

Over the recent years virtual currencies have mushroomed as alternative means of payment. Their increasingly wide use calls for a thorough analysis of the related tax issues, taking into account the absence of statutory provisions in the Bulgarian legislation.

There is no specific definition of the term “cryptocurrency” or “virtual currency” for tax purposes. No other legislative act contains a definition either. In its statement of clarifications of 19 March 2018, the National Revenue Agency (NRA) made a reference to the warning issued by the European Banking Authority (EBA), which reads in the summary that a virtual currency is a form of unregulated digital money that is not issued or guaranteed by a central bank and that can act as means of payment. Virtual currencies have come in many forms, beginning as currencies within online computer gaming environments and social networks, and developing into means of payment “offline” or in “real life”.

Taxation under the Corporate Income Tax Act

In accordance with the Corporate Income Tax Act (CITA), local legal persons are subject to taxation for their profits and income from all sources in Bulgaria and abroad. The tax financial result is established by converting the book-value financial result for tax purposes. There exist no specific provisions on a special treatment of the book value of revenues generated in the sale of virtual currencies (e.g. Bitcoin, Litecoin and others). Therefore they are generally recognized for tax purposes, i.e. they are not included in the conversion of the book-value financial result.

Taxation under the Personal Income Tax Act

The income from the transfer of rights or properties is considered to be a separate type of income. The taxable income covers the income from all sources, except for the income that is non-taxable as prescribed by the law. The income derived from the sale and/or exchange of cryptocurrencies is taxable, insofar as it does not fall within the scope of non-taxable income under Article 13 PITA and it is not exempted from taxation by any other law. Most generally,

in terms of their characteristics and purposes, virtual currencies may be considered to be financial assets. The taxable income from the sale or exchange of shares, stock, indemnification instruments, investment bonds and other financial assets or from the trade in foreign currencies is equal to the sum total of the profit generated in each transaction in the course of the year net of the sum total of the losses relevant to each transaction. The taxable income is stated in the annual tax return. The existing legislation does not require any special supporting documents to be attached to the tax return so that to prove the income generated from the sale of financial assets (cryptocurrencies).

However, these rules do not apply to the income from business operations of a natural person, regardless of whether he or she is registered as a sole proprietor or not. In accordance with the NRA statement of clarifications of 19 March 2018, the purchase of special computer systems so that to generate (mine) cryptocurrencies for the purpose of obtaining profit from their sale on the relevant exchange platforms should be considered to be an activity by occupation, i.e. it would turn into a permanent source of income. The law may treat this natural person as a trader provided that the person meets the requirements which are set out in the Commercial Code. In this case, the taxable income will be calculated on the basis of the tax laws applicable to the income of sole proprietors from their business operations.

The implementation of the Value Added Tax Act

The VAT Act does not contain any specific provisions on virtual currencies. The revenue authority presumes that the general rules of the existing legislation and the case law of the Court of Justice of the European Union will apply to them. Virtual currencies exist only in a digital form and they are sold on exchange platforms where the seller has no information about the final buyer. In this connection, any transaction in a virtual currency is considered to be supply of a service for VAT purposes and assessment should be made whether the supply is exempted or not.

In accordance with Article 135(1)(e) of the VAT Directive, Member States exempt transactions, including negotiation, concerning currency, bank notes and coins used as legal

tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest. The judgment of the Court of Justice of the European Union in Case C-264/14 of 22 October 2015 reads that transactions involving non-traditional currencies, that is to say, currencies other than those that are legal tender in one or more countries, in so far as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment, are financial transactions.

Hence the supply of services that constitute an exchange of traditional currencies for virtual currency units are vice versa by a consideration equal to the margin to be determined by the difference between the price at which the relevant operator buys the currencies, of the one part, and the price at which the operator sells them to his clients, of the other part, is an exempted transaction within the meaning of Article 135(1)(e) of the VAT Directive. Thus the sale of cryptocurrencies as financial assets represents sale of a financial service, within the meaning of the VAT Act, and it is exempted supply.

In this context, it is relevant to make a reference also to the opinion of the European Securities and Markets Authority (ESMA) given in its Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council that "cryptocurrencies are a relative immature asset class that pose major risks for investors".

The law firm will follow the developments in this field, given that the scant overall legal framework and, more specifically, tax treatment of cryptocurrencies and non-existent case law of administrative and judicial authorities on this issue.