
VALUE ADDED TAX WITH RESPECT TO CRYPTO CURRENCIES AND INITIAL COIN OFFERINGS

On June 21, 2018, the Swiss Federal Tax Administration SFTA published a first draft of their adjusted practice guidelines regarding the taxation of crypto currencies with respect to the value added tax (VAT).

According to the draft adjustments to their taxation guidelines VAT-Info 04 (MWST-Info 04), crypto currencies are value units which are generated decentralized on a blockchain using a predetermined mathematical procedure within a computer network. Such value units are usually referred to as tokens or coins.

Initial Coin Offering (ICO) or Initial Token Offering (ITO)

Through an ICO or ITO, a company raises capital for a specific entrepreneurial project. In return, the investors receive blockchain-based coins / tokens. The VAT assessment depends on how an ICO / ITO is structured and what rights the issued coins / tokens grant to the holder. According to the draft of the taxation guidelines VAT-Info 04, a distinction is made between three basic types of coins / tokens:

1. **Payment Tokens** have the purpose of serving as a means of payment. If this is the only purpose, such **payment tokens will be treated the same as official currencies** (CHF, USD, EUR etc.). The use of such Payment Tokens for the "payment" of goods or services is regarded as remuneration and not as an exchange transaction. The amount of the remuneration corresponds to the market value of the goods or services at the time of delivery or performance.

If Payment Tokens are bought or sold with official currencies, this is a non-relevant exchange of currencies for VAT purposes, comparable to the purchase or sale of foreign currencies. Where a commission is charged, this commission is a financial transaction exempt from VAT (without the right to reclaim input tax).

However, the offering of a trading platform for crypto currencies is not exempt from VAT: the services of a virtual marketplace for crypto currencies are subject to VAT if the recipient is resident in Switzerland. The same applies to providers of so-called wallets (electronic wallet for crypto currencies): The storage / safekeeping of crypto currencies on electronic storage media is subject to VAT if the recipient of this service is resident in Switzerland.

2. **Utility Tokens** entitle the holder to receive a service provided by the issuer of the Utility Token. The issuance of Utility Tokens is usually qualified as a service and is subject to VAT if the recipient is resident in Switzerland. However, if the service connected to the Utility Token is exempt from VAT, the issuance of the Utility Token is also exempt from VAT (without the right to reclaim input tax).
3. **Asset Tokens** entitle the holder to a certain share in the profit of the company, in the revenues or a claim to derivative rights or similar rights. The issuance of such Asset Tokens qualifies as turnover in connection with uncertificated securities and derivatives, which are exempt from VAT (without the right to reclaim input tax).

Mining of crypto currencies

“Mining” means to provide computing power for processing crypto currency transactions. In the course of this process, new units of a crypto currency are generated. On the one hand, the "miner" receives a block-reward. The compensation in form of such a block-reward does not qualify as the provision of goods or services and is therefore not subject to VAT (in the absence of a definable beneficiary). On the other hand, the "miner" also receives a transaction fee, which is directly related to the transfer of a certain unit of a crypto currency. This is therefore qualified as income in the financial sector which is exempt from VAT (without the right to reclaim input tax).

Invoicing of Value Added Tax

If the price for goods or services – which are subject to VAT – is paid in crypto currencies, this price must be converted into an official currency (CHF, USD, EUR etc.). For invoices in crypto currencies, the price for the goods or services and the VAT amount must therefore also be shown in an official currency.

The crypto currency can be converted into an official currency using suitable conversion portals. It is required that there is documentation showing the conversion and that the conversion rate can be easily verified.

The VAT to be paid must be shown in an official currency and the VAT must finally be paid to the SFTA in Swiss Francs.

Conclusion

The above notes are based on the first draft of adjustments to the SFTA's taxation guidelines prior to the consultation by the Consultative Body. The content of the draft may therefore differ from the final version and thus has no legally binding effect.

The practice adjustments have basically turned out as expected. However, as tax advisors to various crypto companies, we are pleased with the increasing clarity regarding the treatment of crypto currencies for VAT purposes. Although there remain a number of open questions – such as the VAT treatment of hybrid tokens – the Swiss authorities take a leading position for a comprehensive and innovation-friendly regulation of new business models. The transparency, reliability and constructive cooperation with the authorities are important advantages for blockchain or crypto related businesses in Switzerland.

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