賣方的稅務

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創辦人出售作為私人財富持有的瑞士股份有限公司（AG）或有限責任公司（GmbH）股份，所得屬免稅的私人資本收益，但須留意兩個陷阱。瑞士實務數十年來不斷完善這兩個陷阱，而它們對加密業務同樣全面適用。[1]第一個陷阱是間接部分清算。如買方是公司或作為業務資產持有股份的人士，並在出售後五年內、在賣方參與下，分派於出售時已存在的非業務相關儲備，便會適用。賣方的收益在該範圍內會被重新定性為應課稅的投資收入。[2]持有超出營運所需的大量代幣庫房的加密公司，正是可分派實質資產的典型例子。賣方應在出售前分派超額部分（賣方須就此作為股息課稅，但適用部分寬減稅率），或取得買方不作分派的承諾及州稅務機關的裁定。第二個陷阱是轉置（transposition）：如賣方把股份轉讓予其控制的公司，收益會被重新定性。[3]兩個陷阱均不適用於按第I章所述按開支課稅的創辦人，因為出售根本不在其稅款計算之內。

新加坡創辦人出售作為投資持有的私人有限公司（Pte. Ltd.）股份，所得資本收益毋須課稅。買方按代價與股份資產淨值兩者中較高者，繳付0.2%的印花稅。賣方唯一的風險，是創辦人是否被視為從事公司買賣；對建立並出售一家業務的創辦人而言，這個問題並不存在。[4]有關境外出售收益的第10L條

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規則適用於實體，因此以個人身份出售的創辦人不受其規限。透過瑞士控股公司持有新加坡公司的創辦人，在持有滿一年後可就收益享有瑞士參股寬免，令收益的瑞士利潤稅降至一般稅率的一小部分。[5]

以買方代幣支付的盈利能力支付（earn-out）會增添一層複雜性。對瑞士私人賣方而言，如earn-out屬股份的代價，便構成免稅資本收益的一部分；如實質上是為創辦人繼續提供服務而支付的留任款項，則屬受僱收入。楚格稅務機關把以創辦人繼續受僱為條件的earn-out視作後者。[6]對新加坡賣方而言，同一區分亦適用，IRAS亦會得出相同結論。在結構安排上，如要維持資本性質的處理，earn-out應與業務表現掛鈎，切勿與創辦人是否留任掛鈎。

註釋

1. DFTA, SR 642.11，第16條第3款（免稅私人資本收益）。第G部分第II章。↩
2. DFTA, SR 642.11，第20a條第1款第a項（間接部分清算：把最少20%的持股由私人資產出售為業務資產，並在五年內在賣方合作下分派出售時已存在的非業務相關實質資產）；FTA Circular No. 14，2007年11月6日。第G部分第IV章。↩
3. DFTA, SR 642.11，第20a條第1款第b項（轉置）。↩
4. Stamp Duties Act 1929 (2020 Rev. Ed.)，附表一第3(c)條（股份轉讓按代價或價值兩者中較高者的0.2%徵收印花稅）。第M部分第II章。↩
5. DFTA, SR 642.11，第70條第4款（就持有最少一年、最少10%持股的資本收益給予參股寬免）。第G部分第IX章。↩
6. FTA Circular No. 37，2020年10月30日，有關earn-out及留任款項的一節；BGer 2C_618/2014，2015年4月3日（把以繼續受僱為條件的付款定性為受僱收入）。第G部分第IV章。↩

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