Q&A Crypto Assets - Taxation in Switzerland

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Are firms operating in the crypto space subject to digital service taxes in Switzerland?

No, in Switzerland, there is currently no digital service tax.

Do transactions with crypto assets trigger Swiss transfer taxes?

Transactions with crypto assets will usually be out of scope of Swiss transfer taxes.

If an asset token constitutes a debt instrument in the form of a "bond-like" instrument as defined in Swiss tax practice, then secondary market transactions can trigger Swiss securities transfer tax if a Swiss securities dealer (as defined in Swiss tax law) is involved as a party or an intermediary in the transaction. Transfers of non-Swiss bonds (including "bond-like" instruments) to a non-Swiss buyer or from a non-Swiss seller are exempt (then 50% of the tax will fall away while another 50% charge continues to apply, unless the other party is also an exempt investor).

Crypto assets other than asset tokens constituting a debt instrument in the form of a "bond-like" instrument, however, are generally not taxable securities unless the crypto asset references any other specific taxable security.

Learn more about Swiss securities transfer tax in our Pestalozzi tax update of 13 September 2019.

Sales of crypto assets by the direct shareholder to the company against consideration below market value can constitute a "hidden contribution" subject to a 1% Swiss share issuance stamp duty (the tax applies irrespective of the fact that no shares are actually issued).

What are the Swiss value added tax consequences of selling crypto assets?

Switzerland levies VAT on the supply of goods and services.

The use of payment tokens as a means of payment for a supply is treated the same as use of fiat currency. Thus, the transfer of the payment tokens to the supplier of the goods/services does

not constitute a separate supply for VAT purposes. The situation is different for asset tokens and utility tokens. If asset tokens or utility tokens are used to pay for a supply, this constitutes a barter transaction and can trigger VAT.

For transactions in payment tokens (purchase or sale of payment tokens), a VAT exemption without input VAT credit applies. The VAT treatment of a sale of asset tokens or utility tokens will generally follow the VAT treatment (characterisation of the underlying supply as supply of goods vs. supply of services, place of supply rules, VAT exemptions) of a sale of the asset or use possibility incorporated by the token. VAT is triggered if prepayment is received (for a forthcoming supply that can already be determined) or else when the supply is made.

For ICOs, or if crypto assets are used to pay an employee, the same principles apply, i.e., the VAT treatment of a sale of crypto assets will depend on the characterisation of the crypto assets sold or given to the employee respectively.

What are the Swiss income/capital gains tax consequences of selling crypto assets in an ICO?

A distinction must be made between taxation of the issuer and taxation of the investor.

For the investor, income tax consequences may occur only once there is a return from the asset or a (deemed) disposal of the asset.

For the issuer, the proceeds from the sale of crypto assets constitute income unless the asset sold is a debt instrument. At the same time, the issuer can, however, neutralise the income if the issuer has accepted obligations with the asset sale that require funding or yet need to be fulfilled in order for the issuer to earn the proceeds from the asset sale. In such cases, it can be possible for the issuer to neutralise the income from the asset sale by treating the sales proceeds as customer prepayment or by setting aside a provision for anticipated project cost. Any return (e.g., "interest") owed by the issuer to the investors is generally a tax-deductible cost for the issuer. Limitations and anti-avoidance rules may apply if investors are related parties.

What are the Swiss income/wage source tax consequences for an employee receiving wages or salaries in crypto assets?

If an employee receives wages or salaries in crypto assets, the employee realises taxable income from employment. This employment income is deemed realised already at the point in time at which the crypto assets are received (thus, not only at the point in time of the exchange of such crypto assets into fiat currency).

For the employer, the value of the crypto assets given to the employee constitutes cost of employment.

Income tax owed by the employee is levied in the form of wage source tax to be withheld by the employer (only) if:

- the employer is an entity in Switzerland (including a Swiss permanent establishment) and the employee is subject to limited taxation in Switzerland (i.e., not subject to unlimited taxation in Switzerland), or
- the employee holds neither Swiss citizenship nor a Swiss permanent residence permit type "C" and is not married to a person holding either Swiss citizenship or a Swiss permanent residence permit type "C".

Income tax (including wage source tax to be withheld by the employer) must be paid to the tax authorities in fiat currency (as opposed to crypto currency).

How are crypto assets classified for Swiss income/capital gains tax purposes?

Swiss tax law distinguishes between private assets and business assets. Capital gains on (movable) private assets are tax-exempt. Capital gains on business assets are subject to (corporate) income tax at the standard tax rates. For movable assets, the tax treatment is the same regardless of the type of asset, i.e., regardless of the classification of the asset as e.g., a currency or an intangible asset. If held as a business asset though, the classification of the asset can be relevant for the asset valuation.

An individual can have both private assets and/or business assets. An individual's crypto assets will be considered private assets unless the assets are primarily used for the purposes of a business run by that individual, or the individual is considered a "professional securities trader" as defined in Swiss tax practice.

Assets held by partnerships or legal entities will be characterised as business assets. Taxation of businesses follows statutory accounting. Crypto assets can qualify as fixed assets or as current assets. Valuation rules applying to fixed assets may differ from valuation rules applying to current assets.

What are the income/capital gains tax consequences of selling crypto assets - against fiat currency or against other crypto assets?

Capital gains on (movable) private assets are tax-exempt.

Capital gains on business assets are subject to (corporate) income tax at the standard tax rates. In Switzerland, cantonal/municipal income tax rates vary from canton to canton (and municipality to municipality).

For individuals, the federal and, in general, the cantonal rates, are progressive. The federal rate is between 0% and 11.5% and the cantonal rate ranges between 0% and about 34.5%.

For corporates, the federal corporate income tax rate is 7.83% of profits before tax. Cantonal rates vary and are often flat. The maximum combined (federal and cantonal) effective tax burden varies between approx. 11.7% and 22% of profits before taxes.

As in the case of selling crypto assets against fiat currency, the exchange of one crypto asset against another crypto asset also constitutes realisation of income. Such an exchange of assets

involves both an acquisition and a disposal. The sales value of the asset disposed of constitutes the acquisition cost of the asset acquired.

What are the income/capital gains tax consequences of an indirect investment in crypto assets?

The same principles of taxation apply as those applicable to direct investments. Income received from replacement instruments will be taxable. Private capital gains will be tax-exempt.

Thus, indirect (as opposed to direct) investment in crypto assets is not a means per se to escape income taxation. Income taxation, may however, be delayed or diluted. For example, financial instruments (e.g., structured products, investment fund units) may be accumulating or distributing and may be treated as fiscally transparent or opaque.

Legal entities other than (most) investment fund vehicles are treated as opaque under Swiss tax law (subject to the general anti-abuse test). For individuals,dividend income is taxable income (possibly taxed at a reduced rate, depending on the shareholding quota) whereas a private capital gain on the shares is tax-exempt. Corporate shareholders may be able to get tax relief under the Swiss participation relief.

Legal entities with their statutory seat outside Switzerland are subject to Swiss corporate income taxation if they have a permanent establishment or their place of effective management in Switzerland.

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