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Taxation of Cryptocurrencies in Germany

Agenda

1. Introduction
2. Tax Classification
3. Income Tax Treatment
4. VAT Treatment
5. Cryptocurrencies in Business Assets
6. Inheritance and Gift Tax Treatment
7. Moving away and international taxation
8. Reporting Obligations

Introduction

Introduction

- ✓ Importance of cryptocurrencies and blockchain technology for the economy and tax law
- ✓ Challenges and opportunities for taxpayers and tax authorities
- ✓ No legally secure framework for cryptocurrencies in Germany
- ✓ Distinction from traditional financial instruments

Tax classification

Tax Classification

- ✓ Cryptocurrencies are not considered as legal currency but as intangible assets.
- ✓ The German tax administration is speaking of virtual currency that are not issued or guaranteed by a central bank or public body and therefore do not have the legal status of a currency or money. But they are accepted as means of exchange by individuals and legal persons.
- ✓ There is no tax law related only to cryptocurrency. Basic income rules therefore apply.
- ✓ Implications for income tax, inheritance tax, and value-added tax (VAT)

Income Tax Treatment

Income Tax Treatment

1. Private Sales Transaction (§ 23 German Income Tax Act)

- ✓ Cryptocurrency as private assets
- ✓ Gains from sales within one year are taxable
- ✓ After a holding period of over one year, tax-free
- ✓ Extension of the holding period to 10 years when used for staking or lending
- ✓ Exemption limit of 600 EUR for such income (so called “other income”)
- ✓ Classification as “other income”

Income Tax Treatment

2. Business Income (§ 15 German Income Tax Act)

- ✓ Criteria for commercial trading:
  - ✓ High trading volume
  - ✓ Systematic approach
  - ✓ Use of debt
- ✓ Consequence: Next to income tax, trade tax liability and mandatory bookkeeping

Income Tax Treatment

3. Taxation of Mining and Staking

- ✓ Mining:
  - ✓ Usually, classified as business income if
    - Operated with the intention of making profit
    - There is a certain regularity
    - High investments in hardware or electricity costs
- ✓ Staking:
  - ✓ Tax classification depends on scope and organization
  - ✓ Can be considered as “other income” or business income

Income Tax Treatment

4. Special Considerations for Airdrops and Lending

- ✓ Airdrops:
  - ✓ Can be tax-free if no compensation is provided
  - ✓ Usually, classified as other income
- ✓ Lending:
  - ✓ Usually, classified as other income with an extended holding period of 10 years (not 1 year)
  - ✓ Income from cryptolending is classified as capital income or other income

Income Tax Treatment

5. Summary

- ✓ The tax classification is important for taxation
- ✓ Other income can be tax-free (holding period of 1 or 10 years) or taxable with individual tax rate
- ✓ Business income is taxable. In addition, trade tax and book-keeping obligations apply
- ✓ Capital gains are usually taxed with a flat-tax rate of 25% (plus solidarity surcharge of 5.5% thereof).

VAT Treatment

VAT Treatment

1. VAT Exemption for Cryptocurrency

- ✓ ECJ ruling (Hedqvist case, 2015): Cryptocurrencies as payment means are VAT-exempt
- ✓ Considered comparable to legal tender

VAT Treatment

2. VAT Treatment of Mining and Staking

- ✓ Mining: No exchange of service, as there is no obligated counterparty → No VAT liability
- ✓ Staking: VAT liability depends on contractual setup

VAT Treatment

3 . NFTs and VAT

- ✓ Different VAT treatment depending in use case:
  - ✓ Sale of digital artwork -> VAT-liable
  - ✓ Licensing of rights -> VAT-liable
  - ✓ Trading NFTs within the EU -> Regular VAT treatment

Cryptocurrencies in Business Assets

Cryptocurrencies in Business Assets

- ✓ Accounting treatment: Classified as intangible assets or current assets
- ✓ Valuation: Recorded at acquisition cost or lower fair value
- ✓ Profits: Taxable, losses deductible under certain conditions

Inheritance and Gift Tax Treatment

Inheritance and Gift Tax Treatment

- ✓ Cryptocurrencies are subject to inheritance and gift tax
- ✓ Valuation is based on market value at the date of the inheritance or gift
- ✓ Tax classes and exemptions depend on family relationship
- ✓ Example:
  - ✓ A father gifts his daughter 5 Bitcoin (BTC) worth €250,000.
  - ✓ Since this is a gift, it is subject to gift tax.
  - ✓ The exemption for children is 400,000 EUR (Tax Class I). Since the value of the gift is below this exemption, no gift tax applies.
  - ✓ If the gift were worth 600,000 EUR, then 200,000 EUR would be taxable, with a progressive tax rate depending on the tax class.
  - ✓ Challenge: Proof of gift and ensuring access to wallets for the recipient.

Moving away and International Taxation

Moving away and International Taxation

- ✓ For private assets no exit taxation applies
- ✓ For business assets an exit taxation might apply (taxation of hidden reserves)
- ✓ A limited tax liability might be given after the move e.g. crypto gains taxable if part of domestic business assets
- ✓ Extended limited tax liability under § 2 AStG: Applies if strong economic ties to Germany remain
- ✓ Double Taxation Agreements (DTA): Cryptocurrencies are usually categorized under Article 13 (Capital Gains) or Article 7 (Business Profits)

Reporting Obligations

Reporting Obligations

1. DAC-8 and Tax Transparency

- ✓ Introduction of reporting obligations for crypto transactions within the EU
- ✓ Connection to CRS (Common Reporting Standard) and FATCA for international tax transparency
- ✓ Who is required to report?
  - ✓ Crypto exchanges and trading platforms based in the EU
  - ✓ Custodial wallet providers
  - ✓ Companies acting as intermediaries for crypto transactions
  - ✓ Smart contract and DeFi platforms, if operating commercially

Reporting Obligations

2. Reporting Obligations under DAC-8

- ✓ Reportable transactions:
  - ✓ Crypto transfers above set thresholds
  - ✓ Trading gains and losses
  - ✓ Staking and mining income
  - ✓ Income from NFT sales and DeFi services
- ✓ Obligations of service providers:
  - ✓ Provision of customer data (KYC – Know Your Customer)
  - ✓ Disclosure of wallet addresses and transaction histories
  - ✓ Automatic forwarding of relevant data to tax authorities

Summary

Summary

- ✓ Cryptocurrencies are taxable assets with complex classification
- ✓ Taxpayers should document all transactions and assess tax planning opportunities
- ✓ International regulations and reporting obligations are gaining importance

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