Private wealth or professional trading? The Swiss tax question

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For an individual resident in Switzerland the question decides whether gains on crypto assets are tax-free private capital gains under Art. 16 para. 3 of the Direct Federal Tax Act (DFTA) or taxable income from self-employment under Art. 18. In the second case social security contributions come on top.[1] The Federal Tax Administration's Circular 36 of 27 July 2012 sets out a safe harbour under which a taxpayer who satisfies all five criteria is treated as a private investor without further examination. Failing the safe harbour does not make the taxpayer a professional trader. It opens an overall assessment in which the courts weigh the same indicators.[2]

The five safe-harbour criteria are a holding period of at least six months, a transaction volume in the tax period not exceeding five times the portfolio value at the start of the period, capital gains below 50 per cent of net income, no debt financing (or investment income exceeding interest) and derivatives used only for hedging. Crypto assets strain each of them. Staking rewards and airdrops are income in any event. Liquidity provision on an automated market maker produces

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continuous micro-transactions that can breach the turnover test on paper while the taxpayer sits still. The cantons have accepted that automated rebalancing by a protocol is not trading by the taxpayer, although the practice is not uniform.[3]

The sequence

1. Compute the five Circular 36 criteria for the tax year on the basis of wallet and exchange records. If all five are met, declare the gains as tax-free and the holdings for wealth tax, and keep the computation.
2. If one or more criteria fail, assess the overall picture: frequency and volume, holding periods, use of borrowed funds, derivatives for speculation, systematic method, connection with a professional occupation (a crypto fund manager trading personally is exposed), and whether the trading is necessary to maintain the taxpayer's living standard.
3. Separate income events from disposal events. Staking, lending interest, liquidity-provision fees, airdrops with consideration and mining rewards are taxable income on receipt at market value, regardless of trader status. Hard forks and airdrops without consideration are treated by the FTA as income at receipt, with some cantonal variation.[4]
4. If the overall assessment points to professional trading, model the consequences: income tax at marginal rates on net gains, deductibility of losses, AHV contributions of roughly ten per cent, and the ability to carry losses forward for seven years.
5. Consider structural responses before year-end: moving active trading into a company (corporate tax in Zug is low, dividends partially taxed), ceasing derivative speculation, extending holding periods.
6. Where the amounts are large, request a ruling from the cantonal tax administration. Zug and Zürich both issue rulings on trader status, and a ruling bound on the facts disclosed removes the retrospective risk.[5]

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Indicator	Points to private wealth	Points to professional trading
Holding period	Mostly more than six months	Days or weeks
Turnover v portfolio	Below five times opening value	Many multiples
Share of income	Gains below half of net income	Gains are the main income
Financing	Own funds	Margin, loans, borrowing protocols
Derivatives	Hedging only	Perpetuals, options for speculation
Method	Occasional, buy and hold	Systematic, bots, arbitrage
Occupation	Unrelated	Trader, fund manager, market maker

Client question

"I run an arbitrage bot across three exchanges from my flat in Zug. It made CHF 400,000 last year. Is that tax-free?" Almost certainly not. The bot's turnover will exceed the five-times test by orders of magnitude, the holding period is measured in seconds and the method is systematic. The gain is income from self-employment, subject to income tax and AHV. The better question is whether to run the bot through a Zug GmbH from 1 January, which converts the exposure into corporate profit tax at roughly 12 per cent combined and defers personal taxation until distribution.

Notes

1. Direct Federal Tax Act of 14 December 1990 (DFTA; DBG, SR 642.11), Art. 16 para. 3 and Art. 18 para. 2; see Part G, Chapter II. ↩
2. FTA Circular No. 36 of 27 July 2012, Gewerbsmässiger Wertschriftenhandel, section 3; the FTA working paper on cryptocurrencies of 27 August 2019 (updated 14 December 2021) applies the circular to crypto assets; see Part G, Chapter II. ↩

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3. The Zug and Zürich cantonal practices are compared in Part G, Chapters II and III. ↩
4. FTA working paper on cryptocurrencies, sections 2.3–2.6; see Part G, Chapter II. ↩
5. The Swiss ruling practice is explained in Part G, Chapter I. ↩

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