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By PwC Deutschland | 08. März 2023

Cryptocurrencies to be taxed as capital gain if not held for more than one year

Gains realized by taxpayers within one year from the sale or exchange of cryptocurrencies such as Bitcoin, Ethereum and Monero are subject to taxation as a private capital gain. At least as far as the year 2017 was concerned the Supreme Tax Court held that there was no normative enforcement deficit in the recognition and taxation of transactions with currency tokens which could be viewed as unconstitutional.

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Background

The Supreme Tax Court was asked to clarify whether profits of the plaintiff from the sale of various cryptocurrencies (Bitcoin, BTC, Ether, ETH, and the like) - so called "currency tokens", "payment tokens" or "coins" are subject to capital gains tax according to Sections 22 No. 2, 23(1) No. 2 Income Tax Act (ITA).

The plaintiff had acquired, swapped, and resold various cryptocurrencies. Specifically, these were transactions with Bitcoins, Ethereum and Monero, which the taxpayer carried out on a private basis. In 2017, he realized a profit of €3.4 million from these transactions. The dispute arose with the tax office as to whether the profit from the sale and exchange of cryptocurrencies was subject to income tax. The action brought by the taxpayer before the regional tax court (as court of first instance) was dismissed.

Decision

The Supreme Tax Court confirmed the tax liability of gains from Bitcoin, Ethereum and Monero. Cryptocurrencies are assets that are subject to taxation as a private capital gain pursuant to Section 23 (1) sentence 1 no. 2 ITA if they are bought and sold within one year.

Virtual currencies (currency tokens, payment tokens) are "other assets" within the meaning of Sec. 23 (1) Sentence 1 No. 2 ITA. The term "asset" in this context is to be interpreted broadly. In addition to goods and rights, it also includes actual circumstances (actual states and circumstances) as well as specific opportunities and benefits, for which the taxpayer is prepared to pay and which are accessible to a separate, independent valuation in accordance with the prevailing view of the market. These conditions are met in the case of virtual currencies. Bitcoin, Ethereum and Monero are to be regarded as a means of payment from an economic point of view. They are traded on trading platforms and exchanges, have a market value and can be used for payment transactions to be settled directly between parties. From a tax point of view technical details of virtual currencies are not relevant for their status as an asset. If the tokens are acquired and sold or exchanged within one year, the resulting gains or losses are subject to taxation.

Finally, the Supreme Tax Court held that this legal interpretation is not subject to further constitutional challenge with respect to possible structural deficiencies or structural budgetary defects. There are neither conflicting legislative collection rules that prevent taxation, nor are there any indications that the tax authorities are unable to determine and record profits and losses from transactions with cryptocurrencies. The fact that in individual cases taxpayers manage to evade taxation when trading in cryptocurrencies despite all investigative measures by the tax authorities cannot, in the opinion of the Supreme Tax Court, justify a structural enforcement deficit.

Note: With its decision the Supreme Tax Court is in accordance with the opinion of the tax administration on this matter. - On 11 May 2022, the German Federal Ministry of Finance (MoF) published a circular on the income taxation of virtual currencies and other tokens in coordination with the Supreme Tax Authorities of the German Federal States. In the case of lending and staking by private individuals, the sale of acquired virtual currency within one year is subject to income tax, it is tax-free if done after one year.

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One of the most intensively discussed questions in the run-up to the circular was whether transactions such as lending and staking can lead to an extension of the period during which a private sale of the virtual currency in question is taxable as a private disposal under Section 23 of the German Income Tax Act. Consistent with the view of the Federal States, the MoF circular states that the required ten-year holding period between acquisition and disposal does not apply to crypto currencies. In a first draft version of the circular, the BMF had argued that staking would extend the period for taxable disposals to ten years.

Source:

Supreme Tax Court, decision of 14 February 2023 (IX R 3/22), published on 28 February 2023; press release No. 13/23 from 28 February 2023.

Schlagwörter

Capital gains taxation, bitcoin, crypto assets / virtual assets