

Commercial Securities Traders



Depending on the circumstances of a specific case, it is possible in practice for the tax authority to qualify a private individual as a commercial securities trader, which would mean that capital gains earned by the private individual would be subject to tax.

Principle

Capital gains from the sale of private assets are usually exempt from tax (Direct Federal Taxation Act, Art. 16 para. 3). However, if the situation warrants, tax authorities can classify the private investor as a commercial securities trader with income from self-employment (Direct Federal Taxation Act, Art. 18).

Classification as a commercial securities trader is not only very relevant to the treatment of securities transactions by private investors for the purposes of income tax and AHV contributions, but also depends on many factors.

Factors Influencing Classification as a Commercial Securities Trader

Classification of a private investor as a commercial securities trader must take account of all the circumstances of a specific case.

To give the majority of taxpayers some legal certainty, the Swiss Tax Conference identified the criteria that can be used to exclude commercial securities trading.

According to these, a taxpayer is without exception engaged in private asset management if the following conditions are fulfilled cumulatively (preliminary examination according to Circular No. 36 of July 27, 2012):

- The securities that are sold were held by the investor for at least six months.
- The total transaction volume (sum of all purchase prices and sales proceeds) per calendar year does not exceed five times the value of the securities and credit balances at the beginning of the tax period.
- The capital gains being earned on securities transactions are not necessary to cover living costs. This is usually the case if the realized capital gains equal less than 50% of all taxable income earned in the tax period.
- The investments are not financed by borrowing, or the taxable income from the securities (e.g. interest, dividends, etc.) is more than the pro rata debit interest.
- Derivatives (in particular options) are only purchased and sold to hedge the investor's own securities positions.

If these criteria are not fulfilled cumulatively, qualification as a commercial securities trader cannot be excluded, and the matter will be decided in view of the circumstances of the specific case.

Latest Rulings of the Federal Supreme Court

The taxpayer earns taxable income from self-employment if he/she purchases and sells assets in a manner that exceeds the scope of the regular management of private assets. Here, the taxpayer must be involved in an activity which as a whole is focused on acquisition, i.e. he/she must systematically execute such transactions with the intention of generating a profit. For such an activity to be classified as self-employment the taxpayer does not have to visibly participate in business life or carry out the activity as part of an actual organized business. Classification as a securities trader requires all the circumstances of a specific case to be taken into account. Based on the latest rulings of the Federal Supreme Court, the Circular lists the following factors that must be considered.

Primary Indicators

- Transaction volume (frequency of transactions and short holding periods)
- Substantial use of borrowed funds to finance the transactions (particularly critical if the debit interest and charges cannot be covered by regular income)
- Use of derivatives (critical if derivatives are used for more than just the hedging of risks or volumes that are large in proportion to total assets turned over)

Secondary Indicators

- Systematic or planned approach or reinvestment of gains in similar assets
- Close links between the transactions and the taxpayer's profession as well as use of special expertise

Each important fact may be sufficient on its own or together with other facts (also those that are listed as less important) to justify the classification of an investor as a commercial securities trader. If certain typical elements of self-employment are not given, they can be compensated by the special emphasis placed on other elements. What is important is that the activity from its overall appearance seems to focus on the earning of profits.

Assessment Basis

The difference between the sales proceeds and the cost price of the securities minus selling costs is subject to tax. Business losses can only be deducted if they were booked.

Inherited Securities

The tax qualification that applied to the deceased (private assets or business assets) continues to apply to the heirs.

What Are the Risks of Classification as a Commercial Securities Trader?

The realized capital gains become subject to tax as well as AHV contributions. Capital losses on the other hand can be deducted for tax purposes and carried forward for up to seven years if necessary if they were posted and reported correctly.

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