



eSports and taxes

eSports - the competitive playing (so-called *gaming*) of computer and video games - such as *Counter-Strike*, *Fortnite*, *Call of Duty* or *Fifa* – is enjoying growing popularity in Switzerland. The number of gamers is large even in Switzerland, but the number of professional players – e-athletes, as well as eSports event organisers or eSports organisations – is still low by international standards. However, professionalisation is set to find its way also into Switzerland. FC Basel, for example, already has an eSports team, UPC just launched a new eSports news platform, Swisscom manages a "hero league" with more than 6'000 participating gamers; many more will follow. The tax issues that may arise for the individual players are dealt with in this article.

I. eSports athletes residing in Switzerland

The gamer scene in Switzerland is already thriving and is enjoying steady growth. However, playing video games alone does not make a gamer an eSports-athlete. The decisive factor for this qualification is whether a person takes part in computer games in specific competitions, either alone or as a member of a team.

1. Self-employed activity

a. Income Tax

If an eSports-athlete (in the following this term is also used for the female form) is not employed by an eSports organisation and generates an income through gaming (prize money, fees, other income etc.), it must be

assessed on a case-by-case basis whether there is an income tax liability from self-employment considering the overall picture of the "activities carried out".

Self-employment is generally assumed if the eSports-athlete has a profit motive, proceeds according to a plan and in a professional manner, organises the activity freely, carries it out for his own account and at his own risk and the eSports activity is designed to be permanent. In some cases, it may no longer be a hobby but a gainful activity if the eSports activity provides for at least part of the livelihood. Once qualified as self-employed activity, the income from gaming is subject to income tax and social security contributions.

If the eSports-athlete only registers losses through gaming, it is generally assumed to be a hobby, which triggers merely the obligation to file a tax return but no other consequences such as social security.

One advantage of qualifying as a self-employed person is that from that moment on, expenses such as the costs for equipment, travel and accommodation, entry fees etc. are deductible from the taxable income as business-related expenses. In addition, losses incurred in the previous years can be offset against taxable income for seven years; the qualification as a self-employed person is not automatically lost in the event an eSports-athlete does not make profit in a business year (i.e. suffers a loss).

Regardless of the question of qualification of the gaming activity as self-employment or hobby, income from sponsoring is considered taxable income and not a gift.

b. Value added tax (VAT)

If the gaming activity no longer qualifies as a hobby but as a gainful activity, this may also trigger the obligation to pay VAT. If an eSports-athlete competes under a certain name (e.g. a nickname) and generates a steady income, he basically fulfils the requirements of a business from a VAT perspective. A specific legal form is not required for such business activity. If the (worldwide) annual turnover from taxable services amounts to at least CHF 100,000, there is a VAT liability and the eSports-athlete must register him in the VAT registry.

However, it is difficult to determine the place of activity of the eSports-athlete in the event of VAT liability. This is because VAT can only be claimed on turnover in relation to domestic services: At first glance, the principle of the place of the recipient applicable to *electronic services* seems to be applicable. However, eSports cannot be regarded as an *electronic service* from a VAT perspective; human activity (gaming) is elementary for eSports, and serves as a criterion to exclude the qualification of eSports as an *electronic service*. The question remains as to whether the place of the recipient of the service or the place of activity of the eSports-athlete is relevant. The law does not provide a clear answer; the Swiss tax administrations have thus so far not voiced an opinion. The physical place of activity of the athlete is likely to be the most plausible criterion. If it appeared to be in Switzerland, there would be a (taxable) domestic performance.

2. Employment

2.1 Employment by a Swiss eSports organisation

If the eSports-athlete is not working on his own but is employed by a Swiss eSports organisation (e.g. FC Basel), then this organisation, as an employer, has an obligation to pay social security contributions for its employees in addition

to the salary. The employed eSports-athlete residing in Switzerland is taxable in Switzerland on the worldwide income.

2.2 Employment by a foreign eSports organisation

Compared to other countries, eSports is still not very well known in Switzerland. It is therefore probable that an eSports-athlete residing in Switzerland might be employed by an eSports organisation based abroad. Regardless of the foreign employer, however, the eSports-athlete has his residence and place of work in Switzerland, is subject to the Swiss social security system and therefore qualifies as a so-called *ANOBAG* (Arbeitnehmer ohne beitragspflichtigen Arbeitgeber, i.e. employee without an employer in Switzerland).

ANOBAG are special cases with regard to Swiss social security contributions: If the foreign employer does not account for these, the *ANOBAG* must himself pay the Swiss social security contributions (Old Age and Survivors Insurance, Disability Insurance and Income Compensation Insurance) in full. In addition, he is obliged to register with the AHV compensation fund at his Swiss place of residence. However, there is no obligation to join a Swiss occupational pension insurance plan. Such affiliation is possible on a voluntary basis, provided that the minimum annual salary of CHF 21,330, which is subject to occupational pension payments, is reached.

eSports-athletes who qualify as *ANOBAG* are subject to income tax in Switzerland for their worldwide income as any other employee.

3. Participation in foreign eSports events

If eSports-athletes participate either virtually or physically in foreign eSports events and receive starting and/or prize money, they are generally taxable for such income at their place of residence in Switzerland from the perspective of

unilateral Swiss tax law (world income principle).

From the point of view of international tax law, however, there is currently a certain lack of clarity regarding the place of taxation of such income of eSports-athletes: income from gainful employment will usually be attributed to the country of residence (in this case Switzerland) based on the double taxation agreements ("DTAs") of Switzerland. In contrast, salaries and prize money of sportsmen and artists can also be taxed where the activity is carried out. Sportsmen can be defined as persons who take part in public sporting competitions. However, it is currently unclear whether eSports-athletes fall under this "sportsman" concept or, at most, qualify as artists by performing in public, either directly or indirectly, in front of an audience. It is also unclear where to locate the eSports-athletes' activity in a case of virtual participation in such an event.

Owing to the very broad DTA concept of the sportsman and artist, it is likely that eSports-athletes will be subject to the special DTA provision for sportsmen and artists in international tax law and that their income earned abroad will be subject to tax at source by the state of the venue. A controversial and currently unresolved issue is the handling of income for virtual participation in foreign events being subject to foreign tax at source in the host country. The DTA special provision for sportsmen and artists is linked to the place of activity. In our opinion, in the case of virtual participation, the place of activity is where the eSports-athlete is physically present during its gaming activity. Due to the difficulty of determining this place of activity beyond any doubt (as is well known, the internet can also be accessed via foreign IP addresses), the jury is still out on this.

If the income is subject to foreign source tax and there is a DTA in place with the respective state, this income is not re-taxed in Switzerland (so-called exemption

subject to progression). However, if the event takes place in a state with which Switzerland has not concluded a DTA, Switzerland is generally not obliged to take the foreign taxes into account, which may result in double taxation in this case.

II. eSports event organiser

a) Swiss source tax

For Swiss event organisers in the field of eSports, the question of whether eSports-athletes qualify as sportsmen from a Swiss wage tax perspective is of great importance. If eSports-athletes are considered as sportsmen, Swiss event organisers will have to deduct Swiss source tax on remunerations paid to participants residing abroad. Contrary to the opinion of the Federal Office of Sport, but based on the principle "*in dubio pro fisco*", there is a real chance that Swiss tax practice will subject eSports-athletes resident abroad to Swiss source tax.

b) VAT

Finally, it is relevant for Swiss eSports event organisers whether their services are subject to VAT. Again, the main question is whether or not eSports events are considered to be sport events or cultural services from a VAT perspective. This is because fees charged for sporting events, including entry fees, as well as services provided for cultural purposes are exempt from VAT. As of today, eSports is not officially recognised by the tax authorities as a sport or cultural performance. Currently, it would be prudent to assume that eSports events are not exempt from VAT, and that ticket prices and entry fees may be subject to VAT if the event organiser is subject to VAT itself (and registered in the VAT registry).

III. Conclusion

The general principles of Swiss tax law are basically applicable to the taxation of Swiss eSports-athletes and eSports event organisers.

Owing to the unclear qualification of eSports and its classification from the point of view of national and international tax law, a number of open questions arise, especially with regard to VAT, source tax and international tax law, which must be clarified in the future.

If you have tax-related questions in connection with eSports, our Tax Team will be happy to advise you at any time.



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