Supreme Financial Authorities
the countries

Individual questions on the income tax treatment of virtual currencies and tokens

With reference to the result of the discussions with the highest tax authorities of the federal states, the following applies to the income tax treatment of virtual currencies and tokens:

Table of Contents

I. Explanations

1. Virtual currencies

1   This also includes the digital units of value called tokens with a payment function (currency or payment token). The best-known virtual currencies include, for example, Bitcoin, Ether, Litecoin and Ripple. A list of virtual currencies can be found on the website http://coinmarketcap.com/de/can be viewed.

2. Token

2   Tokens are digital units of value. They can embody claims or rights, the functions of which vary. Tokens can serve as remuneration for services rendered in the network (for example due to computer performance in the network) or can be assigned centrally by a project initiator independently of the provision of computer performance. Such an allocation can be based on a token sale as part of an "Initial Coin Offering" (ICO). The issue of tokens is an alternative financing method, especially for startups.

3   The term "token" is a generic term for virtual units of value. The following categories of tokens can be distinguished:

- Currency or payment tokens are tokens that are used as a means of payment. Furthermore, the term "virtual currency" is used for these tokens (see margin no. 1);

- "Utility tokens" give the owner certain rights of use (e.g. access to a network that may still be created) or a right to exchange the tokens for a certain (possibly yet to be created) product or service. Utility tokens can also convey voting rights which, when exercised, enable the voting right holder to change the software and thus the functionality of the service or product;

- "Security, equity or security tokens" are tokens that are comparable to conventional securities in accordance with Article 4 Paragraph 1 Number 44 of Directive 2014/65 / EU ("MiFID II"), in particular conventional debt instruments and equity instruments;

- "Debt tokens" include a right to repayment of the amount invested, plus interest, if applicable, as is the case, for example, with loans or profit participation rights.

4th Tokens can also contain a combination of the categories described above. For example, utility tokens can also have the function of a means of payment. Tokens that contain elements from several categories are called hybrid tokens. For the income tax classification, each token is to be valued regardless of its designation.

5 While the own blockchain forms the basis of a virtual currency, utility tokens, equity tokens and debt tokens use existing blockchains as the basis (see margin no. 6).

3. Blockchain

6th A blockchain is a database without central control with several participants that uses Distributed Ledger Technology (DLT). A distributed ledger is a store of information that is shared across a number of DLT nodes and synchronized between the DLT nodes ("Node") using a consensus mechanism. It is designed in such a way that the inventory is tamper-proof and unchangeable and only allows additions. In the context of a virtual currency, a blockchain is a decentralized database based on DLT, in which all confirmed transactions are recorded, comparable to a decentralized cash book. These transaction data are summarized in blocks with numbering to be updated. The database is expanded linearly in chronological order, comparable to a chain, at the end of which new blocks are continuously added. The transactions in a block are converted into a specific character string ("hash"). The hash is the output of a cryptographic hash function. With the help of the cryptographic hash function, character strings of any length are mapped to character strings of fixed length. From a computational point of view, it is very complex to find an input for the given output. Additionally, for a given input, it is not possible to find a second input that maps the same output. With the help of the cryptographic hash function, character strings of any length are mapped to character strings of fixed length. From a computational point of view, it is very complex to find an input for the given output. Additionally, for a given input, it is not possible to find a second input that maps the same output. With the help of the cryptographic hash function, character strings of any length are mapped to character strings of fixed length. From a computational point of view, it is very complex to find an input for the given output. Additionally, for a given input, it is not possible to find a second input that maps the same output.

If units of a virtual currency or token are transmitted via blockchain, the data of current transactions and the hash value of the previous block are included in the calculation of the hash. The hash thus ensures that the block is not corrupted, since the hash value no longer applies if the data in the block is changed later

changed data. This creates a chain of unchangeable transaction blocks.

4. Acquisition of units of a virtual currency through mining

7th   Mining is a process in which computing power is made available for processing transactions (creating blocks). Units of virtual currency are assigned to the successful miner who created the block. This process is called mining based on gold mining. Mining can take place, for example, by way of the proof of work or the proof of stake.

a) Proof of Work

8th   Proof of Work is a calculation method in which the miner has to find a nonce ("number that can only be used once": number) for a character string (transaction data) by trial and error. A hash is formed over the character string and the nonce. This hash must start with a certain number of zeros. By defining how many zeros the hash begins with, the difficulty and thus the duration of the calculation can be controlled. The miner who finds the correct nonce first regularly determines the transactions / contents of the new block and receives the associated transaction fees. At the same time, this miner receives the block reward. This is the miner's reward for successfully creating blocks. This can exist in the form of new units of a virtual currency or in other tokens.

9   The reward in the form of new units of a virtual currency is paid out via so-called Coinbase transactions. These are transactions that, for example, create new Bitcoin units to a specified extent and provide them with a payout condition. Coinbase transactions are included in each block candidate, depending on the virtual currency, and are usually written in favor of the miner. There is thus an incentive to always provide sufficient computing power for the legitimation check and block creation in the network.

10   Due to the increasing computing power that is required to process the transaction data, miners join together in central pools and make their contribution to the required computing power (mining pool).
In addition, cloud mining services operate so-called server farms that specialize in mining. They sell or rent parts of their capacities to customers.

b) Proof of Stake

11   There are virtual currencies that use the Proof of Stake consensus mechanism (e.g. NavCoin and NEO). The consensus mechanism describes a process with which a blockchain network reaches a consensus about which participant is allowed to add the next block to the blockchain. A weighted random selection is used for the proof of stake, whereby the weighting of the individual participants is determined from the duration of participation and / or the amount of units of a virtual currency used (the "stake"). The units of a virtual currency used are "bound" in the blockchain and can - in the event of "misconduct" be melted down. The chance of being allowed to add a block to the blockchain as a "service provider" increases with the units of a virtual currency used. As with the Proof of Work, the person who receives

5. Acquisition of units of a virtual currency through exchange

12th If units of existing virtual currencies are exchanged for other units of a virtual currency on trading platforms for virtual currencies (so-called exchanges, e.g. Kraken or Coinbase), units of a virtual currency are acquired. This also applies to the units of a virtual currency paid to the miner as a transaction fee.

6. Wallet

13   In order to carry out a transaction of units of a virtual currency, every user usually needs a wallet.

14th Wallet means purse or wallet. It is an application for generating, managing and storing private and public keys. The wallet is installed on the computer as a software application (software wallet) or is available as a so-called hardware wallet such as an external hard drive or a USB stick.

15th Two separate keys are required for transactions. One of these keys is public and serves as the receiving address for the transaction (public key). It can be compared to an account number or an email address. The other key is private and only known to the owner (private key). It serves as a password or to generate digital signatures. Only the private key enables access to the units of a virtual currency that are stored on the blockchain. There can be several public keys for each private key.
Past transactions can be tracked with the help of a software wallet. However, the inflow and outflow of the units of a virtual currency does not have to coincide with the time of acquisition or sale. The units of the virtual

Currencies can be transferred from the wallet to a personalized account on a trading platform for virtual currencies and vice versa. Trading via the platform is decisive for the time of purchase or sale.

16   As part of a transaction, the transferor first creates a data unit that contains the hash value of the recipient's public key, a hash value for the data unit of the previous transaction (s) and a signature generated by the transferor using the private key for both hash values contains. The transaction generated in this way is then sent to a (storage) pool. Participants who operate a network node with a mining function take the transaction data from there, combine them in blocks and try to calculate a proof of work. If the recipient wants to transfer the units of a virtual currency, he again has to confirm his transaction with his private key.

7. Initial Coin Offering (ICO)

17th The term Initial Coin Offering is based on the English term Initial Public Offering (IPO). This is to be understood as an IPO in which shares from existing shareholders or from a capital increase are offered on the capital market. While shares are sold in such an initial placement, an ICO is about the issue of tokens in exchange for units of a virtual or state currency. With the ICO, like with an IPO, capital is collected.

8. Staking

18th In contrast to the Proof of Stake, participants in the so-called cold staking (cold staker) are rewarded for holding units of a virtual currency over the long term. The staker blocks certain units of the virtual currency for a certain period of time. During the blocking period, the cold staker cannot access these units of the virtual currency. After the blocking period has expired, the cold staker receives a reward in the form of additional units of the virtual currency.

19th A special form of staking is the operation of a so-called masternode. Masternodes not only store a full copy of the blockchain, they verify both transactions and blocks. They can also be an important part of blockchains, because the decentralization of the network is based on the fact that it is distributed over as many nodes as possible. The operator of the masternode makes these functions available to the participants in the decentralized network for a fee. In order to operate a masternode, the participant has to couple a certain number of units of a virtual currency to a masternode. If the units of a virtual currency are detached from the master node, the latter loses its function and the operator loses the right to remuneration.

9. Fork

20th Fork means forking or splitting a virtual currency. This can happen if the rules on which a blockchain is based are changed. Virtual currencies are largely based on the "open source idea". This means that the source code of the virtual currency is published and can be used and changed free of charge. As a result, the code can be viewed, downloaded and changed by anyone and can then develop in a direction that the original developers of the virtual currency no longer want to support, but which is favored by the majority of miners or at least a relevant minority. This can lead to differences of opinion within the user and developer network on the further design of the blockchain, which - following the open source principle - can only be resolved by consensus. If no consensus can be found, this leads to the splitting of the blockchain. This creates an additional version of the virtual currency that coexists alongside the old version. The blockchains of the two virtual currencies will continue to develop separately after the split. In the course of the split, the holders of units of the virtual currency existing before the fork, who follow the concept of the new virtual currency, receive the same number of units of the new virtual currency for the previous number of units of the old virtual currency without any consideration to have to provide. This creates an additional version of the virtual currency that coexists alongside the old version. The blockchains of the two virtual currencies will continue to develop separately after the split. In the course of the split, the holders of units of the virtual currency existing before the fork, who follow the concept of the new virtual currency, receive the same number of units of the new virtual currency for the previous number of units of the old virtual currency without any consideration to have to provide. This creates an additional version of the virtual currency that coexists alongside the old version. The blockchains of the two virtual currencies will continue to develop separately after the split. In the course of the split, the holders of units of the virtual currency existing before the fork that follow the concept of the new virtual currency receive the same number of units of the new virtual currency for the previous number of units of the old virtual currency without any consideration to have to provide.

10. Lending

21 In the case of lending, units of a virtual currency are made available for use in return for a fee, thereby generating additional units of a virtual currency.

11. Airdrop

22nd In the case of an airdrop, units of a virtual currency or token are distributed free of charge. Usually these are marketing campaigns. An airdrop can be linked to the requirement that customers fill out several online forms in order to be able to participate in the airdrop. In this way, the project initiators of the Airdrop obtain valuable customer data. An airdrop can also take place in such a way that units of a virtual currency or token are transmitted to him by the organizer of the airdrop without the intervention of the owner of a public key (see margin no. 15).

II. Classification under income tax law

23 Income from activities in connection with units of a virtual currency and with tokens can, depending on the circumstances of the individual case and taking into account the following statements, income from commercial operations within the meaning of Section 15 EStG, income from employment within the meaning of Section 19 EStG, income from capital assets within the meaning of § 20 EStG, income from private sales transactions in

Within the meaning of Section 22 No. 2 EStG in conjunction with Section 23 EStG or other income within the meaning of Section 22 No. 3 EStG.

1. Mining

24   Mining is an acquisition process and, depending on the circumstances of the individual case, can be private asset management or commercial activity. The income of the taxpayer includes both the units of a virtual currency received in connection with the creation of blocks and the transaction fees that the taxpayer receives from the network participants for verifying the transaction data. The income also includes the fees received from an operator of a mining pool for the provision of computing power.

a) Income from business operations § 15 EStG

25th   If the taxpayer's income is not already classified as such from a commercial enterprise by virtue of his legal form, the classification of his activities as a commercial activity according to Section 15 (2) EStG depends on the scope of the activity.

26   If the taxpayer is active for his own account in the long term and he also bears the entrepreneurial risk, it can generally be assumed that there is a commercial activity in connection with mining (see margin no. 27ff).

27   The taxpayer takes part in general economic traffic by providing the network participants with his computing power for the verification of the transaction data and their inclusion in a new block of the blockchain to be created. The fact that the fee depends on the successful completion of the block does not prevent participation in general economic traffic.

28   In the case of mining, regardless of the amount of hardware and electricity expenses, it is presumed to be rebuttable that there is a commercial activity. In the case of high costs for the acquisition of hardware and / or high energy costs for the operation of the hardware, however, the intention to make a profit must be checked. In the long run, mining must be suitable for generating a profit from this activity (see H 15.3 (total profit) EStH 2019).

29   The mere management of one's own assets is generally not a commercial activity. A mere asset management is to be assumed if the activity still presents itself as the use of assets in the sense of fruiting from assets to be preserved and the exploitation of substantial assets through reallocation does not come to the fore. When the area of   private asset management is left depends on the circumstances of the individual case (see R 15.7 (1) EStR 2012).

30th The above statements also apply if several miners join forces in a mining pool and contribute proportionally to the overall computing power. If units of a virtual currency are generated in a mining pool, these are distributed to the miners involved in accordance with a defined key. The operator of the mining pool only takes on a coordinating role. The miners collectively bear the entrepreneurial risk of their work. Depending on the contractual structure of the individual case, a mining pool can represent co-entrepreneurship. The general principles for the acceptance of co-entrepreneurship apply (see H 15.8 (1) (General) EStR 2012). There is no co-entrepreneurship,

aa) Comparison of business assets
aaa) Economic asset

31 Units of a virtual currency are non-depreciable assets that are to be assigned to fixed or current assets according to the general accounting tax principles. If they are allocated to fixed assets under financial assets within the meaning of Section 266 (2) A. III. HGB and, if allocated to current assets, to be shown under other assets within the meaning of Section 266 (2) B. II. 4. HGB.

bbb) Access assessment

32 The units of a virtual currency allocated for mining and the transaction fee paid in units of a virtual currency are purchased (similar process). The acquisition costs correspond to the market rate at the time the units of a virtual currency were acquired (derived from Section 6 (6) EStG). The market rate can be based on the average value from the exchange rate of three different trading platforms (e.g. Kraken, Coinbase and Bitpanda) or web-based lists (e.g. https://coinmarketcap.com/de). If a stock exchange price is available, this must be used as a basis.

If claims are settled with units of a virtual currency, these are to be recorded at the market rate at the time the claim is settled.

ccc) follow-up evaluation

33 For the valuation on the following balance sheet dates, the acquisition costs are to be compared with the partial value. If the partial value falls below the acquisition cost due to an expected permanent decrease in value, the taxpayer can undertake a partial value depreciation (Section 6, Paragraph 1, Number 2, Sentence 2 of the Income Tax Act).

bb) Income surplus calculation

34   In the case of profit determination by means of an income surplus calculation according to § 4 Paragraph 3 EStG, the access of units of a virtual currency within the scope of an exchange-like process leads to operating income. Units of a virtual currency are to be regarded as non-securitized claims and rights comparable to securities as assets within the meaning of Section 4 (3) sentence 4 EStG, the acquisition costs of which (Section 6 (6) EStG, cf. or in the case of withdrawals to be deducted as operating expenses at the time of withdrawal.

b) Income from (other) services within the meaning of Section 22 No. 3 EStG

35   If the requirements of Section 15 (2) EStG are not met, the income from mining is taxable according to Section 22 (3) EStG. Any active, passive or non-economic behavior on the part of the taxpayer can be considered as other service. Duration and frequency of the service / s are irrelevant. According to its wording, the regulation covers not only occasional or even just one-off behavior, but also repetitive, regularly performed or (for a certain) duration or repetition of actions, toleration or omission. When linking performance and consideration, no synallagmatic relationship between performance and consideration is required. The miner does not have to expect something in return when performing his service. Rather, it is sufficient that he accepts a (counter) performance granted in the economic context of his behavior (doing, toleration, omission) as such. In this way, he assigns his behavior to the sphere of commercial and tax law significance (BFH judgment of April 24, 2012, IX R 6/10, BStBl II p. 581). In this respect, there is no distinction between the units of a virtual currency obtained through mining and the transaction fees. This also applies to the mining pool and participation in a cloud mining service. April 2012, IX R 6/10, BStBl II p. 581). In this respect, there is no distinction between the units of a virtual currency obtained through mining and the transaction fees. This also applies to the mining pool and participation in a cloud mining service. April 2012, IX R 6/10, BStBl II p. 581). In this respect, there is no distinction between the units of a virtual currency obtained through mining and the transaction fees. This also applies to the mining pool and participation in a cloud mining service.

36   The units of a virtual currency obtained in the course of mining are to be stated at the market rate at the time of acquisition in accordance with Section 8 (2) sentence 1 of the Income Tax Act (see margin no. 32 for determining the market rate). For example, expenses for the acquisition of the hardware and software required for mining can be taken into account as income-related expenses.

2. Income from the sale of units of a virtual currency
a) Income tax treatment in business assets

37   If the units of a virtual currency are business assets, the sales proceeds are operating income. Due to the backward reference of each transaction output, an allocation and identification of units of a virtual currency is basically up to

to their original transaction (Coinbase transaction) possible. When selling, the individual - possibly amortized - acquisition costs of the sold units of a virtual currency are to be deducted. If the individual acquisition costs of the units of a virtual currency cannot be determined and assigned individually in individual cases, they can be valued at the average acquisition costs.

38 If units of a virtual currency are repeatedly bought and sold (including exchanging them for units of other virtual currencies), such trading in units of a virtual currency can constitute a commercial activity. To distinguish it from private asset management, the criteria for commercial securities and foreign exchange trading can be used. According to the rulings of the BFH (BFH judgment of December 20, 2000 - XR 1/97 BStBl II 2001, p. 706), frequent purchases and sales alone do not constitute a commercial activity, even if a larger scope is reached. When it comes to investing in securities, there are numerous options for the investor to take. There are income-free securities (e.g. checks, bills of exchange), interest-bearing paper (e.g. bearer bonds, federal treasury bonds) and equity securities (e.g. shares, Profit participation certificates). In the opinion of the BFH, this diversity means that bad securities are replaced by good securities or interest-bearing securities by equity securities. A commercial activity, on the other hand, presupposes that the taxpayer behaves "like a trader" or "typical of a bank" and uses a commercially set up business. Against the background that in the case of virtual currencies, numerous business models enable the generation of additional units of virtual currency by holding the transfer of use, these criteria must also be transferred to the circumstances at hand and checked in each individual case (see margin no. 29). that bad stocks are replaced by good stocks, or interest stocks are replaced by equity stocks. A commercial activity, on the other hand, presupposes that the taxpayer behaves "like a trader" or "typical of a bank" and uses a commercially set up business. Against the background that in the case of virtual currencies, numerous business models enable the generation of additional units of virtual currency by holding the transfer of use, these criteria must also be transferred to the circumstances at hand and checked in each individual case (see margin no. 29). that bad stocks are replaced by good stocks, or interest stocks are replaced by equity stocks. A commercial activity, on the other hand, presupposes that the taxpayer behaves "like a trader" or "typical of a bank" and uses a commercially set up business. Against the background that in the case of virtual currencies, numerous business models enable the generation of additional units of virtual currency by holding the transfer of use, these criteria must also be transferred to the circumstances at hand and checked in each individual case (see margin no. 29).

b) Income tax treatment in private assets

39 Units of a virtual currency are to be regarded as "other economic goods" within the meaning of Section 23 Paragraph 1 Clause 1 Number 2 EStG. Virtual currencies are asset-value advantages, which the acquirer costs to acquire. They are accessible for an independent evaluation by means of a market price that can be determined via stock exchanges (e.g. Boerse Stuttgart Digital Exchange), trading platforms (e.g. Kraken, Coinbase and Bitpanda) and lists (e.g. coinmarketcap).

Profits from the sale of units of a virtual currency, which are held in private assets, therefore represent income from private sales transactions according to § 22 number 2 in conjunction with § 23 paragraph 1 sentence 1 number 2 EStG, if the period between the acquisition and the sale is no more than one year (due to the extension of the sale period to ten years, see margin no. 47). Required are a

Acquisition and one sale process. A purchase is understood to mean the purchase of units of a virtual currency (e.g. through purchase or exchange) from a third party. The fee requirement is met if the units of a virtual currency are purchased, for example, in exchange for units of national currency (e.g. euros), a product or a service or the taxpayer receives units of a virtual currency in exchange for units of another virtual currency. Units of a virtual currency obtained through mining are also acquired through exchange. As a mirror image of the acquisition, the transfer of the acquired asset through sale or exchange to a third party represents a sale. The exchange of units of a virtual currency for units of a national currency (e.g. euro) or the exchange of units of a virtual currency for units of another virtual currency, a product or a service accordingly leads to a sale. The one-year sales period pursuant to Section 23 Paragraph 1 Clause 1 Number 2 EStG starts anew after each exchange.

40 For reasons of simplicity, the time of purchase and sale is decisive for determining the annual deadline, which results from the wallet. If the obligation under the law of obligations is to be decisive for the one-year period, the taxpayer must prove the time of the conclusion of the contract by means of suitable documents.

aa) Determination of the capital gain

41 The profit or loss from the sale of units of a virtual currency is determined from the sale proceeds less the acquisition and advertising costs.

42 In the event of a sale in euros, the agreed fee must be taken into account as the proceeds from the sale. If units of one virtual currency are exchanged for units of another virtual currency, the market price of the acquired units of the other virtual currency on the day of the exchange is to be used as the proceeds from the sale of the units of one virtual currency. If a market rate of the acquired units of a virtual currency cannot be determined, there will be no objection if the market rate of the given units of a virtual currency is used instead. The market rate of the given units of a virtual currency plus any incidental acquisition costs paid also represents the acquisition costs of the units of a virtual currency received on the exchange day.

Example:

On April 1, 01, A acquires 10 Bitcoin at a price of € 300 each (total € 3,000) plus a transaction fee of € 10 from an online platform. On August 1st, A
2 Bitcoin for 40 Ether. He pays a transaction fee of 0.02 Bitcoin for the exchange. On the day of the transaction, the value of one bitcoin is € 400. The value of an ether is € 20.

Solution:

From the sale of 2 Bitcoin, A has received income from private sales transactions in accordance with Section 22 Number 2 in conjunction with Section 23 Paragraph 1 Clause 1 Number 2 EStG in the amount of € 190:

For 2 Bitcoin, A received 40 ethers worth € 20 each, so a total of € 800 as sales proceeds. Of these are the acquisition costs for the 2 Bitcoin and the Transaction fee to be deducted. A spent a total of € 3,010 for 10 Bitcoin. This means that 2 Bitcoin have an acquisition cost of € 602. In addition, A paid a transaction fee of 0.02 Bitcoin (€ 400 x 0.02 Bitcoin = € 8).

Sales proceeds	€ 800 (40 ethers per € 20 market value on the day of the transaction)
acquisition cost	. /. € 602 (€ 3010/10 Bitcoin x 2 Bitcoin)
Transaction fee	. /. € 8 (value of one bitcoin on the day of the transaction € 400 x 0.02 bitcoin)
Profit	190 €

43   If units of a virtual currency are given in exchange for a service or a commodity, the payment agreed in euros is to be recognized as the proceeds from the sale of the units of a virtual currency given. If no remuneration has been agreed, the market price of the units of a virtual currency given is to be used as the proceeds from the sale.

bb) order of use

44   The principle of individual consideration applies to the determination of the annual period (see margin no. 37). For reasons of simplification, the application of the first in first out (FiFo) method to the units of a virtual currency is permitted. This means that it is to be assumed that the units of a virtual currency acquired first were sold first.

45   The method chosen once - FiFo method or individual consideration - must be applied to each individual wallet and retained in this wallet until the units of a virtual currency have been sold in full. After a complete sale of the units of a virtual currency in this wallet and subsequent new acquisition of units of this virtual currency, the method can be changed. When holding units

multiple virtual currencies, there is a separate option for each virtual currency in a wallet.

46 The profit from the sale of units of a virtual currency remains tax-free according to § 23 paragraph 3 sentence 5 EStG if the sum of the profits generated from all private sales transactions in the calendar year (total profit) is less than 600 euros.

cc) Extension of the sale period to ten years

47 According to Section 23 (1) sentence 1 number 2 sentence 4 EStG, the sale period is extended to ten years if units of a virtual currency or token are used as a source of income and income has been generated from them in at least one calendar year. It is used as a source of income, for example, when units of a virtual currency are made available for a fee as part of what is known as lending (see margin no. 21 and 77).

Example:

A leaves F 100 Dash, which F wants to use to operate a masternode. For this, F has to show a total of 1,000 Dash. For the operation of the masternode, F regularly receives Dash from the network. After 6 months, F 100 Dash transmits back to A. In addition, F "pays" 2 Dash per month to A. in return for the time that the 100 Dash was made available for use.

Solution:

A uses the 100 Dash to generate income from (other) services in accordance with Section 22 No. 3 EStG (cf. Rz. 77). The sale period for this Dash will be extended from one to ten years.

48 Use as a source of income within the meaning of Section 23 Paragraph 1 Clause 1 Number 2 Clause 4 EStG can also be given for staking. This applies in any case if the staking is operated as so-called cold staking or in connection with a master node. In both cases, holding units of a virtual currency leads to the allocation of further units of the virtual currency.

49 The use of units of a virtual currency for the purpose of the proof of stake represents a use as a source of income within the meaning of Section 23 Paragraph 1 Clause 1 Number 2 Clause 4 EStG, if holding the units of a virtual currency leads to the participant in the next Block created, thereby generating additional units of a virtual currency. In this case, the units of a virtual currency are used as a source of income.

50   If units of a virtual currency are acquired at a certain point in time and the sale period for some of the units of the virtual currency is extended to ten years in accordance with Section 23 (1) sentence 1 number 2 sentence 4 EStG due to their use as a source of income (see margin no. 47) , while for the other part of the units of a virtual currency the sale period of one year remains in accordance with Section 23 (1) sentence 1 number 2 sentence 1 EStG, the part of the units of a virtual currency for which the sale period has already expired is deemed to have been sold first is.

Example:

In March 01, A acquires 80 ethers at € 160 and in June 01 50 ethers at € 2,000. A leaves 100 ethers in September 01 to F, who pays him back the ethers in September 02 plus 3 ethers as payment for the transfer of use. A sold 100 ethers in December 02 for € 8,000. A has not documented which ethers he bought and sold when.

Solution:

A had purchased a total of 130 ethers in 01. Only for part of the ethers, namely 100 ethers, the sale period has been extended from one to ten years because of their use as a source of income. The sale period for 30 ethers has already expired in December 02. These are deemed to have been sold first. Since A does not keep a record of the acquisition and sale of each individual ether, the FiFo method is to be used to determine the profit from the sale.

Sales proceeds	€ 8,000
of which tax-free (30 ethers)	
€ 8,000 / 100 ethers x 30 ethers	€ 2,400
Remaining sales proceeds (remaining 70 ethers)	€ 5,600
. /. Acquisition costs (from March 01)	
160 € / 80 ethers x 50 ethers	100 €
. /. Acquisition costs (from June 01)	
€ 2,000 / 50 ethers x 20 ethers	800 €
= Income from private sales	4,700 €

c) Obligations to cooperate and to keep records

51-53 [placeholder]

3. Income tax treatment of units of a virtual currency received by way of a fork
a) Income tax treatment in business assets

54   If the units of a virtual currency are business assets and a fork results in units of a new virtual currency that are also business assets, the units of the different virtual currencies represent different assets. The acquisition costs of the units of the virtual currency that existed before the fork are to be allocated to these assets . The apportionment scale is based on the ratio of the market rates of the units of the various virtual currencies at the time of the fork (see margin no. 32 for determining the market rate). If the units of the newly created virtual currency cannot be assigned any value after a fork, the acquisition costs remain with the units of the virtual currency existing before the fork.

b) Income tax treatment in private assets

55   Regarding the sale of the units of a virtual currency that existed before the fork, please refer to the remarks under margin no. 39 ff.

56   With the purchase of units of a virtual currency, the taxpayer acquires the possibility of receiving units of a new virtual currency in the course of a fork. As a result, the taxpayer purchases the units of a new virtual currency as part of the units of the virtual currency that existed before the fork. The acquisition costs of the units of the virtual currency existing before the fork are to be divided in principle in relation to the market rates of the units of the respective virtual currencies at the time of the fork (see margin no. 32 for determining the market rate). If the units of a new virtual currency created after the fork cannot be assigned any value, the acquisition costs remain with the units of the virtual currency existing before the fork.

57   If the units of a new virtual currency that have arisen as a result of a fork are sold, the profit generated is taxable as income from private sales transactions according to § 22 number 2 in conjunction with § 23 paragraph 1 sentence 1 number 2 EStG if the period between the acquisition and Disposal is not more than one year. This also applies if the taxpayer has gained access to the units of a virtual currency that existed before the fork in the course of mining. Due to the extension of the sale period to ten years, please refer to the explanations under margin no. 47 referenced.

4. Initial Coin Offering

With the Initial Coin Offering, tokens are issued by the issuer himself.

a) Income tax treatment in business assets aa) for the issuer of tokens

58   The tokens can - depending on their design - represent both equity capital (permanent capital provision) and debt capital (temporary capital provision). They are to be assessed on the balance sheet according to their legal content and recognized accordingly. The income tax treatment depends on this classification and follows the general principles. Tokens are assets that the issuer has produced itself and that are generally to be capitalized at production costs. When exchanging the tokens e.g. B. against units of a virtual currency or the sale of tokens, the issuer realizes a profit / loss, unless corresponding liabilities or capital amounts are to be recognized. In each individual case, it must be checked whether the

Issue conditions of the tokens result in contractual obligations towards the holders of the tokens, which - if the requirements are met - would have to be reported as a liability or provision.

bb) at the purchaser of tokens

59   For the income tax assessment, a distinction must be made as to whether the tokens grant the holder a special legal position. Tokens can be accounted for as assets under financial assets or as receivables. The general accounting principles apply to further assessment.

b) Income tax treatment in private assets

60   The income tax classification of the income depends on the rights and claims conveyed by the issued tokens in each individual case.

aa) Utility Token

61   So-called utility tokens give the owner future access to a product or service. If such tokens are redeemed, this is irrelevant for income tax purposes (BFH judgment of February 6, 2018, IX R 33/17, BStBl II p. 525). There is no sale because there is no transfer of payment to a third party if the holder of the token merely redeems the claims to a product or service embodied in the token and receives the goods or service using the tokens.

62   If utility tokens are sold, the profit / loss from the sale leads to income from private sales transactions according to § 22 number 2 in connection with Section 23 (1) sentence 1 number 2 EStG if the period between the acquisition and the

The sale does not exceed one year, unless the requirements of margin no. 47 exist.

A sale within the meaning of Section 22 Number 2 in conjunction with Section 23 Paragraph 1 Clause 1 Number 2 EStG also applies if utility tokens are used as a means of payment (hybrid tokens).

bb) Equity / Security / Debt Token

63 Depending on the design, tokens can also be viewed as securities or other financial instruments. The requirement for tokens to be regarded as securities within the meaning of Section 2 Paragraph 4 in conjunction with Paragraph 1 of the German Securities Trading Act (WpHG) is, according to the BaFin letter of February 20, 2018 - WA 11-QB 4100-2017 / 0010[1]

especially

their portability,

their tradability on the financial market or capital market, whereby trading platforms for units of a virtual currency can in principle be viewed as financial markets or capital markets within the meaning of the securities definition,

the embodiment of rights in the tokens, ie either shareholder rights or claims under the law of obligations or claims comparable with shareholder rights or claims under the law of obligations that must be embodied in the tokens and

that the tokens do not meet the requirements of a payment instrument (as mentioned in Section 2 (1) WpHG or Article 4 (1) number 44 MiFID II).

64 Securitization of the tokens in a document is not a mandatory requirement for the acceptance of a transferable security according to Section 2 (1) WpHG and Article 4 (1) number 44 MiFID II. It is sufficient that the owner of the token can be documented using distributed ledger or blockchain technology or using comparable technologies

65 If equity / security / debt tokens are acquired in exchange for units of a virtual currency, this represents a sale of the given units of a virtual currency. Profits from the sale can be subject to taxation according to § 22 number 2 in conjunction with § 23 paragraph 1 sentence 1 number 2 EStG. Please refer to the statements under margin no. 37 ff. Is referred to.

66 If the right conveyed by the token is a bond, the income tax classification of the resulting income or profits applies

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[1] Information letter from BaFin dated February 20, 2018 - WA 11-QB 4100-2017 / 0010 (www.bafin.de → Publications & Data → BaFinJournal → Technical Article → Initial Coin Offerings: BaFin publishes information letter on classification as financial instruments)

it depends on whether a capital claim within the meaning of Section 20 (1) number 7 EStG or a mere claim in kind is justified.

67 If the bond gives the holder only a right to delivery of a fixed amount of a virtual currency deposited with the issuer or a claim to payment of the proceeds from the sale of the virtual currency by the issuer, there is no capital claim within the meaning of Section 20 (1) number 7 EStG, but a claim in kind. The BFH case law on Xetra-Gold bearer bonds (see BFH rulings of May 12, 2015, VIII R 35/14, BStBl II

P. 834 and VIII R 4/15, BStBl II p. 835, BFH judgment of February 6, 2018, IX R 33/17, BStBl II p. 525) and the BFH case law on gold bullion securities (cf. . BFH judgment of June 16, 2020, VIII 7/17, BStBl II 2021 p. 9) are to be applied accordingly.

68 The sale of such a bond may lead to income from private sales transactions in accordance with Section 22 Number 2 in conjunction with Section 23 Paragraph 1 Clause 1 Number 2 EStG. Payments by the issuer during the term of the bond represent other income for the investor within the meaning of Section 22 No. 3 EStG. The units of a virtual currency allocated are to be valued at the time of the inflow.

69 If, on the other hand, the bond represents a capital claim within the meaning of Section 20 Paragraph 1 Number 7 EStG, income received during the holding period leads to income from capital assets (current investment income). A sale of the bond falls within the scope of Section 20 (2) sentence 1 number 7 EStG. In the case of income not received in euros, Section 20, Paragraph 3 and Section 20, Paragraph 4, Clause 1, Clause 2 of the Income Tax Act must be observed.

c) Tokens as income from employment

70 If tokens are discounted or made available to the employee free of charge, it must be checked in each individual case whether there is a cash payment within the meaning of Section 8 (1) EStG or a payment in kind within the meaning of Section 8 (2) sentence 1 EStG. A payment in kind is valued at the final price reduced by the usual price discounts at the place of delivery at the time the claim is granted (Section 8 (2) sentence 1 EStG). Benefits in kind remain tax-free if they do not exceed a total of 44 euros per month (from January 1, 2022 50 euros) (Section 8 (2) sentence 11 EStG).

71 Tokens, which can be classified as benefits in kind, regularly flow to the employee at the time of booking into the wallet. The inflow of tokens takes place at the earliest at the point in time at which the tokens can be traded on the stock exchange or used as a means of payment, as the employee only has the opportunity at this point in time

economically dispose of the tokens. If the employee assigns the contractual right to the booking of the tokens in his wallet to a third party for payment before the token is received, an inflow of wages in the amount of the difference between the sales proceeds and the acquisition costs for the Token.

5. Staking

a) Income tax treatment in business assets

72   If the taxpayer receives additional units of a virtual currency for holding units of a virtual currency for a certain period of time and the units of a virtual currency are business assets, this is an operationally induced access to business assets (business income). The units of the virtual currency are to be activated at the time of their access with the market rate (profit-increasing) (see margin no. 32 for determining the market rate). When determining the profit

Income surplus calculation, the assets are to be included in the registers to be kept on an ongoing basis in accordance with Section 4, Paragraph 3, Clause 5 of the Income Tax Act (see margin no. 34).

b) Income tax treatment in private assets

73   If the taxpayer receives units of a virtual currency in the course of the proof of stake, he will generate income from (other) services in accordance with Section 22 number 3 EStG. This only applies if it is not already income within the meaning of Section 15 EStG; in this respect, reference is made to the explanations on mining (see margin no. 24 ff).

74   If the taxpayer receives units of a virtual currency in connection with the operation of a masternode, there is income from a (other) service in accordance with Section 22 number 3 EStG. This only applies if it is not already income within the meaning of Section 15 EStG; in this respect, reference is made to the explanations on mining (see margin no. 24ff).

75   So-called cold staking also includes income in accordance with Section 22 number 3 EStG. The provider does not have to expect something in return when rendering his service. Rather, it is sufficient that he accepts a (counter) performance granted in the economic context of his behavior (doing, toleration, omission) as such. In this way, he assigns his behavior to the sphere that is important in terms of business and income tax law. The decisive factor here is the perspective of the person who fixes the units of his virtual currency for the purpose of cold staking. From his point of view, remuneration takes place with the additional units of a virtual currency because he does not use or sell his units of a virtual currency for a certain period of time. From an economic point of view

it is a return, only that the investor receives units of a virtual currency instead of money. There is therefore a service in the above sense.

6. Lending
a) Income tax treatment in business assets

76   Income from the transfer of units of a virtual currency that can be allocated to the business assets represents operating income. If the income is generated in units of a virtual currency, the additional units of a virtual currency are deemed to have been acquired at the market rate at the time of the inflow (cf. 32). A profit or loss is realized in the event of a sale.

b) Income tax treatment in private assets

77   Income from lending is taxable in accordance with Section 22 No. 3 EStG. Because with lending, income is generated based on the performance of the taxpayer, namely the temporary use. If the income is generated in units of a virtual currency, the additional units of the virtual currency are purchased at the time of the inflow. The allocated additional units are to be valued at the market price at the time of acquisition (see margin no. 32 for determining the market price). With regard to the sale of additional units of virtual currency, please refer to the statements in margin no. 39 ff.

7. Airdrop
a) Income tax treatment in business assets

78   If the receipt of units of a virtual currency or of tokens is operationally initiated, there is operating income. The units of a virtual currency or the tokens are to be activated with the market price (see margin no. 32 for determining the market price). When determining profits by means of an income surplus calculation, the assets are to be included in the registers to be kept on an ongoing basis in accordance with Section 4 (3) sentence 5 of the Income Tax Act (see margin no. 34). A profit or loss is realized in the event of a sale.

b) Income tax treatment in private assets
aa) Income from (other) services in accordance with Section 22 No. 3 EStG

79   The receipt of additional units of a virtual currency or of tokens can lead to income from a service within the meaning of Section 22 number 3 EStG. With the Airdrop, units of a virtual currency or tokens are distributed "free of charge". Usually this is a marketing measure. However, customers have to register to participate in the Airdrop and disclose information about themselves. As a reward, these customers receive units of a virtual currency or token. Does the allocation of the units of a virtual currency or token depend on the taxpayer providing data about himself that goes beyond the information required for the simple technical

Allocation / provision are required, the provision of data is a service by the taxpayer within the meaning of Section 22 No. 3 EStG, for which he receives units of a virtual currency or token in return. This is to be assumed in connection with an airdrop in any case if the taxpayer is obliged or has to agree to provide the issuer with personal data in return for the units of a virtual currency or token.

The units of the virtual currency or token are to be set at the market price at the time of acquisition (see margin no. 32 for determining the market price).
If no consideration is given, a gift can be considered, for which the gift tax regulations apply.

80   The taxpayer also provides a service within the meaning of Section 22 Number 3 EStG if he uploads his own pictures / photos or private films (videos) to a platform and receives units of a virtual currency or token for this, provided that the ownership of the pictures / photos is received / Filming remains with the taxpayer.

bb) Income from private sales transactions in accordance with Section 22 Number 2 in conjunction with Section 23 Paragraph 1 Clause 1 Number 2 EStG

81   If the allocation of units of a virtual currency or of tokens leads to income from other services, this is an acquisition. The acquisition costs are generally to be set at the value of the data provided. It can be rebuttedly assumed that the value of the data given corresponds to the market price of the consideration. Units of a virtual currency or token are to be valued at the market price at the time of acquisition (see margin no. 32 for determining the market price). If a market price is not available, the value of the units of a virtual currency and the token is the value of the data given. If the units of the virtual currency or the tokens are sold, the profit from this sale is deemed to be income from a private sale transaction within the meaning of of section 22 number 2 in conjunction with section 23 paragraph 1 sentence 1 number 2 EStG. The profit is taxable if no more than one year has passed between the purchase and the sale and the sum of all profits generated from the private sales transactions in the calendar year (total profit) is at least 600 euros. Due to the extension of the sale period to ten years, please refer to the comments on margin no. 47 ff.

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On behalf