

with cryptocurrency, disclosing, among other information, the name, domicile, and TIN.

Risks and Chances

It is worth believing that, in non-regulated markets, cryptocurrencies are comparable to any pet rock - everyone wants to buy one because everyone else has one, not because they are, in any means, intrinsically valued. So, the risks become perceived when a lot of that attractiveness goes away, as we now see with the massive sell-off of many cryptocurrencies. Despite still being under regulation, according to experts, Brazil is a potential market for any crypto-related product.

“Brazilians never miss a tech trend. They’re rarely ever out in front. But when

they follow, they follow for real and stick with it. Within Latin America, look for Brazil to be the cryptocurrency ringleader both on the regulatory side and on the development side. As it now stands, more people are opening cryptocurrency trading accounts in Brazil than traditional brokerage accounts.” (www.forbes.com)

“Insurance for cryptocurrency storage will be a big opportunity.” (Christian Weishuber – Allianz’s spokesman).

Outlook or Summary

In August 2018, the news disclosed that the Atlas cryptocurrency investment platform was hacked and the data of over 264,000 clients stolen. Subsequently, the Brazilian Authorities started studies in an attempt to learn more about this business and its potential use in money-laundering. The question is

whether they will announce a general veto, as in China, or take a complete regulatory approach, as in Japan.

In anticipation of continued adoption of cryptocurrencies, the Brazilian educational system is taking steps to prepare its students for the upcoming cryptocurrency era. Fundação Getúlio Vargas (FGV), a higher education institution in São Paulo, has announced the first Master’s degree in Cryptofinance. The pioneer course in Brazil follows the lead of top universities in the US, including Duke, Cornell, and Massachusetts Institute of Technology (MIT), who have started to offer classes on the subject.

While facing a lack of general regulation, the only real certainty is that any gain arising from cryptocurrency is subject to Capital Gain.



Germany

By Oliver Biernat

Trading or private activity?

Anyone who trades bitcoins as a private individual often does not suspect that one can exercise a trade with it. In order to avoid unpleasant surprises such as accusations of tax evasion and to limit possible additional payments, interest and penalties, it is necessary to have a tax expert check this in good time and collect receipts. The border between trade and private activity is blurred. Section 15(2) sentence 1 of the Income Tax Act regulates this:

“An independent, sustainable activity undertaken with the

intention of making a profit and presented as a participation in general economic circulation is a commercial enterprise if the activity is not to be regarded as an agricultural, forestry, liberal profession or other independent work.”

- Independence should already be fulfilled if you operate your miner yourself with native Bitcoin clients or join forces with others in a mining pool.
- An activity is sustainable if it is designed for repetition, i.e. if further business is planned. So anyone who finds a block by chance because he runs a graphics card for test purposes is not being sustainable. If, on the other hand, you install multiple graphics cards in your server to mine permanently, you are acting sustainably.

- The participation in the general economic circulation will usually be given (i.e. an interaction with others takes place with the use of the bitcoins for paying or exchanging). Others think this is only the case if people offer their mining activities for a fee (i.e. they market the generated bitcoins themselves or make their computer capacity available for a charge).
- As a rule, it will, therefore, depend on whether the intention is to make a profit or it is a mere hobby, which is irrelevant from a tax point of view. The costs associated with mining or trading should also be taken into account when considering this issue. A trading business is present only if a total profit is expected to be achieved over its entire lifetime. The difficulty here is in estimating the

...next page

turnover. Should initial losses occur, trading activity may still exist, and it should be taken care of that these are determined and carried forward by the tax office so that they can later be offset against future profits.

If the requirements mentioned are met, trading activity will commonly exist in the case of mining and cloud mining. Some tax offices now suspect that mining is generally sustainable and therefore commercially operated due to the high initial investments.

But also with the bare trade in Bitcoins & CO, the private administration of assets can be exceeded fast in the case much is shifted, or you can make a living from it, maintain an office furnished for it, or even use personnel for it. If there is a trading activity, private individuals or their tax advisors should register a trade with the responsible municipality and report the activity to the tax office.

Value added tax treatment

Value added tax is to be applied, if any, only to entrepreneurs. The European Court of Justice had

already ruled in 2015 that the sale of bitcoins falls under the tax exemption for foreign exchange under EU Law. However, since bitcoins are not considered to be a legal tender, uncertainty still prevailed.

On 27 February 2018, the Federal Ministry of Finance expressed its opinion and confirmed that when conventional currencies are exchanged for units of the so-called virtual currency bitcoin and vice-versa, it is a service for money within the meaning of Art.2 (1) (c) of the VAT system directive, which falls under the exemption under Art.135(1) (e) of the VAT system directive. This means in detail:

- The exchange of Bitcoin is a taxable service which is VAT-exempt according to Art.4(8) (b) UStG.
- The use of Bitcoin as a fee is not taxable
- When paying with Bitcoin, the conversion must be made at the last published selling rate (e.g. on corresponding conversion portals on the Internet). The performing contractor must document it.
- The services provided by miners are not VAT liable.
- If providers demand payment of

fees for the digital wallets, other services within the meaning of Art.3a (5) (3) UStG are provided electronically, which are taxable in accordance with Art.3a (2) and (5) sentence 1 UStG, if the place of performance is in Germany (see also Art.3a.9a (1) to (8) UStAE).

- If the operator of a trading platform makes his website available to market participants as a technical marketplace for the acquisition or trading of Bitcoin, it is a matter of enabling purely EDP-technical settlement. A tax exemption, according to Art.4(8) UStG, is out of the question. However, if the operator of the platform purchases and sells Bitcoin as an intermediary in his own name, the tax exemption, according to Art.4(8) (b) UStG, is applicable.
- The exchange of virtual currencies for legal tender and vice-versa is exempt from VAT. This does not apply to virtual play money as this is not a means of payment in the sense of the VAT system.

Income tax treatment

- a) **Trading by private investors**
 Bitcoins are treated as intangible

GGI member firm

Benefitax GmbH

Steuerberatungsgesellschaft

Wirtschaftsprüfungsgesellschaft

Advisory, Auditing & Accounting,

Corporate Finance, Fiduciary

& Estate Planning, Tax

Frankfurt am Main, Germany

T: +49 69 256 227 60

W: www.benefitax.de

Oliver Biernat

Founder and Managing Partner

E: o.biernat@benefitax.de

Benefitax GmbH

Steuerberatungsgesellschaft

Wirtschaftsprüfungsgesellschaft is a

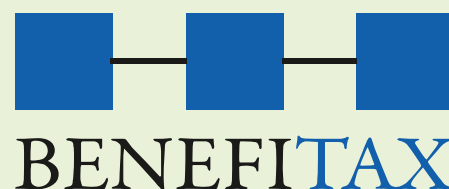
tax consultancy and public auditing



Oliver Biernat

company located in Frankfurt, which is widely recognised as the financial centre of Germany. Benefitax predominantly serves German entities of foreign multinational groups, mid-sized German companies with cross-border activities, and wealthy private individuals.

Oliver Biernat is the Founder and



Managing Partner of Benefitax. He is a German Chartered Accountant, Certified Tax Advisor, and Specialist Advisor for International Taxation with more than 20 years' experience. Since 2008, he has chaired GGI's International Taxation Practice Group (ITPG), increasing its size to more than 570 experts from 90 countries in the process.