



KMLZ VAT NEWSLETTER

Notification from German Ministry of Finance regarding VAT treatment of Bitcoin

On 22.10.2015, in its case *Hedqvist* (C-264/14), the ECJ decided that the exchange of traditional currencies into the virtual currency Bitcoin and vice versa should be VAT exempt, in accordance with art. 135 para 1 of the VAT Directive. By notification dated 27.02.2018, the tax authorities implemented the ECJ's 2015 judgement. Furthermore, the German Ministry of Finance provided comments on further questions regarding the VAT treatment of virtual currencies.

1. Exchange of Bitcoin VAT exempt

Based on the ECJ judgment, the VAT exemption for financial transactions, in accordance with art. 135 para 1 lit. e of the VAT Directive, applies to the exchange of Bitcoin. That is to say, the VAT exemption no longer only applies with regard to traditional currencies regulated by law. According to the wording of sec. 4 no. 8 lit. b of the German VAT Act, the VAT exemption applies only with regard to currencies regulated by law. However, the German Ministry of Finance states, in its notification dated 27.02.2018, that this regulation must be interpreted according to EU law, and thus, also

Exchange of Bitcoin VAT exempt

On 27.02.2018 the German Ministry of Finance issued its very first notification regarding the VAT treatment of Bitcoin. Accordingly, the use of Bitcoin is to be treated the same as traditional currencies. Payments with Bitcoin are therefore not taxable. The exchange of Bitcoin into traditional currencies is tax exempt. However, VAT risks arise for online platforms, which allow virtual currencies to be traded via their platform. The tax exemption does not apply to the services provided by the platform. Additional VAT payments might be due.

applies with regard to the exchange of Bitcoin.

2. Use of Bitcoin as consideration

The use of money to make payments for a received supply is not taxable. This also now applies when the supply of goods or services are paid for by using Bitcoin. The use of Bitcoin as consideration is therefore not taxable. In this respect, the use of Bitcoin is treated as being equivalent to the use of traditional means of payment.

3. "Mining" not taxable

A so-called "Miner" provides the processing power of his computer in order to validate the Bitcoin transactions and include them in a "Block", which will be transferred into the "Blockchain". For this, the "Miner" receives compensation in the form of new Bitcoins from the system and a "transaction fee". These services provided by the "Miner" are not taxable. In the opinion of the German Ministry of Finance, the services provided by the "Miner" are not executed within an exchange of services due to the fact that there is no identifiable recipient. In the case where other users of the Bitcoin



Contact: Eveline Beer
Lawyer, Certified Tax Consultant
Phone: +49 211 54095335
eveline.beer@kmlz.de

system grant a „transaction fee“ to the “Miner“, such payments are voluntary and are not made in direct connection with the service provided by the “Miner“.

4. Fees for “Wallets“ subject to VAT

Bitcoin is kept in an electronic wallet (e.g. App on Smartphone). The provider of such “Wallets“ charges a fee, which is regarded as consideration for an electronically provided service. If the owner of the “Wallet“ is a private person resident in Germany, the provider of the “Wallet“ is required to account for German VAT.

5. Online platforms

The operators of platforms are also not permitted to apply the VAT exemption. Bitcoin can be purchased and traded via such platforms. The German Ministry of Finance is of the opinion that the operators of a platform only facilitate the technically automated processing. The VAT exemption is not applicable when only a website is provided as an online marketplace. Only in cases where the operator of a platform is purchasing and selling Bitcoin, in his own name, are these transactions VAT exempt in accordance with sec. 4 no. 8b of the German VAT Act.

6. Transactions using other virtual currencies

Furthermore, the German Ministry of Finance has stated that virtual currencies, other than Bitcoin, are also to be treated as being equivalent to traditional currencies. However, this only applies, when those currencies are accepted by the parties involved in the transaction as a contractual alternative and direct means of payment and do not have any other purpose beyond their use as a means of payment. Therefore, the exchange of such virtual currencies into traditional currencies, and vice versa, is VAT exempt. Such

alternative currencies have to be distinguished from so-called “in-game currencies“, which are, in particular, used in online games. In this case, virtual play money is given and is not an alternative means of payment in accordance with art. 135 of the VAT Directive.

7. Consequences for the practice

The ECJ, in its judgement *Hedqvist*, already argued in favor of the equal treatment of the virtual currency “Bitcoin“ with regard to traditional currencies. The opinion of the German tax authorities, that a barter transaction subject to VAT is given, therefore became unsustainable in the light of the ECJ’s judgement. Consequently, the authorities have had to acknowledge that the exchange of virtual currencies into traditional currencies is VAT exempt.

However, the equal treatment of Bitcoin with traditional currencies does not apply when it comes to online platforms. Whereas, the procurement of transactions, with a means of payment regulated by law, is VAT exempt in accordance with sec. 4 no. 8 lit. b of the German VAT Act, this VAT exemption does not apply with regard to the procurement of transactions with Bitcoin via online platforms. Although the ECJ has already decided, in several cases, that the type of activity and not the type of execution is decisive, it is insignificant whether the procurement services are provided via the participation of a person or by electronic means.

The notification of the German Ministry of Finance applies with regard to all open cases and thus bears a particular risk for the operators of online platforms who have, to date, assumed that the services provided by them are regarded as VAT exempt procurement services.