

The Definition of and Approach to the Taxation of Crypto-Currencies in Malta

By **Jonathan Vassallo**, 14th May 2019

Background

Malta is one of the countries most advanced in terms of legislation regarding crypto-currencies and has developed a pragmatic approach in relation to the taxation of this asset type.

The Malta Commissioner for Revenue has issued three guidelines regarding the tax treatment of distributed ledger technology ('DLT') assets. Each of the guidelines relates to a different tax: income tax, VAT, and the duty payable on documents and transfers.

Categories of DLT Assets

For the purposes of taxation DLT assets are categorised as follows:

- **Coins** – this category refers to DLT assets, that do not have any characteristics of a security, that have no connection with any project or equity relating to the issuer, and whose utility, value or application is not directly related to the redemption of goods or services. Functionally coins represent the cryptographic equivalent of 'fiat currencies'.

- **Financial tokens** – this category refers to DLT assets with characteristics that are similar to equities, debentures, units in collective investment schemes, or derivatives, and include financial instruments. Generally, they are known as 'security', 'asset' or 'asset-backed' tokens. Alternatively, such tokens may provide potential reward, based on performance or voting rights, or represent ownership in assets, or rights secured by an asset, as in asset-backed tokens, or a combination of the

above.

- **Utility tokens** – this category refers to a DLT asset whose use, value or application is restricted solely to the acquisition of goods or services, either within the DLT platform, or within a limited network of DLT platforms. This category also includes all other DLT assets that are tokens and whose use is restricted solely to the acquisition of goods or services, whether or not listed on a DLT exchange. They have no relation to the equity of the issuer and do not have the characteristics of a security.

It may be possible for a token to contain the features of a financial and a utility token, depending on the terms and conditions of the relevant token. In this case the token is referred to as a 'hybrid' and taxation will depend on how the hybrid token is used; as a financial token, as a utility token, or as a coin.

Income Tax Treatment of DLT Assets

A transaction involving DLT assets, in terms of income tax, is treated in the same way as any other transaction, with reference to the nature of the activities, the status of the parties and the specific facts and circumstances of the particular case.

Ultimately, the tax treatment of any type of DLT asset will not necessarily be determined by its categorisation, but will depend on the purpose for and context in which it is used.

When a payment is made or received in a cryptocurrency it is treated like a payment in any other currency, for income tax purposes. Accordingly, for businesses which accept payment for goods or services in cryptocurrency, there is no change to when revenue is recognised or the manner in which taxable profit is calculated. The same applies to payments of remuneration, such as salaries or wages, which are regarded as taxable in terms of the general principles. When a payment is made by means of the transfer of a financial or utility token, it is treated like any other 'payment in kind'.

For the purpose of income tax, transactions involving DLT assets, are evaluated with reference to the market value of the DLT asset:

- the rate established by the relevant Maltese Authority, **OR** (if such a rate is not available);

- by reference to the average quoted price on a reputable exchange, on the date of the relevant transaction or event, **OR**;
- other methodology that meets the requirements of the Maltese Commissioner of Revenue.

Examples of the Application of General Tax Principles to Transactions Involving DLT Assets

◦ Transactions in COINS

The tax treatment of transactions involving DLT coins is identical to the tax treatment of transactions involving fiat currency. The profit realised from exchanging coins is treated in the same manner as the profit derived from the exchange of fiat currency. Gains and/or profit within the revenue account, from the mining of cryptocurrency, represent income. DLT coins fall outside the scope of capital gains tax.

◦ Return on FINANCIAL TOKENS

Returns derived from the holding of financial tokens, for example, payments such as dividends, interest, premiums etc., in a cryptocurrency or in another currency, or in kind, are treated as income for tax purposes.

◦ Transfers of FINANCIAL and UTILITY TOKENS

The tax treatment of the transfer of a financial or utility token, depends on whether the transfer is a trading transaction or the transfer of a capital asset.

If the transfer is a trading transaction, the consideration will be treated as a receipt in the revenue account and will be treated as a trading profit.

In the case of the transfer of a financial token, if it is not a trading transaction, the transfer may fall under the scope of capital gains tax.

◦ Treatment of INITIAL OFFERINGS

An initial offering of financial tokens (or token generation event), typically involves raising capital. The proceeds of such an issue are not treated as the income of the issuer and the issue of new tokens is not treated as a transfer, for the purposes of capital gains tax. Gains or profits realised from the provision of services or the supply of goods will represent income.

- **VAT**

In relation to VAT, a transaction involving DLT assets is analysed in the same manner as any other transaction, with the place of supply of the goods or services always being taken into consideration.

- **DUTY on Documents and Transfers**

When a transfer involves DLT assets that have the same characteristics as 'marketable securities', they are subject to duty, in accordance with the provisions of the Malta 'Duty on Documents and Transfers Act'.

Additional Information

If you would like further information on this subject, please contact the Dixcart office in Malta: advice.malta@dixcart.com or your usual Dixcart contact.