = CHF 13,694.50

Effective taxes levied in the canton of Geneva = CHF 53,062.55