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A turning point in German crypto taxation

A draft bill prepared by the German Federal Ministry of Finance (BMF) has emerged, proposing a fundamental reform of the taxation of certain crypto assets held as private assets.

The key change: Bitcoin, Ether & Co. would move from the private disposal regime under Sec. 23 EStG into investment income under Sec. 20 EStG.

But the more interesting point lies in the interaction between tax law and MiCA classification.

? Scope: “exchange crypto assets”

The draft introduces “exchange crypto assets”: crypto assets within the meaning of MiCA that are accepted as a means of exchange without being issued or guaranteed by a central bank or public authority, including Bitcoin and Ether.

These assets would in future fall under Sec. 20 EStG.

Claims arising from lending or passive staking would also be covered, while NFTs, security tokens and other crypto assets representing an underlying asset or right would continue to follow the tax treatment of that underlying asset or right.

? Why stablecoins matter

Only e-money tokens within the meaning of Title IV MiCA are expressly excluded.

According to the explanatory memorandum, however, this covers only a small number of the crypto assets commonly referred to as stablecoins.

Stablecoins that do not qualify as e-money tokens, including certain asset-referenced tokens, may therefore still fall within the new regime and potentially become subject to withholding tax.

MiCA classification may thus become directly relevant for tax compliance.

? Other key changes

The one-year tax-free holding period would disappear for exchange crypto assets, making gains taxable regardless of holding period.

Domestic crypto-asset service providers or crypto-asset operators, or the domestic branch or permanent establishment of foreign crypto-asset service providers or crypto-asset operators, would be required to withhold tax at source from 2028.

For certain acquisitions without taxable consideration, including airdrops or bounties, acquisition costs may be set at EUR 0. Where acquisition date and costs cannot be established for withholding-tax purposes, the deduction would generally be calculated on 50% of the disposal proceeds.

? Timeline

From 1 January 2027 for assets acquired after 31 December 2026. Existing holdings would generally remain subject to the current regime. The withholding-tax mechanism would apply from 2028.

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MY TAKE

The draft would create a much closer link between MiCA classification, tax treatment and operational withholding obligations.

If the proposed rules remain in place, investors will need to keep in mind that two different income tax regimes may apply when disposing of crypto assets. This would increase the administrative burden.

Contact:

Frederek Schuska

Senior Manager Frankfurt
Tel.: +49 170 4163735
E-Mail:**frederek.schuska@pwc.com**

Schlagwörter

Gesetzgebung