

Taxation of cryptocurrency transactions under the legislation of Ukraine

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The article presents legal aspects of the taxation of the operations with cryptocurrency in the Ukraine. The legal status of cryptocurrency in the Ukraine is yet to be established at the legislative level. However lack of the regulation doesn't mean that all operations with cryptocurrency are neutral to the income tax in the Ukraine. In this matter author elaborates situations in which de lege lata the taxation of such operations occurs, as well as draft legislation aimed to regulate the activities with a cryptocurrency.

Key words: tax, cryptocurrency, virtual currency, tax system

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Introduction

Formation of an innovation society and the rapid development of science, technology and high-tech in various spheres of public life have led to the emergence of a large number of innovations, including in the field of financial technologies (*Fintech*) and Internet technologies. Such innovations include so-called cryptocurrency that is gradually spreading all over the world and is already widely used as a means of payment.

Despite the fact that the first cryptocurrency, *Bitcoin*, which first appeared in 2009, is now quite widespread all over the world, a number of scholars, economists and other special-

ists on the matter still fail to elaborate and agree upon a single approach to comprehend a legal nature of cryptocurrencies and, consequently, have not given a unified definition to this innovation.

For example, various specialists describe

Bitcoin and *Altcoin*¹ as cryptocurrencies, digital and virtual currencies, or electronic money. Some experts equate *Bitcoin* and *Altcoin* with money, currency, and means of payment, while others equate them with assets, goods, property, etc.

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¹ General definition of other cryptocurrencies appeared after *Bitcoin* (*Ethereum*, *Litecoin*, *Monero*, etc.).

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taxation issues of cryptocurrency transactions. In several countries, the cryptocurrency transactions are prohibited or substantially limited (for example, in Bangladesh, Vietnam, etc.), while in others such transactions are subject to government regulation (Japan, Belarus, etc.). However, there are certain states where the cryptocurrency is not prohibited but, at the same time, is not governed or controlled by state authorities (Ukraine).

Peculiarities of the legislation of Ukraine on cryptocurrencies taxation

The current legislation of Ukraine neither uses the term cryptocurrency nor any other term denoting the specified innovation (a unique set of numbers resulting from complex mathematical calculations and endowed with a certain value on a contractual basis; a monetary equivalent in the national currency of one or the other country determined on a contractual basis). This is due to the fact that the cryptocurrency and its transactions are not currently subject to government regulation in Ukraine, and the legal status of cryptocurrency remains a challenging open and controversial issue.

In 2014, the National Bank of Ukraine voiced its first official opinion about the legal status of cryptocurrency in Ukraine and the transactions involving cryptocurrencies. In the clarification letter, the National Bank of Ukraine classified *Bitcoin* as a monetary substitute that has no real value and cannot be used by individuals or legal entities as means of payment in Ukraine. However, the approach that determines a cryptocur-

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rency as the monetary substitute was not established in any legislative acts or regulations of the National Bank of Ukraine, and was rather controversial, as a cryptocurrency is not covered by the definition “monetary substitute” as provided for in the legislation of Ukraine.

Thus, according to Article 1 of the Law of Ukraine “On the National Bank of Ukraine”, which established the prohibition of the use of monetary substitutes as means of payment in Ukraine. This legal category extends to *any documents in the form of banknotes that are different from the monetary unit of Ukraine issued by an establishment other than the National Bank of Ukraine and manufactured with the purpose to carry out any payments within economic turnover, except for the currency valuables*. However, a cryptocurrency does not fully correspond to the above definition of a monetary substitute. Firstly, it is not a document as such and cannot be classified as an electronic document. What is more, a cryptocurrency is not a banknote. Finally, according to the analysis of the legislative norms of

Ukraine, a cryptocurrency cannot be considered a monetary substitute.

In 2017, the National Bank of Ukraine reviewed its position on classifying a cryptocurrency as monetary substitutes and, together with other government regulators of the Ukrainian financial economy sector (the National Securities and Stock Market Commission and the National Commission for State Regulation of Financial Services Markets), delivered a joint statement on the status of cryptocurrencies in Ukraine. According to the current legislation of Ukraine, Ukrainian financial regulators² in their joint statement determined the properties not peculiar to a cryptocurrency. However, the issue of determining the

² Joint statement of financial regulators on the status of cryptocurrency in Ukraine. Available at: https://bank.gov.ua/control/uk/publish/article?art_id=59735329.

legal status of a cryptocurrency has been left for further consideration.

Thus, the National Bank of Ukraine, the National Securities and Stock Market Commission and the National Commission for State Regulation of Financial Services Markets concluded that a cryptocurrency cannot be defined as:

- a) *money* (monetary funds, funds, banknotes) due to the fact that a cryptocurrency does not exist in the form of banknotes, coins, records in bank accounts;
- b) *currency, legal tender of a foreign country, currency valuables* due to the fact that a cryptocurrency is not pegged to the monetary unit of any country;
- c) *securities*, because no cryptocurrency contains any signs of a document and issuer, namely, there is no established form of the document with the relevant requisites certifying monetary or other property, no definition of the relationship between the issuer of the security and the person, which has the rights to the security, it does not stipulate the fulfilment of obligations to such securities, as well as the possibility of transferring the rights to securities to other persons;
- d) *a monetary substitute*, due to the fact that a cryptocurrency does not have the features of banknotes; there is no issuer and no production purpose.

According to the analysis of the legal status of cryptocurrency all over the world and in Ukraine, the government regulators have come to the conclusion that despite numerous practices of using the cryptocurrency as a measure of value, means of exchange and accumulation, its complex legal nature cannot be identified with any of the related concepts (monetary funds, currency, currency

valuables, legal tender, electronic money, securities, monetary substitutes, etc.). Other state authorities, in particular, the Cabinet of Ministers of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine, and the State Fiscal Service of Ukraine, did not express their position regarding the legal status of cryptocurrency in Ukraine. They provided neither public explanations of the status of cryptocurrency, nor the conclusion of any civil law contracts regarding the cryptocurrency or its obligations, as well as the taxation procedure of cryptocurrency transactions and mining activities, etc. Today, scholars of economic and legal sciences, other specialists and state authorities study and analyse the turnover of cryptocurrency in Ukraine, the emergence and termination of ownership to cryptocurrency, the specifics of governmental regulation and control of mining activities, activities of cryptocurrency exchange and exchangers in order to determine the place of cryptocurrency among the objects of civil rights and its regulation at the national level.

The absence of laws and regulations that would establish the turnover of cryptocurrency in Ukraine does not lead to a mining ban of one or another cryptocurrency. Moreover, it does not entail the preparation and exchange of a fiat currency for a cryptocurrency and vice versa, as well as the exchange one cryptocurrency for another. The absence of state regulation of the above public relations does not lead to a prohibition of the use of a cryptocurrency in any way not directly prohibited by law.

Today, the possession of cryptocurrency and the transactions involving cryptocurrencies (donation, exchange, etc.) that are not

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related to a socially dangerous act (in particular, laundering of illegal funds, financing of terrorism and proliferation of weapons of mass destruction) are legitimate. Firstly, owning cryptocurrencies and carrying out transactions involving cryptocurrencies do not contradict the current legislation of Ukraine. In addition, such actions do not entail the possibility of applying the measures of state coercion to the individual concerned, including criminal and administrative prosecution. Therefore, in the absence of laws and regulations of Ukraine, which would regulate the specifics of the implementation of activities and transactions related to the cryptocurrency, the specified activities and transactions should be governed on a general basis.

Public relations that arise in the field of taxation (taxation and other obligatory payments directed to centralised public funds, to the State Budget of Ukraine and local budgets: budgets of territorial communities, united territorial communities) are regulated by the Tax Code of Ukraine, the Customs Code of Ukraine, and other laws and regulations of Ukraine adopted by authorised state authorities in accordance with the Tax and Customs Codes of Ukraine.

Thus, according to the Tax Code of Ukraine, the object of taxation in Ukraine is income obtained by individuals originating from sources in Ukraine, as well as any foreign income obtained by an individual who is a resident of Ukraine originating from sources outside Ukraine. In addition, the current tax legislation of Ukraine provides for the taxation on property owned or used by individuals.

When regulating the issue of collecting in Ukraine a tax on the property belonging to an individual, the Tax Code of Ukraine does not attribute the cryptocurrency to the property from which such a tax is levied, as a result of which the fact that any individual possesses a crypto-

currency, regardless of its current market value, does not predetermine the occurrence of a tax liability of such an individual, including the obligation to declare it.

Taxation of income received by individuals originating from sources in Ukraine (for residents and non-residents of Ukraine), as well as the taxation of foreign income (for residents of Ukraine) is based on the principle that all the income is taxable, except for the income excluded from the total monthly (annual) taxable income of a taxpayer (individual) according to the law. The list of income that is not included into the total monthly (annual) taxable income of taxpayers (individuals), i.e. the income that is not subject to personal income tax, is exhaustive and is clearly stipulated in Article 165 of the Tax Code of Ukraine. According to Article 165, the income received by the individual as a result of the cryptocurrency transaction shall not be excluded from the total annual (monthly) taxable income. Thus, such income is subject to taxation.

What is more, according to Article 163 of the Tax Code of Ukraine, the object of taxation of a resident (an individual) shall be the total monthly (annual) taxable income originating from sources in Ukraine subject to the final taxation during its accrual (disbursement, provision), and the foreign income (profit) received from sources outside Ukraine. The object of taxation of a non-resident (an individual) shall be the total monthly (annual) taxable income originating from sources in Ukraine and the income originating from sources in Ukraine, which is subject to the final taxation during its accrual (disbursement, provision).

Pursuant to subparagraph 14.1.54. of paragraph 14.1. of Article 14, the phrase “income sourced from Ukraine” shall be interpreted as any income received by residents or non-residents from any kind of their activities exercised on the territo-

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ry of Ukraine (including compensation payment /accruals/ by foreign employers), as well as its continental shelf, in its exclusive (maritime) economic zone. Pursuant to subparagraph 14.1.55. of paragraph 14.1. of Article 14, the phrase “income sourced outside Ukraine” denotes any income received by residents from any forms of their activity outside the customs territory of Ukraine, including the interest, the dividends, the royalties and any other forms of passive income, inheritance, gifts, winnings, prizes; the income from the performance of work (provision of services) within civil and labour contracts; the income from granting the property located outside Ukraine, including the rolling stock registered with ports located outside Ukraine, on lease (for use) to the residents; the income from the sales of the property located outside Ukraine; the income from the alienation of investment assets, including corporate rights, securities, etc.; other income from any business activities outside the customs territory of Ukraine or on the territories not controlled by the customs service of Ukraine.

The receipt of cryptocurrency by an individual as a result of a business or any transaction does not result in the occurrence of income of such an individual, including income that is subject to personal income tax.

duction of obligations which leads to the growth of equity (except for growth of the capital at the expense of fees of owners).

Due to the complex legal nature of the cryptocurrency, it cannot be related to an asset (including financial or intangible asset) under the legislation of Ukraine, as well as to the property rights and obligations. Accordingly, the receipt of cryptocurrency by an individual as a result of a business or any transaction (as a gift, as a remuneration under a labour or civil law contract, as a result of an exchange for property or as a result of the exchange of one cryptocurrency to another) does not result in the occurrence of income of such an individual, including income that is subject to personal income tax and military fee. Such income does not arise in the event of a change in the value ratio of the cryptocurrency to the currency to which it is pegged (with an increase in the market value of a specific cryptocurrency).

However, according to the provisions of the tax legislation of Ukraine, any income received by the individual in Ukraine (in the monetary or non-monetary form) from any transaction or activity (except for income not subject to personal income tax and military fee) involves tax liability of such an individual. Therefore, monetary funds, other property, property rights received by a individual as a result of any transaction with a cryptocurrency (for example, exchanging the cryptocurrency for fiat currency, other property, or property rights) should be taxed according to the general national rules applicable in the state. Moreover, the legal nature of a civil contract (contract of exchange, etc.), including such a transaction, is irrelevant to form tax liabilities on personal income tax and military fee.

Thus, the income received in case of exchange of a cryptocurrency or its part for any monetary funds, other property, or property rights shall be subject to personal income tax at a rate of 18%

However, the Tax Code of Ukraine does not provides for the definition of “income” with the aim to carry out income taxation of taxpayers (individuals), as well as any other taxes and fees included in the tax system of Ukraine. Pursuant to paragraph 5.3. of Article 5 of the Tax Code of Ukraine, other terms used and not defined herein shall be used in the meaning established by other legislative acts.

The income received in case of exchange of a cryptocurrency or its part for any monetary funds, other property, or property rights shall be subject to personal income tax.

Hence, Article 1 of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” provides for the definition of the notion “income”, which is understood as an increase in economic benefits in the form of an increase in assets or re-

and military fee at a rate of 1.5% in Ukraine. The tax base shall be determined by the total amount of monetary funds received from the transactions with a cryptocurrency or the value of the property (property rights) received as a result of the transaction determined at the regular rate, multiplied by a coefficient calculated according to the following formula: $C = 100:(100 - Tr)$, where C is the coefficient; Tr is the tax rate specified for such income at the time of such accrual.

Unclear legal status of a cryptocurrency in Ukraine and the absence of legislative grounds for determining the cryptocurrency as the property or other assets preclude the use of any cryptocurrency in the economic activities of legal entities, including indication of any cryptocurrency in the accounting and financial reporting.

The Verkhovna Rada of Ukraine registered six drafts intended to regulate the activities and transactions with a cryptocurrency as follows: 1) Draft Law of Ukraine “On Cryptocurrency Turnover in Ukraine” (reg. No. 7183 dated 06.10.2017); 2) Draft Law of Ukraine “On Stimulating the Cryptocurrency Market and Their Derivatives in Ukraine” (reg. No. 7183-1 dated 10.10.2017); 3) Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine on Stimulating the Cryptocurrency Market and Their Derivatives in Ukraine” (reg. No. 7246 dated 30.10.2017); 4) Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine on the Taxation of Virtual Assets Transactions in Ukraine” (reg. No. 9083 dated 14.09.2018), 5) Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine on the Taxation of Virtual Assets Transactions in Ukraine” (reg. No. 9083-1 dated 27.09.2014); 6) Draft Law of Ukraine “On Amendments to the Commercial Code of Ukraine on the Virtual Assets Turnover” (reg. No. 9359 dated 03.12.2018).

Thus, the Draft Law of Ukraine “On Cryptocurrency Turnover in Ukraine” provides as follows:

- firstly, cryptocurrency is a program code (a set of characters, numbers, and letters), and an object of ownership that can be used as a means of exchange. The information on the cryptocurrency is entered and stored in the

blockchain system as accounting units of such a system in the form of data (software code). In this case, the owner of the cryptocurrency is any individual, individual entrepreneur or legal entity that legally keeps and holds cryptocurrency;

- secondly, the cryptocurrency resulting from the mining activity shall be subject to taxation according to the general rules;
- thirdly, according to the legislation of Ukraine, general provisions on the contract of exchange are applicable to the cryptocurrency transactions; taxation of mining activities and cryptocurrency exchange transactions shall be governed by the current legislation of Ukraine.

The introduction of licensing of the cryptocurrency stock exchange and other financial institutions that will provide financial services on the cryptocurrency market (managing client accounts in cryptocurrency, cryptocurrency transactions between such accounts, cryptocurrency exchange transactions and derivatives operations on cryptocurrency) is provided within the framework of the Draft Law of Ukraine “On Stimulating the Cryptocurrency Market and Their Derivatives in Ukraine”. In the Draft Law, the term cryptocurrency refers to a decentralized digital value measurement that can be digitally expressed and functions as a means of exchange, cost savings, or accounting unit based on mathematical calculations, is the result of them and has cryptographic accounting protection. For legal purposes, cryptocurrency is considered a financial asset.

The Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine on Stimulating the Cryptocurrency Market and Their Derivatives in Ukraine” (reg. No. 7246 dated 30.10.2017) states as follows:

- the profit of enterprises, in addition to financial institutions that provide financial



services in the market of cryptocurrency in accordance with the Law of Ukraine “On Stimulating the Cryptocurrency Market and Their Derivatives in Ukraine”, and obtained from the sale and purchase transactions of cryptocurrency, is exempt from taxation;

- proceeds from cryptocurrency transactions are not taxed monthly (annual) personal income tax, and no military fees are charged;
- cryptocurrency and cryptocurrency transactions are not subject to value added tax.

According to the Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine on the Taxation of Virtual Assets Transactions in Ukraine”, it is proposed to introduce such legal fiction as a virtual asset and to tax the transactions with virtual assets in a special order, namely:

- firstly, the profit of enterprises from operations with virtual assets (the positive difference between the proceeds from the sale of virtual assets (the exchange for currency values) and the costs of their acquisition and/or mining) will be taxed at the rate of 5 percent by 1 January 2014, and the basic corporate income tax rate of 18% will be applied to tax such profit after the specified date;
- secondly, profit (income) from operations with virtual assets is taxed at a rate of 5% of the personal income tax, while such a profit (income) should be interpreted as a positive difference between the income derived from the sale of virtual assets (exchange of them for currency values), and the cost of their acquisition, provided that they are documented, or the cost of mining such

virtual assets. In the absence of such documentary confirmation of the cost of acquisition of virtual assets, the total value of such income will be considered a tax base.

According to the Draft Law of Ukraine “On Amendments to the Commercial Code of Ukraine on the Virtual Assets Turnover”, cryptocurrency is proposed to be considered as virtual assets, that is, intangible assets created using information technologies that have a value and can act as objects of economic turnover. It is proposed to consider such virtual assets as property without introducing any particulars regarding the taxation of transactions involving the use of such virtual assets.

Conclusions

The legal status of cryptocurrency in Ukraine is yet to be established at the legislative level. The National Bank of Ukraine and other state bodies that implement state regulation of the financial sector of the economy in Ukraine, however, have come to the conclusion that cryptocurrency cannot be considered as money, currency, currency value, legal tender of a foreign state, securities and money surrogate. Such uncertainty at the level of legislation, as well as the absence of any legal acts, the subject of which is the introduction of peculiarities of state regulation of operations with cryptocurrency and mining, does not generate in Ukraine a prohibition as such with regard to its use and mining, and therefore such activities and operations should be regulated by the general rules laid down in Ukrainian legislation, including on taxation matters.



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