Trading profits taxation in Switzerland

Investing in the stock market: a simple hobby or taxable activity?

For natural persons, the principle of exemption from capital gains realized on the sale of elements of private wealth is anchored in both federal and cantonal tax law.

An abundant body of case law has identified a number of criteria which make it possible to delimit what comes under the simple management of private wealth exempt from tax from active management which should be considered, as a whole, as a taxable gainful activity because focused on obtaining a gain.

The systematic and planned nature of the operations as well as their high frequency or the duration of possession of the securities are among the indicators identified by the Federal Court in favor of an independent gainful activity. The close relationship between the supposed self-employed activity and the taxpayer's main training or profession and the use of special knowledge are also taken into account. The recourse of investing significant foreign funds (eg. borrowed funds) and the reinvestment of the profits made it also possible to distinguish a simple hobby from a main or accessory gainful activity.

Depending on its importance in a specific case, the presence of only one of such indicators may lead to qualification as a professional activity if it is of particular importance. The Federal Court also noted that in the event of using the services of a third party, such as an asset manager, his activity and his professional knowledge are directly attributable to the client.

A federal tax circular (ie. EStV circular N° 36 dated 27.07.2012) makes it possible to ensure some legal certainty for the taxpayer investor managing his securities portfolio "with a careful and wise management", and this regardless of his professional knowledge or even in the event of limited recourse to borrowing to finance the said investments

Swiss capital gains
Whether or not you pay capital gains tax on trading profits depends on whether the tax office categorizes you as a private investor or as a professional investor.

Private investors do not pay tax on capital gains achieved through investing their assets. Professional investors, on the other hand, must account for capital gains in their taxable income.

Private investor or professional investor
Private investors, meaning individuals who invest their own assets in securities, may, in some cases, be categorized as professional investors by tax offices. If you are categorized as a professional investor, you will be required to pay tax on capital gains earned through trading and investing.

Whether or not you, as an investor, must pay tax on your trading profits depends entirely on whether you are categorized as a private investor or as a professional investor by the tax office.

The 5 criteria used to determine your tax status
Guidelines published by the Federal Tax Administration (ie. EStV circular N° 36 dated 27.07.2012) list 5 criteria to be used by tax offices in determining the tax status of investors. You can only be sure that you will not be categorized as a professional investor <u>if you meet all of these criteria</u>:

1. ***You hold securities for at least 6 months before you sell them.***

2. ***The transaction volume of all of your securities trades combined (total spent on purchases and total earned on sales) do not represent more than 5 times the total value of your securities at the start of a tax year.***

3. ***Capital gains generated through securities trading do not account for a significant portion of your basic income. In a nutshell: Capital gains should account for less than 50 percent of your net income.***

4. ***Realization of capital gains from securities transactions is not necessary to replace missing or ceased/missing income in order to ensure the taxpayer's lifestyle. This is normally the case when the realized capital gains represent less than 50% of the net income for the tax period considered.***

5. ***If you invest using derivatives (and options in particular) these can only be used to hedge your own securities.***

Tax offices are free to implement these criteria in keeping with their own standard practices, so the way in which you are categorized varies between cantons and municipalities. In some cases, investors who do not meet the criteria listed above may still be categorized as private investors and not have to pay tax on their capital gains.