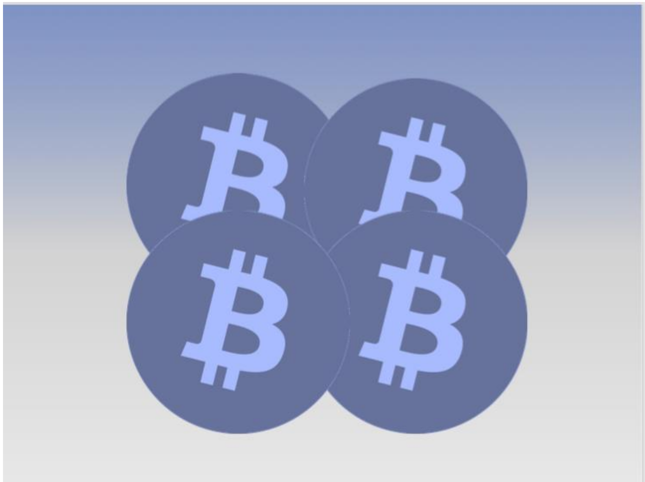
Bitcoin and tax: dangerous liaisons

Bitcoin is landing in our business life. People are preparing a suitable airport for one single purpose: to receive properly the new amazing bitcoin. What was a marginal issue reserved for some Tech freaks is becoming much more than a **virtual currency but an asset, a commodity**. Investors are looking at bitcoin as a desired object, and lots of euros and dollars are changing to a digital life through its conversion in cryptocurrencies.



But, what about Tax?

The first approach must point out that cryptocurrencies have in common that they are not issued by the central bank of public state authority. There is no EU-regulation about bitcoin being accepted as currency. In fact, it could be said that lack of general public regulation could be deemed as part of the DNA of bitcoin and other cryptocurrencies.

What is the European Central Banks approach?

The European Central Bank as other Central Banks in the world is observing the virtual currency's growth with some worries. Thus, there are presently ongoing discussions on some regulations on the virtual currencies.

Such concerns arise basically from the volatility of virtual currencies and of the absence of guarantee that their units will be exchanged for goods and services. However, the focus of the main worries probably lies on the anti-money laundering and counter-terrorist financing perspectives. The lack of traceability or difficulties to carry out a traceability of the virtual currencies transactions for the authorities put in question the non-regulated frame of the cryptocurrencies under the Central Bank's eyes.

In that sense it is to remark the Opinion of the European Central Bank of October 12th, 2016 on a proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC (CON/2016/49).

What about EU-Commission?

The EU-Commission has also showed its concerns about the cryptocurrencies as a possible tool of money laundry. Virtual currencies, as they are called in the report increase the exposure risk to **money laundering**. It is to remark the issue of such virtual currencies in online gambling business. See Working Paper of 27.6.2017, Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations, COM(2017) 340 final.

Bitcoin and VAT: love and mislove.

To face up the study of the dangerous liaisons between tax and bitcoin requires to distinguish two aspects: indirect taxes, that **is VAT,** and direct taxes, what is basically Income Tax and Corporate Tax. . As far as VAT is concerned it is important to remark:

a) There is no VAT regulation about VAT.
b) The delivery of currency is out of the scope of VAT.
c) The financial transactions are exempted in VAT.

The first question is thus whether bitcoin can be considered as currency in the term of VAT Directive. The answer is easy. Bitcoin transaction cannot be deemed as currency transition as bitcoin is not an officially recognised currency by the central bank.

The second question concerns the consideration or not of bitcoin transactions as financial transactions. European Court of Justice (ECJ) declared that “the exchange of traditional currencies for units of the ‘bitcoin’ virtual currency and vice versa” are deemed as financial exemption in the sense of the VAT Directive. See ECJ judgment, *Hedqvist*, C-264/14.

Love and mislove. On the one hand, ECJ accepts bitcoin transaction as VAT exempt. On the other hand, the lack of traceability let Tax Authorities be mistrustful over bitcoin and “friends”.

Direct tax and Bitcoin: mistrust

Income and Corporate tax are focused on the profit to be taxed. On the one hand, from that perspective the Transactions over Bitcoins can lead to some profit and losses, which are under the scope of the direct taxation. On the other hand, individuals or legal entities that held Bitcoins without transactions, may have latent surplus, not realised capital gains. For some direct taxation such latent profit should be taxed.

The mistrustful relationship between Tax and bitcoin arises from the not traceability of the transactions for the Tax Authorities, so that Tax Administration must rely on the good faith of the tax payers about the bitcoin ownership. However, Tax Administration will have other resources of information what should not be ignored.

Bitcoin introduce other issues beyond VAT or direct issues such as the payment of taxes. In this sense, Zug canton in Switzerland accepts bitcoin as payment of taxes. This could establish a trend in Tax Law, however the unclear origin of the money behind the bitcoin, the not traceability and anti money laundering regulations would make the way for this not easy in most jurisdictions.

In short, these words pretend to face up the complex the new landscape for tax and bitcoin. A relationship that deserves to be described with a film's title: dangerous liaisons.

Silence! Film is going on…

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