

Tax Notes

Our business - your insight

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In practice, it ought to be observed that taxable individuals are repeatedly confronted with the same difficulties when it comes to the correct completion of the Securities Directory (Wertschriftenverzeichnis, SD). Four problem areas can thereby be identified which raise the most questions in practice.

Income from movable capital assets

Withholding tax (WHT) on the earnings of the movable capital assets (in particular on interest and dividends) as well as on Swiss lottery winnings can only be refunded to the taxpayers resident in Switzerland if the earnings have been declared correctly. The declaration is carried out in the SD in the column for values with the WHT deduction. It is essential that the gross income (amount before deduction of WHT) is always declared in the appropriate column. Otherwise, the WHT credit is calculated incorrectly. On the other hand, the dividend payments of reserves from capital contributions are not to be declared as income. These are tax-free for the recipient.

Intra-year change in the securities holdings

If the securities portfolio undergoes changes throughout the year (for example, through the purchase or sale of securities), this circumstance must be taken into account accordingly in the SD. It can therefore happen that securities which were sold in the current year, and which would no longer have to be declared in the SD as of 31 December, have still yielded earnings this year which must be declared by the taxpayer. In order for the corresponding earnings to be recorded correctly and for any possible WHT to be refunded, without simultaneously recording the underlying security falsely as a taxable asset, the sales date of the security must always be stated in the SD. Conversely, there are constellations in which securities were bought, which have yielded dividend earnings before the purchase, that consequently are not to be declared by the taxpayer. Here too, the indication of the respective purchase date is recommended in order to prove that the declaration of asset earnings was correctly waived.

Valuation of shares in unlisted companies

According to circular no 28 from 28 August 2008 of the Swiss Tax Conference, Guidance on the valuation of securities without market value for wealth tax' (KS 28), as well as the Tax Harmonisation Act (Steuerharmonisierungsgesetz, StHG) (Art. 14 para. 1 StHG), the market value of the security as at 31 December is generally decisive for the wealth tax. For listed securities,

the closing price of the last trading day of the corresponding tax period is considered as market value. For unlisted securities - for which no market quotations are known and their securities are also not regularly traded off-market - the market value corresponds to the intrinsic value. This is calculated according to the valuation rules contained in KS 28 - generally as continuation value. For commercial, industrial and service companies as well as domiciled and mixed companies, the company value results from the two-time weighting of the earnings value and the one-time weighting of the net asset value. The earnings value can thereby be determined by two different methods. It should be noted that the calculation of the market value of unlisted securities is usually carried out by the tax authority of the canton in which the company to be valued has its legal seat, whereby no legal remedy can be taken against this valuation. If the unit holder disagrees with the valuation, he can challenge this only within the framework of the ordinary assessment or, respectively, objection process, in which he declares the presumed lower value in his SD. Minority shareholders (as a rule, investments up to and including 50% of the share capital) may assert a lump-sum deduction of 30% of the calculated investment value in compliance with further requirements contained in KS 28.

Declaration of cryptocurrencies

Cryptocurrency is the collective term for digital accounting units or, respectively, financial assets, which can serve as means of payment and capital investment. Although the value of cryptocurrencies is determined by supply and demand, units in cryptocurrencies are not securities, but rather digital means of payment dependent on a protocol and the underlying technology.

In the broadest sense, the ownership of cryptocurrencies is similar to the ownership of cash or a bank balance. From a tax law point of view, the owner of cryptocurrencies has a monetary right to assessable movable property. According to the law, the entire net assets are subject to wealth tax –which is why cryptocurrency holdings must be declared as financial assets in the tax declaration. The tax administrations of most cantons stipulate that cryptocurrency holdings must be declared in the SD. The evidence has to be given by a print-out of the digital wallet as of 31 December (the so-called wallet, which manages financial assets on the blockchain). With regard to the valuation of cryptocurrencies, various difficulties arise at the end of the year. Due to the sometimes very high currency fluctuations, daily closing prices are in the meanwhile difficult to determine. Moreover, widespread cryptocurrencies like Bitcoin are traded on an unwieldy number of platforms, which at times vary greatly from each other in valuation. The Swiss Federal Tax Administration (SFTA) uses an official market value for Bitcoin and several other virtual currencies. This results from the average of five relevant e-trading platforms at the end of the year. If the SFTA has not set an official market value in the absence of regular representative trade, the cryptocurrency is to be entered at the rate of the exchange platform most common for this currency, or at the rate of that trading platform via which the buy and sell transactions are executed, at the end of the tax period. If no current valuation rate can be determined, the original purchase price of the cryptocurrency must be used in Swiss Francs. Most cantons follow the recommendation of the SFTA for the assessment. However, the problem of significant price fluctuations as well as the large number of trading platforms seems to be hardly taken into account. The value in the individual wallet may therefore vary greatly from that of the SFTA. In addition to Bitcoin as the largest crypto-ecosystem, at the present time there are thousands more digital information units (so-called 'tokens' or 'altcoins'). In terms of the qualification of these tokens under tax law, it must be analysed exactly as to which rights the owner of the digital information unit is entitled to. In this respect, a reference to the guidelines published by

FINMA on ICOs from 16 February 2018 seems appropriate. Accordingly, due to the economic function and purpose of the tokens, three types are distinguished in terms of function (though mixed forms can also occur). Payment tokens are to be equated with pure 'cryptocurrencies', without being linked to additional functionalities or projects. Usage tokens are tokens that are intended to convey access to a digital use or service. Investment tokens represent financial assets such as shares in real assets, companies, earnings or claims to dividends or interest payments. In terms of its economic function, the tokens are to be valued like a stock, bond or a derivative financial instrument. Beyond the problem of the correct recording in the SD for wealth tax purposes, the tax consequences are expected to be very different depending on the design of the tokens. So for example, digital shares in the SD should be listed, corresponding capital earnings are taxable, and may be subject to the WHT as well as to sales tax. Digital interest and debt claims on credit and loans must likewise be recorded in the SD and the corresponding liabilities recorded in the debt register. Capital gains derived from this are taxable, whereby earnings from bank balances and bonds are additionally subject to the WHT. Digital shares in investment funds should also be entered in the SD. Corresponding capital gain is taxable and may be subject to WHT. If the tokens grant the owner additional ownership and usage rights to movable, physical property (e.g. diamonds or gold), like bitcoin, they represent a monetary right to a property – whereby, in contrast thereto, this is not only digital property. Correspondingly, a sale of an underlying consumable item may be subject to value added tax. Ownership and usage rights to intangible assets (e.g. software licenses) should also be treated in the same manner. The configuration options are as diverse as in reality and as permitted by the respective legal system; they are likewise subject to constant change. A detailed analysis and qualification of the functions of a token, as well as the resulting valuation difficulties, are therefore inevitable.

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