
WORKING PAPER OF THE SWISS FEDERAL TAX ADMINISTRATION REGARDING CRYPTOCURRENCIES AND OTHER TOKENS/COINS

The Swiss Federal Tax Administration (SFTA), Main Department Direct Federal Tax, Withholding Tax, and Stamp Duty, has issued a working paper on 27 August 2019 regarding the taxation of cryptocurrencies and other coins or tokens based on the blockchain technology. The working paper also provides guidelines regarding the net wealth taxes imposed on a cantonal and communal level.

The working paper of the SFTA ("Working Paper")¹ categorizes the different kinds of coins or tokens based on the blockchain technology into the following three groups: (1) Payment-Token or Native-Token, (2) Asset-Backed-Token and (3) Utility-Token. The Asset-Backed-Tokens are sub-categorized into (a) Debt-Token, (b) Equity-Token und (c) Participation-Token. This categorization is generally in line with the current practice of the Swiss Financial Market Supervisory Authority FINMA as mentioned in its guidelines dated 16 February 2018 regarding Initial Coin Offerings².

Taxation of Payment-Tokens / Native-Tokens

Payment- or Native-Tokens do not include any rights or claims of the token owner against the issuer, in general, they are meant to be used as a digital means of payment (hereinafter "**Payment-Token**"). Therefore, according to the Working Paper they should be treated similar to foreign currencies from a Swiss tax perspective. For an individual owning Payment-Tokens as a private asset, neither the acquisition nor the sale of such payment-tokens should lead to any Swiss income tax consequences. On the other hand, if the activities of an

¹ "Kryptowährungen und Initial Coin/Token Offerings (ICOs/ITOs) als Gegenstand der Vermögens-, Einkommens- und Gewinnsteuer, der Verrechnungssteuer und der Stempelabgaben", published on 27 August 2019, available at: https://www.estv.admin.ch/dam/estv/de/dokumente/bundessteuer/kryptowaehrungen/Arbeitspapier-Kryptowaehrungen.pdf.download.pdf/Arbeitspapier-Kryptowaehrungen_de.pdf

² Cf. our newsletter dated 16 February 2018 here: <https://www.reichlinhess.ch/2018/02/16/finma-publishes-ico-guidelines/>.

individual in connection with its Payment-Tokens should be qualified as a professional (trading) activity, the realized capital gains or realized losses should be tax-effective for income tax purposes. Similar distinctions should be made for income from mining, staking, or pooling that would qualify as income from self-employment if performed on a professional basis (see regarding "Mining / Staking" below).

The transfer of Payment-Tokens to employees as part of the salary – for example under an employee incentive plan – is also subject to income taxes. This applies not only to Payment-Tokens but also to other tokens granted to an employee for free or at a discounted price.

For net wealth tax purposes, the tax value of Payment-Tokens and any other kind of tokens is determined based on the applicable exchange rates at the end of the respective tax period. For tokens not yet listed at a crypto-exchange, the purchase price could be used as a tax value.

The issuance or transfer of Payment-Tokens is not subject to withholding tax or stamp duties since Payment-Tokens are qualified as mere digital means of payment and not taxable certificates.

Remarks regarding Swiss Value Added Tax ("VAT")

Also for VAT purposes, Payment-Tokens are considered as a means of payment. The Swiss Federal Tax Administration, VAT Department, has issued respective guidelines in June 2019. The usage of Payment-Tokens to pay for goods or services should, therefore, be qualified as a payment and not barter for Swiss VAT purposes. If Payment-Tokens are bought or sold against FIAT currencies, it should qualify as a mere exchange of means of payments, and it should be exempt from Swiss VAT (comparable to an exchange of "traditional" FIAT currencies).

However, for Swiss VAT purposes, a payment by the usage of Payment-Tokens should be translated into a FIAT currency by applying an exchange rate of a "suitable" crypto exchange platform. Invoices in Payment-Tokens should also show the amount payable and the amount of VAT in a FIAT currency. The applied exchange rate should be documented and should be made transparent for later reviews by the SFTA. In any case, the Swiss VAT must be paid in CHF.

Taxation of Asset-Backed-Tokens

The Working Paper defines Asset-Backed-Tokens³ as tokens that grant to the token owner enforceable rights against the issuer. The Working Paper divides Asset-Backed-Tokens into the following sub-categories:

³ Named "Asset-Token" or "Investment-Token" in the FINMA guidelines of 16 February 2018, see para. 3.1.

Debt-Tokens

By the issuance of Debt-Tokens, a company is borrowing money from investors. From a Swiss tax perspective, such tokens qualify as a liability for the borrower and as a receivable for the lender. The acquisition, sale and the repayment of Debt-Tokens should not be subject to Swiss income taxes. However, any interest paid, irrespective whether as a one-time payment or in regular intervals, is subject income taxes for the recipient and constitutes a tax-deductible expense for the payor (provided the interest is at arm's length)

Interest paid in connection with Debt-Tokens that qualify as bonds for Swiss tax purposes is subject to Swiss withholding tax. Furthermore, the transfer of such tokens is subject to stamp duty (0.15% if issued by a Swiss domiciled issuer or 0.3% if issued by a non-Swiss domiciled issuer) provided a Swiss securities dealer (defined according to Swiss tax law) is involved in the transaction. Whether a Debt-Token qualifies as a bond for Swiss tax purposes depends on the number of investors and the amount of money borrowed.

Equity-Tokens

Equity-Tokens grant their holders an entitlement to a certain percentage in the profit or the liquidation proceeds of a company. However, the token-holder has no right to the repayment of the invested amount. From a Swiss tax perspective, Equity-Tokens are generally qualified as derivative financial instruments of its own kind.

The revenues from the issuance of Equity-Tokens are taxable earnings for the issuer. Depending on the circumstances, the issuer can book tax-deductible provisions if the revenues should be used for a specific project (e.g., the development of a software). Alternatively, it may be considered by the issuer to record the revenues from the issuance of the Equity-Tokens as a liability in the balance sheet (e.g., an account like "prepayments without repayment obligation").

Subsequent payments to the token-holders should qualify as tax-deductible expenses for the issuer. However, it is required that the recipient of the payments can be identified. In addition, the tax authorities can treat such payments as hidden dividend distributions if they exceed certain thresholds (see below regarding withholding tax). In such cases, the payments would not be tax-deductible.

For individuals, the purchase and sale of Equity-Tokens is generally not subject to Swiss income taxes (provided that these activities are not performed on a professional basis). However, the payments from the issuer to the investor are subject to Swiss income taxes as these payments are not deemed to be tax-free

capital repayments. Thus, Equity-Tokens are less attractive for individuals from a Swiss tax perspective.

Generally, payments of the issuer to the investors in connection with Equity-Tokens are not subject to Swiss withholding tax. This should not apply if the following requirements are met:

- a) the shareholders of the issuer hold more than 50% of the tokens,
and
- b) more than 50% of the EBIT is payable to the token holders according to the agreed profit- or EBIT-participation-quota.

These restrictions are not only applied in connection with Equity- but also with Participation-Tokens (see below).

The issuance or transfer of Equity-Tokens should not be subject to stamp duties. As mentioned above, such tokens are qualified as financial instruments and not as participation rights.

Participation-Tokens

Participation-Tokens grant to their holder an economic entitlement to a certain percentage in a specific key figure of the company issuing the tokens, such as the EBIT, income from royalties, or other special revenues. From a Swiss tax perspective, Participation-Tokens are treated the same as Equity-Tokens (see above).

Remarks regarding Swiss VAT

According to the guidelines issued by the VAT Department of the SFTA, Asset-Backed-Tokens include contractual claims against the issuer. From a VAT perspective, they should be treated similarly to certificated or non-certificated securities, or derivative instruments according to art. 21 para. 2 of the Swiss VAT Act. Thus, the issuance of such tokens should not be subject to VAT. The same applies to purchases and sales of Asset-Backed-Tokens. However, the SFTA has not yet provided the same clarifications regarding tokens that include claims according to company law (despite we would expect that these kinds of tokens should be treated the same as the Asset-Backed-Tokens currently mentioned in the VAT guidelines).

Taxation of Utility-Tokens

Utility-Tokens generally include usage rights for a blockchain-based digital service. The purchaser must (usually) redeem the Utility-Token in order to obtain the respective services. The legal relationship between the issuer and the holder of Utility-Tokens can be compared to a mandate agreement. The investor has no entitlement to a repayment of his investment.

According to the Working Paper, the revenues from the issuance of Utility-Tokens should be subject to Swiss income taxes. However, depending on the circumstances the issuer may record a tax-deductible provision if there is a legal obligation to use the revenues for a pre-defined project that will incur expenses in future accounting and tax periods. Alternatively, the issuer can record the revenues from the issuance of the Equity-Tokens in a liability account in the balance sheet (e.g., an account like “prepayments without repayment obligation”).

For individuals, the purchase, and potential realized capital gains from a sale of the Utility-Tokens should not be subject to Swiss income taxes provided the activities are not assumed to be performed on a professional basis.

The issuance or transfer of Utility-Tokens should also not be subject to withholding tax or stamp duties.

Remarks regarding Swiss VAT

According to the guidelines issued in June 2019 by the VAT Department of the SFTA, the issuance of Utility-Tokens is considered to be a service and is generally subject to VAT if the recipient is resident in Switzerland. This does not apply if the service for which the token may be used qualifies as a turnover exempt from VAT. For example, the issuance of a Utility-Token that includes the right to use a future software may be compared from a Swiss legal perspective to a mandate agreement. The place of provision of the service should, therefore, be assumed to be at the domicile of the purchaser of the token (art. 8 para. 1 Swiss VAT Act). Also, trading of Utility-Tokens qualifies as a performance subject to VAT provided the place of performance is located in Switzerland and the respective service is not explicitly exempt from VAT (cf. VAT-Information Guidelines 04, para. 2.7.3.4).

Issuance of tokens to employees

The issuance of any kind of tokens to employees free of charge is a taxable event for the employee and must be declared in the employee’s salary certificate by the employer. The issuance of tokens to employees below market value is considered taxable income for the employee in the amount of the difference between the issuance price and the market value. The taxable income should be determined at the time of receipt, converted into Swiss francs, and must be declared in the employee’s salary certificate by the employer.

Tokens owned by an employee are subject to net wealth taxes and the employee should declare his/her tokens in the tax return. For net wealth tax purposes, the exchange rate as at the end of the tax period is relevant to determine the taxable

value. For tokens not yet listed at a crypto-exchange, the original purchase value may be used converted into Swiss francs.

Mining / Staking

Usually, the miners receive a so-called “block reward” in the form of tokens for creating new blocks in a blockchain. This should be considered a compensation for the computational efforts provided. Also, miners are usually receiving part of a transaction fee for registering or validating transactions in a blockchain. In the case of pool-staking, several owners of tokens combine their tokens in a pool, and a “staking-software” is forwarding potential block rewards or transaction fees to the participants of the pool.

From a Swiss income tax perspective, such income is qualified as taxable income from movable property according to art. 20 of the Direct Federal Tax Act. In case the criteria for the assumption of a professional activity are fulfilled, the respective income qualifies as income from self-employment according to art. 18

Remarks regarding Swiss VAT

The provision of a block reward is generally not considered a taxable event for Swiss VAT purposes. Also, validation or verification services are not considered a commercial activity provided block rewards only compensate for such activity. Should a miner receive also a transaction fee (besides of a block reward) it is considered a taxable transaction between the sender and validator of a transaction. Such a digital service is subject to Swiss VAT if the recipient of the transaction is domiciled in Switzerland.

In case of staking-pools, the transactions between the pool and the stakers are considered as subject to Swiss VAT provided the recipient of the service is domiciled in Switzerland.

of the Direct Federal Tax Act.

Conclusions

The Working Paper issued by the SFTA clarifies certain issues regarding the treatment of cryptocurrencies and other kinds of tokens from a Swiss income, withholding, and stamp duty perspective. However, several questions remain, such as the treatment of hybrid tokens with specifications of more than one token-category. Besides, for net wealth tax purposes, the usage of an exchange rate as per the end of the year may not be appropriate in view of the high volatility of certain tokens. The taxable wealth of an individual can unexpectedly increase or decrease which may not necessarily reflect the objective economic capability of a taxpayer. We assume it would not be very burdensome to

calculate and apply an average exchange rate or to grant a discount on a tax value depending on certain criteria.

Our tax advisors and lawyers would be happy to support with any questions you may have regarding this topic. Please also find further information regarding our services provided to companies in the [crypto and blockchain sector here](#).

Your contacts



Christian Maeder

MLaw, Attorney-at-Law
Certified Tax Expert

christian.maeder@reichlinhess.ch
www.reichlinhess.ch

T +41 41 729 10 70
M +41 79 332 51 75



Benno Hinni

Lic. iur., Attorney-at-Law
Certified Tax Expert

benno.hinni@reichlinhess.ch
www.reichlinhess.ch

T +41 41 729 10 70

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