

Input newsletter

Bitcoin: VAT exemption

The Court of Justice of the European Union (CJEU) ruled on 22 October 2015 in the Hedqvist case (C-264/14) that exchange of the virtual currency bitcoins for conventional currencies are VAT exempt.

Regarding the factual background, we refer to the conclusions of the Advocate General, Mrs Juliane Kokott released on 16 July 2015:

“Mr Hedqvist plans to engage, via the internet, in the purchase and sale of the virtual currency ‘bitcoin’ (bitcoins) for Swedish crowns. The price of the bitcoins will be based on the exchange rate on a particular exchange site plus or minus a certain percentage as consideration for the exchange. These bitcoins are accepted as a means of payment by a number of private individuals and internet traders. Bitcoins are stored as data either on the user’s computer or on the computer of a third party service provider and are only transferred electronically. They do not have a particular issuer but are created on the internet by an algorithm programmed by an as yet unknown individual. Bitcoins are not designated as legal tender in any country.

Before taking up the activity, Mr Hedqvist requested a preliminary decision from the Skatterättsnämnd (Swedish Revenue Law Commission) to establish whether he was required to pay VAT on the purchase and sale of bitcoins as described. The preliminary decision found the purchase and sale of bitcoins to be a supply of services for consideration which was however exempt from VAT because bitcoins are a means of payment which is used in a manner corresponding to a legal means of payment.”

The Swedish tax administration referred to the CJEU on 27 May 2014 the following questions:

1. Is Article 2(1) of the VAT Directive to be interpreted as meaning that transactions in the form of what has been described as the exchange of virtual currency for traditional currency and vice versa, which is effected for consideration included by the supplier when the exchange rates are determined, constitute the supply of a service effected for consideration?
2. If so, must Article 135(1) [of that directive] be interpreted as meaning that the abovementioned exchange transactions **are tax exempt**?

In her conclusions, the Advocate General Juliane Kokott opined that exchange transactions of bitcoins for conventional currencies should not be subject to VAT because **these transactions are comparable to those in national currencies that are not subject to VAT.**

In his ruling, the Court follows the Advocate General conclusions. The Court ruled that these exchange transactions are services in the scope of VAT and that bitcoins are private money with no intrinsic value. Bitcoins are thus not goods or commodities. The Court decides that these virtual private currencies are similar to national currencies ones and that consequently exchange transactions of bitcoins for conventional should be exempt as provision concerning transactions relating to 'currency, bank notes and coins used as legal tender'.

This decision is important because it removes the uncertainty regarding the VAT treatment of virtual currencies due to different interpretation existing in the EU where some Member States consider bitcoins as commodity or good used for barter and thus as taxable while others are in favor of the exemption. The decision thus ensures a **level playing field in the EU**. With VAT rates raising from 17% (Luxembourg) to 27% (Hungary) with an average of 21% in the EU, **the taxation would have represented a substantial cost** for all end user consumers, i.e. all persons that could not or only partly recover VAT, including private persons and **would have entailed the competitiveness of the EU position in this global industry**.

This also implies that businesses involved in transactions relating to bitcoins could not recover the VAT incurred on their costs except if their clients are non EU residents or if the transactions are linked to export of goods outside the EU.

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