

TaxPage, February 2025

Limits to capital gains exemption – self-employment income

Introduction

Under Swiss tax law, capital gains realised on private assets are not subject to income tax, except in the case of real estate, where a special tax on real estate gains is levied. However, there are several exceptions to this principle, which we will present below and in future issues of TaxPage.

Distinction between private capital gains and income from self-employment

According to the Federal Court, the concept of self-employment should be interpreted broadly, so that only capital gains obtained by an individual by chance or purely as the result of the simple administration of their private wealth can be tax-exempt.

Qualification as income from self-employment may be justified even in the absence of an activity that is recognisable to third parties or organised on the model of a commercial enterprise, and even if the activity is carried out only on an occasional, temporary or isolated basis. Extensive case law has been developed on this issue in the context of transactions involving real estate or securities.

In general, the distinction is made by taking into account all the circumstances of the particular case at the time the gain is realised. However, the High Court has defined criteria to draw the line between exempt gains and taxable income from self-employment. Indications of a self-employed gainful activity exceeding the simple administration of private wealth include:

- The systematic and/or planned nature of the operations;
- The high frequency of transactions;
- The short period of possession of the assets before their (re)sale;
- The close relationship between the supposed independent activity and specialised knowledge;
- The commitment of foreign funds of a certain importance to finance operations;
- The reinvestment of profits;
- The formation of a partnership;
- The effective use of the asset;
- The reason for its sale.

Each of these indicators can lead - alone or in combination with others - to the classification as a self-employed gainful activity. In real estate, it has already been ruled that a single transaction can lead to this classification. Regarding gains made on

securities, the Federal Tax Administration has published a circular (no. 36) containing safe harbour rules that ensure that a transaction cannot be classified as taxable income.

The case of the collector

As a general rule, the assembling of a collection by an amateur is not to be regarded as a self-employed, gainful activity when it is simply a hobby and is not aimed at making a profit. In this case, jurisprudence holds that the criteria presented above apply. The criterion of the reason for sale is particularly important. For example, transactions carried out by heirs on a collection that they did not wish to continue or a transaction carried out on a collection when the collector ceases their activity for personal reasons (for example, lack of space) are in principle exempt.

Conclusion

There are many cases in which a capital gain can be classified as taxable independent income. The limit is not always easy to define, so each transaction must be carefully analysed according to the criteria developed by case law. The consequences of reclassification as taxable income are not limited to income tax. The gain will also be subject to OASI contributions.

Please do not hesitate to contact us if you have any questions.

valfor TaxTeam

Daniel Gatenby | daniel.gatenby@valfor.ch