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Research of the effectiveness of the system of legal regulation of tax relations for operations with cryptocurrency currently in force

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The article deals with the national practicies of direct and indirect taxation of income from cryptoassets in some countries of the world, including Russia, France, Italy, USA, Great Britain, etc. The authors study various approaches to the concept of cryptocurrency for the purposes of fiscal management: macroeconomic, cost, accounting, legal and institutional approaches. According to the authors position cryptocurrencies for tax reasons should be treated as a property and means of payment. Therefore, any income in cryptocurrencies received by taxpayers should be subject to personal income tax or corporate income tax, respectively. The recognition of cryptocurrencies as a means of payment (that is, private money) leads to the need to exempt taxpayers from paying value added tax in cases where cryptocurrencies perform these monetary functions in transactions performed by taxpayers, in particular, they perform the function of a means of payment. Payment of taxes on income of taxpayers received in cryptocurrencies can be carried out both in cryptocurrencies and in national (fiat) currencies. It is permissible to establish a tax declaration of transactions for cryptocurrency. The foundations of the legal regime of taxation of digital currencies in the Russian Federa-

tion have been formed. The problems of introducing effective taxation of cryptocurrency transactions in the Russian Federation are identified, as well as changes to tax legislation are proposed, in particular, clarification of the range of objects that can be classified as "digital currency", synchronization with the law on digital financial assets, determining the tax base and implementing tax control of transactions with cryptocurrency. As the study showed, the approaches to indirect taxation are the most unified. Tax regulation is a potential incentive to reduce the speculative interest of participants in transactions with cryptocurrencies and increase the transparency of taxation of cryptocurrencies.

Keywords: cryptocurrency, digital asset, fiscal management, legal regulation, taxation, business accounting.

1. Introduction

Modern financial technologies used by business entities in the FinTech segment are quite diverse. Financial technologies have become firmly established in the Russian economy as well. In 2016, in partnership with the Bank of Russia and ten large Russian based banks, the Fintech consortium was created to develop blockchain technology in the Russian financial sector and introduce financial innovations in line with digitalization trends[1]. Sberbank, together with Federal Antimonopoly Service of the Russian Federation (FAS), was one of the first to initiate a pilot Digital Ecosystem project using distributed document storage. Similar projects are currently being implemented by Alfa-Bank, VTB, Raiffeisen-Bank, Rosbank.

Blockchain technology is also promising for tax administration reasons. It allows to create a distributed storage system with secure access and the ability to authenticate users thereof.

Cryptocurrencies, which are actively used in the international and national markets, are of the greatest research interest (Bubnova, Bubnov 2018). Crypto assets and, in particular, digital currencies, are rapidly being introduced into the economies of all countries of the world. However, tax authorities often fail to foresee the full tax implications of using cryptoassets as a subject of civil transactions. At the current stage, the consequences of tax evasion of transactions with cryptoassets are practically not studied, although they constitute an important and promising aspect of the further development and improvement of legislation in force. It is important to formulate the key aspects of tax policy and the tax regime for virtual currencies in terms of taxation of income. However, for adequate regulatory regulation of taxation of transactions with cryptocurrency, it is necessary first to define the concept of this financial instrument, to understand its economic and legal nature.

The question of whether cryptocurrencies are money is causing much controversy. For example, according to William O'Rorke "bitcoin and other crypto assets can be considered nothing more than alternative means of payment" (O'Rorke 2018). Swiss lawyers Daniel Haeberli, Stefan Oesterhelt & Urs Meier Homburger in "Blockchain & Cryptocurrency Regulation" come to conclusion that cryptocurrencies are not "money" in the

[1] "In Russia, a consortium for the research and application of blockchain and cryptotechnologies is being created under the auspices of the Central Bank". *Banki.ru.* 2016. Accessed June 25, 2023. https://www.banki.ru/news/lenta/?id=9040016.

narrow meaning, as they are not statutory means of payment (Haeberli, Oesterhelt, Homburger 2019).

The view that cryptocurrencies are recognized as being of a monetary nature is supported by some French researchers who disagree with the position of their Financial Markets Oversight Service. They consider cryptocurrencies to be money and, accordingly, a means of payment, but not public, but private money (Bali 2016, 6). This approach is based on Judgment of the European Court of Justice of 22 October 2015 in Case C-264/14 under which "bitcoin" virtual currency has no purpose other than to be a means of payment[2].

European Court of Justice's approach is shared by legislative institutions of the European Union. For example, in 2018, the text of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC was supplemented by par. 18 Art. 3, according to which "virtual currencies" means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically[3].

A similar position is adhered to by the Financial Action Task Force on Money Laundering — FATF. In its report "Virtual Currencies. Key Definitions and Potential AML/CFT Risks" virtual currencies are defined as digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i. e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction[4]. This definition, in turn, is based on the definition given by the European Central Bank, according to which a virtual currency is a type of unregulated, digital money, which is issued and usually controlled by its developers[5], and used and accepted among the members of a specific virtual community[6].

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[2] Case C-264/14 Skatteverket v David Hedqvist [2015] ECLI:EU:C:2015:718, para. 24. Accessed June 25, 2023. https://curia.europa.eu/juris/liste.jsf?num=C-264/14.

[3] Art. 3 (18) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. *OJ.* L 141. 05.06.2015, p. 73 as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. *OJ.* L 156. 19.06.2018, p. 43. Accessed June 25, 2023. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849.

[4] "Virtual currencies — key definitions and potential aml/cft risks". *FATF.* 2014. Accessed June 25, 2023. http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf.

[5] The authors note that with the advent of decentralized virtual currencies such as bitcoin, which are not issued or controlled by a centralized developer, this definition is somewhat outdated.

[6] "Virtual Currency Schemes". *European Central Bank.* October 2012. Accessed June 25, 2023. https://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf.

As was stressed by FATF a virtual currency is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency. Virtual currency is distinguished from fiat currency (a. k. a. "real currency," "real money", or "national currency"), which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and accepted as a medium of exchange in the issuing country. It is distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency. E-money is a digital transfer mechanism for fiat currency — i. e., it electronically transfers value that has legal tender status.

The position of the European Union and the FATF was supported by the Russian legislator, who defined digital currency as a means of payment[7], although its use is prohibited in settlements for residents of the Russian Federation.

Despite these disputes, almost all researchers are unanimous in that crypto assets, and, in particular, cryptocurrencies, are property. For instance such conclusion is made in Federal Council report on virtual currencies in response to the Schwaab (13.3687) and Weibel (13.4070) postulates of June 25 in which given their tradability, virtual currencies are classified as an asset[8].

2. Basic research

2.1. Methodology and functional approaches to the definition of cryptocurrencies for the purposes of tax regulation

For tax purposes, it is necessary to define the concept of "cryptocurrency", which may differ in various legal systems, as well as in different countries. From a technical point of view, digital currency is the most general concept, which refers to a special form of currency that exists only in digital form. Digital currency is intangible, operations with it and storage thereof are possible only if there are electronic wallets connected to the Internet or another designated network. Digital currencies can be used to pay for goods and services, most often, on certain Internet portals, on social networks or on gaming sites. According to the method of regulation, digital currencies are usually divided into regulated digital currencies of central (national) banks and virtual currency. A regulated digital currency is a digital currency regulated by the central (national) bank of the respective state (Bech, Garratt 2017).

Virtual currency should be understood as private digital money that doesn't fall within the scope of national central bank regulation and which is controlled only its developer, parent organization or a certain network protocol, and is accepted for payment in the virtual world. If a virtual currency is created using blockchain technology and asymmetric cryptographic encryption, then it is "cryptocurrency".

[7] "Art. 1 (3) Federal law of 31.07.2020 No. 259-FZ on digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation". *The official Internet portal of legal information.* Accessed June 25, 2023. http://www.pravo.gov.ru.

[8] Federal Council report on virtual currencies in response to the Schwaab (13.3687) and Weibel (13.4070) postulates of June 25, 2014, p. 7. Accessed June 25, 2023. https://www.news.admin.ch/NSBSubscriber/message/attachments/35355.pdf.

However, this definition of cryptocurrency also needs to be clarified using the following economic approaches, given that money is, first of all, an economic social relation.

The first approach — macroeconomic one — implies the possibility of a decentralized payment system (taxation of payment system operators).

The second approach deals with a digital expression of value from the standpoint of value (determination of the taxable base for value-added tax (VAT)).

The third approach — accounting one — considers cryptocurrency as an accounting object — a financial asset (taxation of income from transactions with financial assets).

The fourth approach — the legal one — considers cryptocurrency as an object of legal regulation and digital rights (changes in the tax and civil legislation of the Russian Federation).

Let's study examples of how some regulators define the concept of "cryptocurrency", guided by the indicated economic approaches.

For example, the definition of "cryptocurrency" is contained in the Federal Council report on virtual currencies in response to the Schwaab (13.3687) and Weibel (13.4070) postulates. of June 25, 2014[9]. The Report reiterates the EU approach and defines virtual currencies as digital representation of a value which can be traded on the Internet. Given their tradability, virtual currencies should be classified as an asset.

Another feature of "cryptocurrencies", according to the Swiss authority for financial markets, is the way they are issued. The Glossary to the Report of the Swiss Federal Council[10] states that virtual currencies are issued and controlled by a non-regulated institution or a network of computers. This feature is an important criterion for distinguishing cryptocurrencies from other forms of money recorded on a durable electronic medium.

This feature was used by FINMA in a FINMA press release of September 19, 2017. FINMA announced that since 2016 and for more than one year, the QUID PRO QUO Association has been issuing its own "cryptocurrency" called "E-Coins". FINMA called it "pseudo-cryptocurrency". Together with DIGITAL TRADING AG and Marcelco Group AG, the Association offered interested parties an internet platform for trading and transferring these electronic coins. Three legal entities accepted funds from several hundred users through this platform for a total amount of at least four million francs and managed these funds in virtual accounts. According to FINMA, this activity is consistent with passive banking and remains illegal unless the company in question holds the relevant financial market licence[11].

FINMA also reported that unlike real cryptocurrencies, which are stored on distributed networks and use blockchain technology, E-Coins were completely under the providers' control and stored locally on its servers. The providers had suggested that E-Coins would be 80 % backed by tangible assets, but the actual percentage was significantly lower[12]. Moreover, substantial tranches of E-Coins were issued without sufficient asset backing, leading to a progressive dilution of the E-Coin system to the detriment of investors.

[9] Federal Council report on virtual currencies…

[10] Ibid.

[11] FINMA closes down coin providers and issues warning about fake cryptocurrencies. Press release of September 19, 2017. Accessed March 28, 2023. https://www.finma.ch/~/media/finma/dokumente/dokumentencenter/8news/medienmitteilungen/2017/09/20170919-mm-coin-anbieter_de.pdf?sc_lang=en.

[12] Ibid.

Thus, from the point of view of the Swiss regulator, "cryptocurrencies" should be understood as such a financial asset that has the following features:

— it is digital representation of a value, i. e. exists as a digital code;

— it has no physical form, that is, it cannot exist in the form of coins or banknotes;

— can be used as a means of payment for real goods and services;

— issued and stored decentralized using blockchain technology.

A similar position in defining digital currencies was taken by the Russian legislator. In accordance with Part 3 of Article 1 of the Federal Law of July 31, 2020 No. 259-FZ on Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation, digital currency is understood as a set of electronic data (digital code or designation) contained in the information system.

Since cryptocurrencies are a type of digital currencies created using blockchain technology and asymmetric cryptographic encryption, the definition of digital currency provided in the Russian Federal Law No. 259-FZ of July 31, 2020 can also be applied to cryptocurrency, if this does not contradict its specific features.

From the point of view of Russian legislation, digital currencies should have the following features:

— digital currencies can be offered and accepted as a means of payment that is not a monetary unit of the Russian Federation, a monetary unit of a foreign state and/or an international monetary or unit of account, and can also be used as an investment[13]; therefore, the concept of "digital currency" should not include the "digital ruble", which the Central Bank of the Russian Federation intends to introduce soon[14], given that it will be considered the currency of the Russian Federation;

— regarding digital currencies, there should be no person bearing responsibility before each owner of such electronic data, saving the operator and/or nodes of the information system, which are only obliged to ensure compliance with the procedure for the release of these electronic data and the implementation of actions in relation to them to make (change) entries in such information system to its rules[15];

— digital currency is recognized as an asset[16].

Thus, the Russian legislator, like the Swiss regulator of financial markets, believes that cryptocurrencies (digital currencies) can be a means of payment, are property (assets), and are also not of creditor-debtor relationship nature. From the analysis of this definition, it turns out that from the point of view of the Russian legislator, "true" private digital currencies can only be issued using public blockchain technology, examples of such digital currencies are bitcoin and ether, which was also stated by FINMA. However, unlike the Swiss regulator, the Russian legislator has banned the use of private digital currencies as a means of payment. This prohibition is addressed only to residents of the Russian Federation.

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[13] Art. 1 (3) of Federal Law of July 31, 2020 No. 259-FZ on Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation.

[14] "Digital ruble. Report for public consultation". *Bank of Russia.* 2020. Accessed June 25, 2023. https://cbr.ru/StaticHtml/File/112957/Consultation_Paper_201013.pdf.

[15] Art. 1 (3) Federal Law of July 31, 2020 No. 259-FZ on Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation.

[16] Art. 3 Federal Law of August 7, 2001 No. 115-FZ on combating the legalization (laundering) of proceeds from crime and the financing of terrorism. Accessed June 25, 2023. https://gss.unicreditgroup.eu/sites/default/files/markets/documents/Federal%20Law%20115-FZ.pdf.

2.2. Analysis of foreign legal practices in regulating tax relations in the context of the use of cryptocurrency

The development of legal approaches to the taxation of income from transactions with cryptocurrency had a significant impact on the global development of the cryptocurrency market. The most representative legal orders from the taxation point of view were established in Great Britain, Israel, USA, France, Switzerland, and the European Union. The UK is a leader in cryptocurrency integration and one of the most favorable and convenient jurisdictions for doing cryptocurrency business. Moreover, the state provides support to startups related to digital currency (Solodan 2019).

Table 1 shows the classification of the legal regimes of transactions with cryptocurrencies in some foreign countries for tax purposes.

Table 1. **Classification of cryptocurrencies in foreign countries for tax purposes***

Country	Classification	Tax regime
Australia	Property	Capital gains tax** Goods Service Tax*** is not applicable
United Kingdom	Asset or private money: Determined by the court on a case-by-case basis	Capital gains tax Sales tax is not applicable
Germany	Private money	No capital gain tax. Sales tax is not applicable**** If owned less than one year, a progressive income tax of up to 45 % applies for gains
Italy	Currency	Capital gain tax
Canada	Barter form of exchange	Capital gains tax
China	Virtual commodity	No taxes
Lichtenstein	Digital asset	Integration of wealth tax into income tax, as well as the principle that the source of income is subject to property tax or income tax (avoidance of double taxation)
United States	Property	Capital gains tax Sales tax is not applicable
France	Goods	Capital gains tax
Switzerland	Foreign currency	No capital gains tax Sales tax is not applicable
Japan	Legal method of payment, currency	Capital gains tax Exempt from consumption tax*****

* The authors basically used the table provided in: (Langer 2017).

** Capital Gains Tax is a tax on the profit when you sell (or 'dispose of') something (an 'asset') that's increased in value. It's the gain you make that's taxed, not the amount of money you receive.

*** Goods and ServicesTax (GST) — a broad-based tax of 10 % on most goods, services and other items sold or consumed in Australia. It is an Indirect tax which introduced to replacing a host of other Indirect taxes such as value added tax, service tax, etc.

**** Sales tax rate is a tax charged to consumers based on the purchase price of certain goods and services.

***** Consumption tax is a national tax levied against the volume of business and through self-assessment.

A study of the tax regulation of crypto assets in various jurisdictions indicates the prevalence of income taxation in the corporate area, with differentiation depending on the income received. The most unified approaches to indirect taxation. Tax regulation can serve as an incentive to reduce the speculative interest of participants in transactions with cryptocurrency.

As for security tokens and utility tokens the latter, as a rule, are not taxed. This is not surprising given that utility tokens cannot be treated as a property. The classification of tokens was proposed by FINMA in the Guide pratique pour les questions d'assujettissement concernant les initial coin offerings (ICO) (Edition FINMA du 16 février 2018)[17].

FINMA categorises tokens into three types, but hybrid forms are possible:

Payment tokens are synonymous with cryptocurrencies and have no further functions or links to other development projects. Tokens may in some cases only develop the necessary functionality and become accepted as a means of payment over a period of time.

Utility tokens are tokens which are intended to provide digital access to an application or service.

These tokens do not qualify as securities only if their sole purpose is to confer digital access rights to an application or service and if the utility token can already be used in this way at the point of issue. If a utility token functions solely or partially as an investment in economic terms, FINMA will treat such tokens as securities (i. e. in the same way as asset tokens).

Asset tokens represent assets such as participations in real physical underlyings, companies, or earnings streams, or an entitlement to dividends or interest payments. In terms of their economic function, the tokens are analogous to equities, bonds or derivatives.

Thus, only transactions with payment and investment tokens (as those tokens can be classified as "property") can be taxed. Service tokens are not property but are "countermarks" for access to the corresponding content. Therefore, transactions with them cannot be classified as economic transactions for tax purposes.

The greatest incentive for countries to tax regulation and control of transactions with cryptocurrencies is the possibility of their use for money laundering, "dilution" and concealment of income (Kochergin, Pokrovskaia 2020, 64).

In some legal systems accounting standards should be considered when using and administering cryptocurrencies. For example, by early 2017, the Australian Accounting Standards Board (AASB) issued a cryptoasset accounting standard[18]. In 2018, the Republic of Belarus adopted the National Accounting and Reporting Standard "Digital Signs (Tokens)". Crypto platform operators and cryptocurrency exchange operators were required to reflect operations with cryptocurrency in accounting, draw up accounting and financial statements, in accordance with the established procedure of the Ministry of Finance of the Republic of Belarus[19].

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[17] Guide pratique pour les questions d'assujettissement concernant les initial coin offerings (ICO) Edition du 16 février. 2018. Accessed June 25, 2023. https://www.finma.ch/fr/~/media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?la=fr.

[18] Digital currency — A case for standard setting activity. A perspective by the Australian Accounting Standards Board (AASB). Accessed June 25, 2023. https://www.aasb.gov.au/admin/file/content102/c3/AASB_ASAF_DigitalCurrency.pdf.

[19] Decision of the Ministry of Finance of the Republic of Belarus of March 6, 2018 No. 16. On the approval of the National standard of accounting and reporting "Digital signs (tokens)" and the introduction of additions and changes in some resolutions of the Ministry of Finance of the Republic of Belarus. National

The mechanism of taxation of transactions with cryptocurrencies, performed by legal entities and individuals, also requires deep and comprehensive legal study. For example, in Germany, mining is not recognized as a taxable event, according to the following clarifications from the Ministry of Finance. The German Ministry of Finance believes that the fee for including a transaction in a block is not in any strict connection with the actions of the miner. The task of calculating a new block is posed by the mining pool, which disposes of the computing power provided to the platform, and the result in the form of a new block is added to the distributed ledger. The position under consideration is based on the following conclusions. First, the point of view under consideration is based on the fact that there is no contract between the users of the system who initiate the transaction and the miner, and therefore the amount received by the miner is paid voluntarily. This position seems to be controversial. For example, according to Simon Geiregat, cryptoassets are contracts (Geiregat 2018).

Secondly, the new coins arising from the miner, according to the protocol, come generally outside the framework of exchange relations. First of all, there is no specific recipient of the property grant made by the miner[20]. To determine the amount of tax payments, one should take into account the costs of miners for the purchase of equipment, its depreciation, maintenance, rent, and energy consumption for mining. So, for miners, the most attractive regions for conducting a cryptocurrency business are regions with the lowest energy consumption rates.

In Belarus taxation issues in this field are covered by the Decree of the President of the Republic of Belarus dated December 21, 2017 No. 8 "On the development of the digital economy". It came into force on March 28, 2018. Under the Decree all cryptocurrency operations, including cryptocurrency mining, are tax-exempt until 2023, and Hi-Tech Park blockchain companies pay only 1 % in tax until 2049[21]. It also stipulates requirements for operators of crypto-exchanges and ICOs in Belarus: obligation to obtain the status of a resident of the Park of High Technologies, non-residents can only conduct an ICO through a resident intermediary; it also provides complete monitoring of customer transactions; refusal to process suspicious transactions and obligation to inform about them; requirements of full verification of clients; control of transactions during the ICO; blocking the entry of "suspicious" tokens into the market.

The Organization for Economic Cooperation and Development (OECD) in 2018 announced the need for early development of common approaches to determining the tax implications of using cryptoassets with distributed ledger technology. This work was initiated within the framework of the Tax Challenges Arising from Digitalisation[22] as a part of Base Erosion and Profit Shifting (BEPS) events. Further this project was continued in

Legal Internet Portal of the Republic of Belarus, 03.24.2018, 8/32944. Accessed June 25, 2023. https://pravo.by/document/?guid=12551&p0=W21832944&p1=1.

[20] "Umsatzsteuerliche Behandlung von Bitcoin und anderen sog. virtuellen Währungen; EuGH-Urteil. Vom 22. Oktober 2015. C-264/14, Hedqvist". *Bundesministerium der Finanzen. Berlin*. 2018. Accessed June 25, 2023. https://www.ihk-muenchen.de/ihk/documents/Recht-Steuern/Steuerrecht/Finanzverwaltung/2018-02-27-umsatzsteuerliche-behandlung-von-bitcoin-und-anderen-sog-virtuellen-waehrungen.pdf.

[21] Decree of the President of the Republic of Belarus dated December 21, 2017 No. 8 "On the development of the digital economy". Accessed June 25, 2023. http://president.gov.by/ru/official_documents_ru/view/dekret-8-ot-21-dekabrja-2017-g-17716/.

[22] OECD/G20 Base Erosion and Profit Shifting Project. Tax Challenges arising from Digitalisation — Interim Report 2018. Accessed June 25, 2023. https://www.oecd-ilibrary.org/sites/9789264293083-en/index.html?itemId=/content/publication/9789264293083-en.

2019 with Addressing the Tax Challenges of the Digitalization of the Economy[23] Report. The report notes that digitalization and some of the business models it promotes pose significant challenges to international taxation. Tax issues arising from the digitalization of the economy are identified as one of the main areas of the Base Erosion and Profit Shifting Action Plan (BEPS)[24]. The digital economy needs to be separated from the rest of the economy for tax purposes due to the increasingly ubiquitous nature of digitalization. Digitalization has given rise to a number of broader direct taxation problems. These concerns are mainly related to the question of how tax laws should be allocated among countries for income derived from cross-border activities in the digital age.

In October 2020, the OECD released Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues[25].

When developing a taxation system for cryptoassets, the key issues include:

> How should the income created by crypto-assets be treated for direct and indirect tax purposes?
>
> If considered to be property, should the stock of crypto-assets be included in countries' net wealth taxes (where they exist) or other capital taxes? If so, how should they be valued?
>
> How should VAT systems treat the creation, acquiring, holding and transfer of these assets?
>
> What are the policy implications of the different tax treatments available?
>
> How can governments effectively detect and address the risks of tax evasion and other financial crimes posed by crypto-assets, including what are the existing legal frameworks and tools that tax administrations can use?
>
> How to improve tax transparency, including what information tax administrations need to know about transactions for purposes of compliance and enforcement? In addition, the OECD is addressing the need for greater tax transparency in this area, in particular in light of the tax compliance risks posed by crypto-assets. In this respect, the OECD is currently developing technical proposals in order to ensure an adequate and effective level of reporting and exchange of information with respect to crypto-assets.

The answers to these and other questions will have to be given by national legislators in order to create a full-fledged legal and economic mechanism for taxing transactions with cryptoassets.

Key taxable events related to virtual currencies are token offer (release), money, forging. The creation of a new unit of virtual currency through mining can conceptually lead to taxation when the unit is received by the miner, however this matter is not considered in many countries.

The procedure for taxing virtual currencies in different countries often follows from the definition of the essence (concept) of virtual currencies within a particular country, since this determines their compliance with existing laws on income taxation. Most often,

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[23] "Addressing the Tax Challenges of the Digitalisation of the Economy. Public Consultation Document". *OECD.* 2019. Accessed June 25, 2023. https://www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf.

[24] Action Plan on Base Erosion and Profit Shifting. Accessed June 25, 2023. https://www.oecd.org/ctp/BEPSActionPlan.pdf.

[25] Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues. *OECD.* 2020. Accessed June 25, 2023. https://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf.

virtual currency is considered to belong to an existing category of income and is taxed as usual for this form of income (income tax, VAT).

Very few countries consider cryptocurrency (which can also be payment tokens) as a type of currency (foreign or domestic) for tax purposes. The reasons for this are varied, but often related to their decentralization, lack of support, price volatility and limited use as a medium of exchange.

In some countries, there is uncertainty on the definition of virtual currencies, which could lead to different interpretations of the tax regime. Since virtual currencies are generally considered to be a form of intangible property or financial assets rather than currency for income tax purposes, it is likely that normal property tax rules will apply rather than foreign currency taxation rules. Foreign exchange taxation rules often contain provisions aimed at minimizing the tax consequences of taxing foreign exchange for individuals or casual / small traders, that is, by providing minimum exemptions or tax exemptions for transactions carried out on individual accounts.

Under legislation of Andorra, Argentina, Austria, Cote d'Ivoire, Colombia, Croatia, Estonia, Finland, Japan, Luxembourg, New Zealand, Norway, Slovenia, South Africa, UK and USA first taxable event for mined virtual currencies under income taxes takes place on receipt of new tokens from mining. If taxable on receipt, the value of the unit of virtual currency received is included in taxable income (other capital income, or miscellaneous income) when the token is received, and income tax applies at the normal rate within that category of income, either at personal or corporate income tax rates. The costs associated with deriving that income are deductible[26]. Direct costs incurred in accumulating this income can be deducted, including the cost of electricity and equipment used in mining. A tax liability arises upon receipt of a token or commission fee. Special rules based on average exchange rates can be used to roughly calculate income over a longer period (for example, per day or month).

In Italy, transactions of individuals in virtual currencies are generally not taxed unless they are considered speculative. The Italian tax authorities consider it speculative if, during the financial year and for at least seven consecutive days, the virtual currency holding threshold exceeds approximately € 51 000. Taxes may also apply if trading profits exceed € 51 646 for seven consecutive days[27].

The OECD Report "Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues" also deals with disposal of virtual currencies as taxable event. In the Report OECD experts analyze such events as exchange of a virtual currency for fiat currency, exchange of a virtual currency for other virtual currencies or crypto-assets and exchange of a virtual currency in payment for goods and services, or wages. These transactions are considered barter or reciprocal for tax purposes in many countries where cryptocurrency is legalized. Receiving virtual currency does not change the underlying tax regime that would apply if the purchase was made in fiat currency. Therefore, a supplier who receives payment for goods and services in virtual currency must include the value of the virtual currency in their taxable income. Likewise, if salaries are paid in vir-

[26] Taxing Virtual Currencies… P. 24.

[27] "Risoluzione No. 72". *Agenzia Entrate, Italian Ministry of Economy and Finance.* 2016. Accessed June 25, 2023. https://www.agenziaentrate.gov.it/portale/documents/20143/302984/Risoluzione+n.+72+del+02+settembre+2016_RISOLUZIONE+N.+72+DEL+02+SETTEMBRE+2016E.pdf/8e057611-819f-6c8d-e168-a1fb487468d6

tual currency, they are also taxable under the personal income tax rules, either as fringe benefits or as salary income.

The possibility of losses or theft of a virtual currency gives rise to a number of questions from a tax perspective. Should a loss or theft be treated as a disposal (and capital loss) for the taxpayer? Are lost tokens able to be deducted from the value of an inheritance? There is very little guidance available on how these events should be treated for tax purposes and approaches differ in the few countries providing guidance.

For example, in the case of loss or theft of a crypto-asset in Australia, the owner may claim a capital loss, provided they are able to present the evidence of their ownership. In the United Kingdom, theft is not considered to be a disposal and Her Majesty's Revenue and Customs (HMRC) considers that the individual continues to own the asset. Similarly, the loss of a private key is not considered a disposal, but a taxpayer can apply to have the loss recognised[28].

2.3. Shaping a legal taxation regime for digital currencies in Russia

On January 1, 2021, in Russian Federation the Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation" came into force. Even earlier, Russia adopted Federal Law No. 34-FZ on March 18, 2019 "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation" supplemented Part 1 of the Civil Code of the Russian Federation by Art. 141.1, which deals with digital rights[29].

Thus, from about January 1, 2021, regulation of the turnover of cryptocurrencies begins in Russia, however, this regulation is based mainly on restrictive rules. So, the Russian legislator has banned the circulation of digital currency for residents of the Russian Federation. Under Art. 14 (5) of the Russian Federal Law No. 259-FZ of July 31, 2020, residents are not entitled to accept digital currency as a counter-provision for the goods transferred by them, the work they perform, the services they provide.

The draft law on taxation of cryptocurrencies passed its first reading in State Duma in February 2021[30]. It should be noted that the draft law does not use the term "cryptocurrency", but the term "digital currency".

Moreover, when preparing the draft law for the first reading, the committees of the State Duma of the Russian Federation made a number of comments. In particular, the Chairman of the Committee for State Building and Legislation P. V. Krasheninnikov drew attention to the fact that amendments to Russian legislation are necessary in order to regulate the consequences of the spread of digital currency and expand the number of economic entities using it for various purposes. However, there is no concept of "digital currency" in the Civil Code of the Russian Federation. It seems reasonable to collect the entire conceptual apparatus of digital property turnover in the Civil Code of the Russian

[28] Information provided under: Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues. *OECD.* 2020. P. 31.

[29] Civil Code of the Russian Federation as amended by Federal law of 18.03.2019 No. 34-FZ. Accessed June 25, 2023. http://www.consultant.ru/document/cons_doc_LAW_5142/8568bf88dfcddf96ec39cede2444c36c998fbde3.

[30] Draft Federal Law No. 1065710-7. "On amendments to parts one and two of the Tax Code of the Russian Federation (in terms of taxation of digital currency)". The text of the bill adopted in the first reading. Accessed June 25, 2023. https://sozd.duma.gov.ru/bill/1065710-7.

Federation in order to ensure uniformity. It is also necessary for the purposes of tax regulation.

Otherwise, the use in tax legislation of its own, autonomous concepts of "digital currencies", "digital rights", "digital property" could create uncertainty in the definition of their tax regime for a huge number of Russian economic actors and raise problems in law enforcement practice. The different wordings of the same concept contained in different acts and regulations can create the basis for regulatory arbitration.

"Moreover, creditors in civil relations could be in less favorable position than tax authorities. Such situations can lead to the violation of equity before law" stressed P. V. Krasheninnikov[31]. In this regard, it is impossible to establish the tax regime of digital currencies without clarifying the range of objects that can be classified as "digital currency", establishing their relationship with the categories of "digital rights", "money" enshrined in the Civil Code of the Russian Federation, as well as establishing a clear regime of their use.

P. V. Krasheninnikov's position seems to be valid and justified. Currently, the concept of digital currency is contained only in the Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation". It seems reasonable to supplement the Civil Code of the Russian Federation with a legal norm introducing a definition of digital currency, which can also be used for taxation purposes, as well as for the purposes of applying other laws covering various matters dealing with digital currency. This approach will make the definition of the term "digital currency", "cryptocurrency" the most universal and convenient.

2.4. Proposals for the establishment of a legal mechanism for taxation of transactions with cryptocurrency

The above analysis of the legislation of various countries on the turnover of cryptocurrencies showed the fragmentation of its legal regulation, as well as the inconsistency of various approaches to the definition and legal nature of bitcoin and other cryptocurrencies. However, cryptocurrency transactions that take place around the world need adequate taxation.

Therefore, at this stage, it is necessary to determine at least the minimum principles, based on which it is possible to create a system of tax regulation of operations with cryptocurrencies, so to speak, of the "first generation of principles on cryptocurrencies turnover taxation".

To this end, when developing a taxation mechanism for transactions with cryptocurrencies, it seems appropriate to take into account the legal position stipulated in Judgment of the European Court of Justice of 22 October 2015 in Case C-264/14 "Skatteverketcontre David Hedqvist". This decision could help to determine the basic principles of taxation of transactions with cryptocurrencies in the most conflict-free way.

In this judgement the Court held that virtual currencies — without being legal tender — are a means of payment accepted by the parties to a transaction; virtual currency has no other purpose than to be a means of payment and that it is accepted for that purpose by certain operators (paras. 50, 52). Having regard to the foregoing considerations,

[31] "Taxation of digital currency criticized for terminology". *Pravo.ru*. Accessed June 25, 2023. https://pravo.ru/news/229505.

the answer to the second question is that transactions with cryptocurrencies should be exempt from VAT in the meaning of Art. 135 (1) (e) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[32] (para. 57).

Considering the abovementioned approach the principles of taxation of transactions with cryptocurrency may be as follows:

First, the recognition of bitcoin as a means of payment will inevitably require the recognition of cryptocurrencies in general and bitcoin, in particular, as property, including for tax purposes[33].

Consequently, any incoming in cryptocurrencies received by taxpayers should be subject to personal income tax or corporate income tax, respectively.

As mentioned above, according to Russian law, digital currency is treated as property, various transactions are allowed with it (sale and purchase, exchange, donation, etc.), but it is prohibited to use it as a means of payment. Consequently, the income from its sale is subject to personal income tax. In this case, the tax rate is 13 %. From January 1, 2021, a different rate of this tax is applied on income exceeding 5 million rubles — 15 %[34].

Secondly, for calculating the tax on transactions with cryptocurrency, the procedure for determining the taxable base, adopted in the relevant legal system, can be applied, taking into account some specific features of transactions with cryptocurrency. For example, for the purposes of determining the tax base, expenses incurred in both cryptocurrencies and fiat money can be deducted from the total income received in cryptocurrencies. However, in this case, an appropriate conversion of amounts in cryptocurrencies into amounts in national currencies may be required. However, there are no legal rules establishing a procedure to determine a rate to be used in order to perform such conversion.

In the Russian Federation, the tax base for the taxation of operations with cryptocurrency is defined as the difference between the income from its sale and the cost of its acquisition. This approach to determining the tax base was established by the Russian Ministry of Finance back in 2018. Liability is also established for non-payment of tax, the amount of which, according to Art. 122 of the Tax Code of the Russian Federation can be 20 % of the amount of unpaid tax, in the event of an unintentional act, and 40 % of the amount of unpaid tax, if intent is established in the actions of the taxpayer. In addition to collecting the amount of the fine as a sanction for the committed tax offense, the taxpayer must pay the amount of tax and interest.

Thirdly, the recognition of cryptocurrencies as a means of payment (that is, private money) leads to the need to exempt taxpayers from paying value added tax in cases where cryptocurrencies perform these monetary functions in transactions performed by taxpayers, in particular, they perform the function of a means of payment.

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[32] "Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax". *OJ*. 2006. L 347, p. 1. Accessed June 25, 2023. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0112.

[33] More specifically, in authors opinion, recognition of cryptocurrencies as property for tax purposes in Russian legislation will require appropriate amendments to Art. 38 Part 1 of the Tax Code of the Russian Federation. 1998. Accessed June 25, 2023. https://www.nalog.gov.ru/html/sites/www.eng.nalog.ru/Tax%20Code%20Part%20One.pdf

[34] Federal Law No. 372-FZ dated November 23, 2020 "On Amendments to Part Two of the Tax Code of the Russian Federation". Accessed June 25, 2023. http://publication.pravo.gov.ru/Document/View/0001202011230015.

Fourth, the payment of taxes on income of taxpayers received in cryptocurrencies can be carried out both in cryptocurrencies and in national (fiat) currencies in accordance with the current state tax policy. Examples of paying taxes and other fees in cryptocurrencies are already available for practice. So, on November 2, 2017, the commercial registration office in the canton of Zug (Switzerland) began to accept Bitcoin and Ether as administrative costs. In addition, a specialized government organization — the Commercial Register — accepts cryptocurrencies as a capital contribution for the purpose of setting up a company. In the city of Zug, public utilities (registration of residents) up to CHF 200 (about $ 210) can be paid with Bitcoin. On January 1, 2018, the municipality of Chiasso in the Swiss canton of Ticino began accepting bitcoins as a tax payment of up to CHF 250 (about $ 263) (Gesley 2018, 71–72).

Fifth, it is permissible to establish a tax declaration for transactions with cryptocurrency. For example, such tax declaration was actually introduced by the Russian Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation". In accordance with part 6 of article 14 of the said law, the rights to digital currency are subject to judicial protection only on condition of declaring (informing the tax authorities) the fact of possession of it in the manner established by the legislation of the Russian Federation on taxes and fees.

At the end of 2020, the Ministry of Finance proposed amendments to the Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation". According to these amendments cryptocurrency owners will be obliged to provide tax authorities with information on their receipt of cryptocurrency, transactions with it, and balances in digital wallets. Such an obligation for the copyright holders of the digital currency will arise if the amount of transactions with it in a calendar year exceeds an amount equivalent to 600 thousand rubles. The amount is calculated based on the market price of the digital currency at the date of each transaction. The procedure for determining the market price for a digital currency is established by the federal executive body authorized for control and supervision in the field of taxes and fees — the Federal Tax Service of Russia.

The bill provides that the Federal Tax Service of Russia will be able to demand from banks extracts on transactions on accounts of individuals and certificates of digital currency transfers.

According to the bill, signers and crypto exchangers will be required to submit information about transactions with digital currencies to Rosfinmonitoring. For failure to submit information to the tax authority, the project provides for an administrative fine.

For the failure of a taxpayer to submit to the tax authority more than 2 times within 3 years of the above information, the project provides for criminal liability in the form of imprisonment for up to 3 years (Davydov-Gromadin 2021).

3. Conclusion

Legislation on taxation of digital currency transactions is under development. There is no uniform taxation mechanism for digital assets, in part because there is no single definition for cryptocurrency. The legal nature of cryptocurrency is controversial. In addition, any digital property (cryptoassets, cryptocurrency, digital financial assets, digital currency) is not a single category, but includes a wide range of heterogeneous types that

have a number of unique characteristics. These features create troubles and restrictions for legal regulation and tax control. Tax regimes may vary depending on the "life cycle stage" of a crypto asset (creation, exchange, circulation, transfer, disposal, donation).

The development of a taxation mechanism for digital currencies can be based on the conclusions on their legal nature, which were made by the Court of Justice of the European Union, stated it in its Judgment of 22 October 2015 in Case C-264/14 "Skatteverket-contre David Hedqvist". The Court recognized cryptocurrency as a means of payment and exempted transactions with it from value added tax.

The development of a mechanism for taxing digital currencies (cryptoassets) will strengthen the position of regulatory bodies, including the Federal Tax Service of Russia, will help strengthen the regulatory framework for taxing digital currencies and increase the rule of law, transparency, and confidence of both tax administrations and taxpayers.

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