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# How Malta's System Is Embracing The Crypto Revolution

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"Bitcoin is now considered an investable asset" – reads the first sentence of the interview with Mathew McDermott, Global Head of Digital Assets at Goldman Sachs in the newly-issued report by the bank. With the recent buzz in the news about cryptocurrencies such as Bitcoin, Ethereum and Cardano we wanted to discuss how Malta has for a long time now had an open-door policy on this new class of assets.

Malta was at the forefront of regulating transactions involving cryptocurrency. Besides providing for a sophisticated regulatory regime for digital assets, in 2018 Malta also introduced tax guidelines on transactions involving digital assets, including cryptocurrencies.

**Income Tax**

The Malta Commissioner for Revenue has adopted quite a straightforward approach to the treatment of cryptocurrencies for income tax purposes. All the old principles and jurisprudence in relation to income and capital is by analogy applicable to transactions involving cryptocurrencies. Thus, the same questions would be posed when analyzing a cryptocurrency transaction as would be the case have the transaction involved "regular" assets. Thus, questions as to the intention behind the transaction, status of the parties, nature of the transaction, and so on are all still relevant.

The tax guidelines differentiate between coins and tokens with tokens being sub-divided into financial tokens and utility tokens. "Coins" are defined by Maltese tax law to be similar to regular fiat means of payment. To be a "coin" the cryptocurrency must not have features which would make it comparable to classic equity, bond or another type of financial security. Its value should not be related to its redemption for a service or a good (i.e. it should not be akin to a voucher). When such a type of coin is involved in the transaction, the tax law treats it identically to regular transaction involving a fiat currency.

Thus, for example, any profits made from exchanging coins are treated just like regular fiat exchange profits would be. When a company holds coins as part of its trading stock, any gains or profits are taxed as income. Any coins rewarded from mining activities are treated as regular income as well.

If an individual realizes a capital gain from long-term holding of a coin, and he is not doing so as part of his regular trading activity, that should not attract income tax on capital gains.

In our opinion, staking coins in crypto pools or in proof of stake algorithms or in liquidity swaps like the ones offered by Binance, for instance, would also result in any rewards, whether in the same coin or an alternative one, to be subject to the same income tax treatment.

This approach is very favourable towards those that often trade or stake their coins as it means that many business expenses that these entrepreneurs incur in relation to the generation of income associated with these coins are deductible for income tax purposes.

Those tokens that are analogous to classic financial securities like bonds, shares and so on are treated as such for income tax purposes. This means that any returns from mere ownership of such financial tokens which can be considered as an interest, or a dividend and will be treated as such. This is important because it means that all the exemptions in tax law found for regular dividend and interest payments are also applicable to these kinds of returns. So, for instance, a non-resident individual who receives returns from merely owning certain coins will be able to benefit from exemption applicable to non-residents who received dividends in Malta.

Transactions involving tokens will depend on whether they are of a trading nature or not. Thus, all the classic jurisprudence will apply, namely, the "badges of trade" test. This test was developed by long series of case law and revolves around a number of questions to determine whether the proceeds from the transaction are of a trading nature or of a capital one. The questions are:

- Is it a "one-off" transaction or a transaction capable of being an adventure in the nature of trade?
- Are there elements of repetition?
- Is the transaction related to the ordinary trading activity of the taxpayer?
- What is the subject matter of the transaction? Is the item/consideration something which is often subject to trade and speculation?
- How was the transaction carried out?
- How the was transaction financed?
- Was the item resold, or worked on/improved? Were modifications made?
- Was the item stacked, separated, bundled or somehow itemized or was it sold "as is"?
- What was the intention of the purchaser?
- Was there an element of personal enjoyment?

Even if the transaction is deemed to be of a capital nature, it is still important to see whether the gains made are covered by a special provision of the Maltese Income Tax Act, which levies income tax on certain capital gains. One of the gains included are gains made from transactions involving financial securities. If it is apparent that the transaction involves a token that has similarities to a traditional financial security like a share, stock, bond or debenture, then it will still be liable to income tax. If, however, the token has more similarities with a utility token, then there is no income tax levied on capital gains made in relation to that transaction, again, provided that it is not of a trading nature.

Malta also has a rather favourable and straightforward treatment of ICOs. ICOs are treated just like regular raising of capital by regular companies– there are no tax liabilities for any of the parties. However, if the ICO involved issuing utility tokens which come with an obligation to provide certain services or supply certain goods, gains or profits derived from the provision of the said goods or services will be subject to regular income tax rules and rates.

**Value Added Tax**

For the purposes of VAT, the Commissioner for Revenue also differentiates between coins, financial and utility tokens. Those transactions which involve cryptocurrencies as "coins" as discussed above are exempt from VAT – Malta follows the Skatterverket case of the Court of Justice of the European Union on this matter, and thus transactions involving cryptocurrencies as a means of payment are generally exempt from VAT.

In the case of crypto wallet providers' fees for transactions involving "coins", those would be exempt without credit. We also are of the opinion that for this reason, certain "gas" fees involving regular coins may also be exempt without credit for VAT purposes, but only where the other party to whom the gas fees are paid is identifiable.

As for wallet providers, where the fees charged by them are not directly related to the coin transaction but are for other taxable services like, for instance, privacy features, then the transaction would be taxable.

Mining and staking transactions may or may not be subject to VAT. Usually, mining activities will be considered to be outside the scope of VAT altogether in the classic mining operations. However, if coins are received as consideration for the provision of services such as validation of transactions, whereby it is possible to clearly identify the recipient of such service, then the VAT will be due to be paid by the miner.

For crypto exchanges, transactions or fees for the transactions involving cryptocurrencies that would classify as regular currencies or a financial security for VAT purposes would be exempt from VAT. Thus brokerage, exchange, intermediation and negotiation in these assets would be exempt from VAT. Crypto exchanges which merely provide a platform for traders to transact and the exchange is not of itself buying and selling digital assets, would be considered as providing a platform service, and therefore its services will be subject to VAT.

Utility tokens are treated differently depending on whether they are what the guidelines call "single-purpose vouchers" or "multi-purpose vouchers". If a utility token is issued and the token represents an underlining service or good that can clearly be identified, then that creates a tax point for VAT purposes, depending on whether the underlining service or good is taxable or exempt. Multi-purposes vouchers are, on the other hand, those tokens for which the underlining good or service and its place of supply is not yet known. No VAT tax point arises when such a multi-purpose voucher is issued, and the tax point will only come into question once the supply in exchange for the voucher is actually made.

For ICOs that involve coins or financial tokens, and these coins or financial tokens are used for the purpose of raising the company's capital, no VAT should arise. If the tokens issued are utility tokens, then it would be important to see what underlining goods or services are behind those tokens.

The guidelines on tax and transactions of digital assets are continuously reviewed to keep up with technological changes.

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