

Source: International Tax Monitor: News Archive > 2018 > June > 06/27/2018 > News > Germany: Germany Reaffirms Crypto Tax Stance—But at Market's Expense?

Germany

Germany Reaffirms Crypto Tax Stance—But at Market's Expense?

By Jabeen Bhatti

Germany's lower house of parliament, the Bundestag, has confirmed it has two separate stances on when cryptocurrency is taxed.

Any income made from buying and selling tokens would be subject to income tax which can be as high as 45 percent. But when the digital currency is used as a means of payment, or when it's exchanged or sold, it will be exempt from Germany's 19 percent VAT.

The Bundestag confirmed the VAT exemption in a June 4 clarification, given in response to a minor inquiry in the lower house of the German parliament. While the clarification stems the fear that cryptocurrency would suddenly be liable for VAT, it still raises questions for traders on the German cryptocurrency market, who are becoming increasingly constrained in their work as lawmakers consider how to apply existing currency regulations to the fledgling crypto market, practitioners said.

"If you're dealing with cryptocurrencies from a VAT perspective, the Federal Tax Administration of Germany says that cryptocurrencies are equal to real currencies," Istvan Cocron, a partner with CLLB law firm in Berlin, who specializes in virtual currencies and startups, told Bloomberg Tax June 20. "But if you're buying and selling cryptocurrencies, it's like buying and selling things privately."

More Questions

The move dispels fears dating to 2014 that the government would eventually subject cryptocurrencies to VAT—a move attorneys say would tank the cryptocurrency market in Germany, since most sales are small and done by individuals.

The dual system is an attempt to regulate the market using existing laws for fiat money in order to levy taxes on cryptocurrencies, attorneys said. Such treatments that have been clarified in part through parliamentary inquiries, court cases at the European Court of Justice (C 264/14) and decrees from the finance ministry, they added.

"In light of the latest statement, it definitely looks like this past view no longer applies," David Hoetzel, a senior associate with the P+P Berlin law firm who specializes in the taxation of virtual currencies, told Bloomberg Tax in a June 20 email. "It is disadvantageous, however, that the government has only laid out the VAT treatment of cryptocurrencies solely used as a means of payment."

The clarification is in line with the German Finance Ministry's Feb. 27 decree on the tax treatment of cryptocurrencies, in which the government clarified that the peer-to-peer sale of cryptocurrencies, as well as the exchange of cryptocurrencies for goods or services and the mining of virtual tokens, would remain VAT-exempt, attorneys said.

Unclear Application

Cryptocurrencies are now on the same footing as fiat money as a means of payment in Germany. Virtual wallets alongside are the platforms used to store and trade virtual currencies. However, according to Matthias Luther, an attorney specializing in VAT and cryptocurrencies with KMLZ law firm in Düsseldorf, the suppliers of such virtual wallets aren't considered to be offering a financial service to their customers.

That means wallet suppliers must pay VAT—though Germany's VAT Act deems financial service providers, such as a bank providing a customer with a bank account, exempt from VAT.

"Their conclusion is incorrect—wallet providers should be treated the same way as banks," Luther told Bloomberg Tax June 19. "If a wallet provider could sufficiently show that its services are comparable to services provided by banks, it is likely that courts would find the wallet provider's services to be VAT-exempt."

While there haven't been any challenges to the rule yet, "the different treatment of wallet providers and banks might even infringe the principle of equal treatment" provided by the German constitution, he said.

Snapshot

- Inconsistencies in regulations will ultimately continue to constrain market
- Bundestag confirmed VAT exemption in June 4 clarification

Such inconsistencies in regulations will ultimately continue to constrain the market—and may hurt cryptocurrency investors trying to break into Germany, Hoetzel said.

“This half-baked predictability of future legal decisions by tax authorities and tax courts causes confusion, and might even lead to a false sense of security if market participants are not well advised,” he said.

To contact the reporter on this story: Jabeen Bhatti in Berlin at correspondents@bloomberglaw.com

To contact the editor on this story: Penny Sukhraj at psukhraj@bloombergtax.com

Contact us at <http://www.bna.com/contact-us> or call 1-800-372-1033

ISSN 1535-7783

Copyright © 2018, The Bureau of National Affairs, Inc.. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.