

# Lesson Nr. 1: Don't Fall Tax Blog

## Season 1: Understanding Tax Matters in Investing

### Episode 2: Deal(er) or no Deal(er)

#### The professional real estate dealer

For investors who follow strategies like those of Kim and Robert Kiyosaki emphasizing real estate as a key asset in their investment portfolio, there is an important caveat to consider: mind the Real Estate Dealer.

On Swiss federal level, capital gains on private Real Estate are generally exempt from taxation. In Switzerland, the taxation of capital gains on real estate is treated separately from the taxation of other private assets. While federal law typically exempts capital gains on privately held assets from taxes, real estate gains are subject to real estate capital gains tax on cantonal level.

However, if an individual is considered a professional real estate dealer, in addition to the real estate capital gains tax, the profit from the sale of the property becomes subject to direct federal income tax and social security contributions for self-employed individuals.

#### Criteria qualifying as a professional real estate dealer

Gains from activities that go beyond the mere management of private assets constitute income from self-employed resp. professional dealership. Whether an activity is classified as income-generating must be assessed based on the overall circumstances of the specific case.

According to established Federal Supreme Court practice, the following factors are indicative of self-employment leading to a qualification as professional real estate dealer:

- A systematic or planned approach,
- Frequency of transactions,
- Short holding periods,
- A close connection to the professional activity of the taxpayer,
- Specialized knowledge,
- Significant use of external financing for the transactions, and
- Use of the profits generated or their reinvestment in similar assets.

Any of these factors, either in combination or, in some cases, individually, may be sufficient to classify an activity as self-employment. The fact that certain typical elements of self-employment are not present in a specific case can be compensated by other factors that are particularly pronounced. Each case is typically assessed individually by the respective tax authorities, based on an evaluation of the actual circumstances.

The various factors should not be viewed in isolation and may occur with varying degrees of intensity. The decisive factor is whether, in its overall appearance, the activity is aimed at generating income.

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Self-employment or commercial real estate trading is not present if only personal assets are being managed, such as through the rental of personal properties. This remains true even if the assets are substantial, professionally managed, and commercial accounting practices are used.

Crucial: Depending on the circumstances, **even a single property sale** can trigger reclassification as a professional real estate dealer.

## Mind the Dealer in case of debt financing

A recent federal court ruling<sup>1</sup> established that the qualification as a professional real estate dealer applied when almost 100% of the real estate was financed through debt. Thereby, the following factors were not considered relevant in this case:

- The relatively long holding period,
- The small number of property sales in previous years, and
- The prior multi-year classification of the property as private assets.

Additionally, it has become clear that the criterion of specialized knowledge is to be interpreted broadly as was the case in prior court rulings.

In other recently published federal court rulings<sup>2</sup>, debt financing was again a decisive factor. In this case, siblings inherited a property which they then demolished and rebuilt into a multi-apartment complex. Within a few months, they then sold the newly constructed apartments. In this case, the siblings' high level of debt financing, the frequency of the transactions, and the systematic sales approach applied led to their classification as professional real estate dealers.

## **3 in 3: key takeaway**

1. **Mind the real estate dealer classification:**  
Even a single real estate sale can trigger reclassification as a professional dealer and tax free capital gains on federal level are replaced with income taxes and social security contributions
2. **Caveat: High levels of debt financing**  
High levels of debt financing can weigh heavily in determining professional dealer status, even if other factors like a long holding period apply
3. **Seek guidance to guide you around the trap:**  
Consult with a tax professional to ensure your real estate transactions.  
Do not unknowingly fall into the professional dealer category, potentially exposing you to unexpected income taxes and social security contributions

Reading Time: A little over 3 minutes (those extra seconds for important REal insights)

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<sup>1</sup> 9C\_613/2023

<sup>2</sup> 9C\_262/2024, 9C\_263/2024 and 9C\_264/2024