



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value Added Tax

**Group on the Future of VAT
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GROUP ON THE FUTURE OF VAT

GFV N^o 049

VAT treatment of Bitcoin

1. INTRODUCTION

Questions of application can, on occasion, have wider implications. Although dealt with by the VAT Committee, some questions could merit discussion by the Group on the Future of VAT.

2. ISSUES ARISING FROM THE APPLICATION OF EU VAT PROVISIONS

A first such issue brought to the Group on the Future of VAT concerns the VAT treatment of Bitcoin (see attached).

3. QUESTIONS TO THE DELEGATES

Delegations are invited to:

1. express their views with regard to the VAT treatment of various activities involving Bitcoin; and
2. comment on the wider issues arising from the treatment afforded to such activities.



EUROPEAN COMMISSION
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TAXATION AND CUSTOMS UNION
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Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 811

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN: United Kingdom

REFERENCES: Articles 2(1)(c) and 135(1)(d), (e) and (f)

SUBJECT: VAT treatment of Bitcoin

1. INTRODUCTION

The UK delegation wishes to discuss with the VAT Committee how VAT should be applied to Bitcoin¹ and, by extension, other forms of digital currencies. The questions tabled by the UK, accompanied by what is their position, are attached in annex.

With a view, if possible, to reach a common and consistent position on the VAT treatment of Bitcoin and similar digital currencies, the Commission services collected views from Member States.

2. SUBJECT MATTER

Bitcoin is an unregulated decentralised peer-to-peer form of digital private money, which can be exchanged for goods or services (where accepted) or traded in its own right. It qualifies as a virtual currency² but is also sometimes referred to as a crypto currency because bitcoins are transferred through an exchange of encoded information, *i.e.*, making use of cryptography³.

According to the European Central Bank (ECB), Bitcoin constitutes a virtual currency scheme with bidirectional⁴ flow, which means that “*users can buy and sell virtual money according to the exchange rates with their currency. The virtual currency is similar to any other convertible currency with regard to its interoperability with the real world. These schemes allow for the purchase of both virtual and real goods and services*”⁵.

The future of Bitcoin is almost totally dependent on its capacity to inspire trust. Since inception, its value expressed in other currencies has moved upwards but has been characterised by extreme volatility. The association of Bitcoin with dubious schemes such as Silk Road (closed by the US authorities because of criminality) or Sheep Marketplace (collapsed after a flurry of on-line theft) does not help confidence.

Moreover, it is unlikely that accounting records expressed in Bitcoin would be acceptable for any regulatory or tax obligations. All Bitcoin transactions would have to be systematically expressed in Euro (or other legal tender currency equivalent). The day-to-day volatility of bitcoins again makes this difficult and cumbersome.

However, it cannot be denied that Bitcoin is becoming more and more a generally accepted virtual currency. For instance, it seems likely that Monoprix, a major French

¹ As to the spelling, please note that we have used «Bitcoin» when referring to the Bitcoin scheme in general (as a virtual currency), and «bitcoins» when referring to the specific units that are transferred.

² Nowadays, the terms “digital currency” and “virtual currency” are used as synonyms, although the latter from the outset was used about a physical coupon. For more information on virtual currencies, we refer to the European Central Bank (ECB) <http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf>; and the European Banking Authority (EBA) <http://www.eba.europa.eu/-/eba-warns-consumers-on-virtual-currencies>.

³ Not all digital currencies make use of cryptography.

⁴ The virtual currency can be purchased using real currency at a specific exchange rate but it can also be exchanged back to the original currency.

⁵ <http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf> (see p. 14)

retail chain, will accept payments in Bitcoin as from 2015⁶; and Apple Inc, an American multinational corporation designing, developing and selling consumer electronics, has signalled a new stance on virtual currencies⁷.

As a stateless digital currency outside traditional commerce and finance or supervision, its increasing worldwide popularity has given rise to questions about taxation, including VAT. It is highly desirable to reach a common and consistent position on the VAT treatment of Bitcoin and similar digital currencies across the EU.

Most of the uncertainty regarding the VAT treatment of Bitcoin comes from its innovative nature. Therefore, in order to clarify the VAT implications of Bitcoin, its legal status must first be analysed, in particular whether Bitcoin could be regarded, for VAT purposes, as (i) electronic money; (ii) currency; (iii) a negotiable instrument; (iv) a security; (v) a voucher; or (vi) a digital product.

In order to determine the VAT treatment of Bitcoin, not only do payments in this digital currency need to be looked at, but also the activities which revolve around them. All potential activities carried out in this respect shall be examined in further detail: (i) supplies of goods and services, subject to VAT, remunerated by way of Bitcoin; (ii) services concerning the arrangement of transactions in Bitcoin; (iii) services concerning the verification of transactions in Bitcoin (mining activities); and (iv) services concerning the exchange of Bitcoin.

The analysis focuses on Bitcoin, given that this is today the best-known form of virtual currency, but is valid to any other form of virtual currency with the same characteristics. It does not, however, extend to virtual currencies whose use is restricted within the limits of online computer gaming environments and social networks.

3. THE COMMISSION'S OPINION

3.1. Legal status of Bitcoin

The VAT treatment of Bitcoin and its related activities depends on the legal status of the digital currency. Since the characteristics of Bitcoin prevent it from easily fitting into a category, several approaches shall be examined. Specifically, whether Bitcoin could be regarded, for VAT purposes, as (i) electronic money; (ii) currency; (iii) a negotiable instrument; (iv) a security; (v) a voucher; or (vi) a digital product.

In this way, we aim to clarify concepts which may look close to Bitcoin, such as electronic money or currency. It is also necessary to examine the potential applicability of exemptions for financial services pursuant to Article 135(1) of the VAT Directive⁸, on the basis of currency, negotiable instruments, and securities. The analysis also takes into account digital products, as suggested by some Member States, and vouchers.

⁶ http://www.lemonde.fr/economie/article/2014/04/09/monoprix-pret-a-se-mettre-au-bitcoin-des-la-fin-de-l-annee_4398350_3234.html?xtmc=bitcoins&xtcr=19

⁷ <https://developer.apple.com/appstore/resources/approval/guidelines.html> (see point 11.17).

⁸ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

3.1.1. *Electronic money (e-money)*

Bitcoin is an unregulated digital currency issued and controlled by its private developers anonymously. Hence it should be distinguished from electronic money, as defined by Article 2 of Directive 2009/110/EC⁹: monetary value as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by persons other than the issuer. According to Article 1(1) of that same Directive, only certain categories of electronic money issuers are recognised, mainly credit institutions, electronic money institutions, post office giro institutions, the ECB and national central banks, and Member States or their regional or local authorities under certain conditions.

In electronic money schemes, the link with traditional money forms is preserved¹⁰, as the stored funds are expressed in the same unit of account (Euro, for example).

No Member State has expressed a view which envisages the option of treating Bitcoin as electronic money.

3.1.2. *Currency*

Bitcoin is generally referred to as a form of digital currency. That already indicates that, from the user's perspective, its role is equated to the functions traditionally granted to currencies. Bitcoin aims at replacing traditional legal tenders and becoming a generally accepted form of payment similar to cash¹¹, which provides anonymity and can be transferred to others without involving any other commercial party or regulatory institution.

That could see Article 135(1)(e) of the VAT Directive apply, whereby Member States shall exempt “*transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest*”.

However, the mere fact that Bitcoin acts like a currency and it is commonly referred to under the term “virtual currency”, does not in itself confer it such legal status.

Traditional currencies have three different functions, according to the ECB¹²: (i) medium of exchange used as an intermediary in trade; (ii) unit of account for the measurement of value and costs of goods or services; and (iii) store of value, for the money can be saved and retrieved in the future.

While Bitcoin acts as a medium of exchange and a unit of account (up to a point), it is doubtful it can be considered a safe storage of value due to the lack of supervision, potential technical problems and, above all, high volatility that some economists have

⁹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (OJ L 267, 10.10.2009, p. 7).

¹⁰ BAL, A.: *Stateless Virtual Money in the Tax System*, 53 Eur. Taxn. 7 (2013), Journals IBFD.

¹¹ LAMBOOIJ, M.: *Retailers Directly Accepting Bitcoins: Tricky Tax issues?*, 16 Derivs. & Fin. Instrum. 3 (2014), Journals IBFD.

¹² <http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf> (see p. 10).

regarded as a sign of financial bubble. This volatility¹³ imposes limitations on usefulness in trade or accounting.

Accordingly, it seems unlikely Bitcoin could be seen as currency.

Even if Bitcoin were regarded as a currency, it would not meet the criteria in Article 135(1)(e) of the VAT Directive that currencies are to be “used as legal tender”.

All Member States exclude Bitcoin from falling under Article 135(1)(e) of the VAT Directive, on the basis of it being a currency not used as legal tender.

3.1.3. Negotiable instrument

Bitcoin may be deemed to be a negotiable instrument. Such interpretation would imply the applicability of Article 135(1)(d) of the VAT Directive, whereby Member States shall exempt “*transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection*”, related to the sphere of financial transactions.

The concept of “other negotiable instruments” is not defined in the VAT Directive. In *Granton Advertising*¹⁴ the Advocate General (AG), for the purposes of Article 135(1)(d) of the VAT Directive, outlined the concept in the following terms: “*It is therefore clear that ‘other negotiable instruments’ is likewise to be understood to mean only those rights which – in the absence of a debt or a cheque – confer an entitlement to a particular sum of money*”.

The Court of Justice of the European Union (CJEU) in its judgment found that: “*Article 13(B)(d)(3) of the Sixth Directive concerns, inter alia, payment instruments such as cheques. As noted in paragraphs 18 and 31 of the present judgment, although the Granton cards¹⁵ entitle their holder to price reductions, they do not constitute, in themselves, a payment instrument for the purpose of that directive. As the United Kingdom government noted, even if such cards are transferrable and may be resold at a certain price, they do not operate as a way of transferring money, unlike payments, transfers and cheques*”¹⁶.

Following the same line of thought, amid the reasons for concluding that a Granton card does not constitute a negotiable instrument, the AG highlighted that the instrument “*is neither concerned with a right to a particular sum of money, nor is it likely to be regarded in the course of trade as similar to money*”¹⁷.

¹³ For illustrations of volatility see <http://bitcoincharts.com/charts/>

¹⁴ CJEU, opinion of Advocate General Kokott in case C-461/12 *Granton Advertising*, point 40.

¹⁵ According to the facts of the case, Granton Advertising, a taxable person in the Netherlands, issued and sold Granton cards. Those cards entitled their holder to a certain number of goods and services on preferential terms from retailers and affiliated businesses. The card holder received a discount on orders from the businesses specified on the Card in question. In addition, the Cards were not personal but transferable. They could not, however, be exchanged for money or goods.

¹⁶ CJEU, judgment of 12 June 2014 in case C-461/12 *Granton Advertising*, paragraph 37.

¹⁷ *Granton Advertising*, point 42.

Regarding the interpretation of the exemptions envisaged by Article 135 of the VAT Directive, according to settled case-law¹⁸ of the CJEU it needs to be strict, for they constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person.

It should, however, also be taken into account that the scope of the exemptions cannot be determined on the basis of an interpretation which is exclusively textual: “*In order to clarify its meaning, reference must therefore be made to the context in which the phrase occurs and consideration given to the structure of the Sixth Directive*”, as stated by the CJEU in *SDC*¹⁹. According to settled case-law²⁰, in interpreting a provision of EU law it is necessary to consider, inter alia, the wording of that provision, the context in which those concepts appear and the objectives pursued by the exemption provided for therein.

Regarding the exemption for financial services, the CJEU²¹ has settled that transactions exempt from VAT under Article 13(B)(d) of the Sixth Directive²² are, by their nature, related to the sphere of financial transactions, although they do not necessarily have to be carried out by banks or other financial institutions.

More precisely, the AG in *Granton Advertising* pointed out that the purpose of the exemption provided for under Article 135(1)(d), albeit not clear²³ enough, is to “*treat rights perceived in trade in the same way as money, i.e., in the same manner as the payment with money is treated in tax law. Payment of money as such (...) is not taxed (...), either because it is not a supply of goods or services (...) or because the payment is exempt*”²⁴. This view has been supported by doctrine²⁵: “*the mere use of money as a means of exchange must not give rise to any VAT liability. The aim of this provision is therefore to exempt any dealings in money of account (transferable money), including all operations concerning money transfers and the operations concerning any instrument that facilitates transactions and transfers of money*”.

As it can be drawn from *Granton Advertising*, the concept “other negotiable instruments” in Article 135(1)(d) of the VAT Directive is deemed to be closely linked to payment instruments acting as a way of transferring money, thus acting as a financial transaction in line with the objectives of the exemption.

Bitcoin constitutes a virtual currency, whose commercial use is akin to money, *i.e.*, it acts as a payment instrument. Therefore, its characteristics may fall within the meaning of “other negotiable instruments”, as found in *Granton Advertising*.

¹⁸ CJEU, judgment of 15 June 1989 in case C-348/87 *Stichting Uitvoering*, paragraph 13; and judgment of 10 March 2011 in case C-540/09 *Skandinaviska Enskilda Banken*, paragraph 20.

¹⁹ CJEU, judgment of 5 June 1997 in case C-2/95 *Sparekassernes Datacenter*, paragraph 22.

²⁰ CJEU, judgment of 17 November 1983 in case 292/82 *Merck*, paragraph 12; and judgment of 19 July 2012 in case C-112/11 *ebookers.com Deutschland*, paragraph 12.

²¹ CJEU, judgment of 19 April 2007 in case C-455/05 *Velvet & Steel*, paragraphs 21-22.

²² Equivalent to present Article 135(1)(b)–(g) of the VAT Directive.

²³ “*The purpose of exempting financial transactions from tax, (...) remains one of the big mysteries associated with VAT law. This is because, as the Committee on Economic and Monetary Affairs of the European Parliament recently observed, the precise reasons for that exemption were never clearly spelled out*” (*Granton Advertising*, point 2).

²⁴ *Granton Advertising*, point 41.

²⁵ KAJUS, J. and TERRA, B.: *Commentary – A Guide to the Sixth VAT Directive (Historical Archive) – Chapter 10 Exemptions*. (2014), IBCF Tax Research Platform.

However, certain concerns may arise as regards negotiability of Bitcoin. According to the opinion of the AG in *Granton Advertising*, “other negotiable instruments” shall be seen as instruments which confer the right to claim a sum of money. Bitcoins can be exchanged for currency only to the extent that another private party is willing to buy them on an exchange or in a peer-to-peer transaction. As the ECB warns, “*Users go into the system by buying Bitcoins against real currencies, but can only leave and retrieve their funds if other users want to buy their Bitcoins, i.e. if new participants want to join the system. For many people, this is characteristic of a Ponzi scheme*”²⁶.

In the United States the definition of Bitcoin as a negotiable instrument is also controversial²⁷, for their regulation defines a “negotiable instrument” as an “unconditional” right. Specifically, Article 3 of the Uniform Commercial Code governs the issuance and transfer of negotiable instruments in the following terms: “*Negotiable instrument means an unconditional promise or order to pay a fixed amount of money....*”. Bitcoins, unlike cheques, would not grant their holders an unconditional right to be paid in currency.

As to the position expressed by Member States, some of them were in favour of considering bitcoins as negotiable instruments, therefore applying exemption provided for under Article 135(1)(d) of the VAT Directive.

3.1.4. Security

Bitcoins could perhaps also be deemed to be securities. Such interpretation would imply the applicability of Article 135(1)(f) of the VAT Directive, whereby Member States shall exempt “*transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2)*”.

Although the concept “other securities” is not defined in the VAT Directive, in *Granton Advertising* the CJEU found for the purposes of Article 135(1)(f) of the VAT Directive that: “*While that exemption thus refers specifically to securities conferring a property right over legal persons and securities representing a debt, it is still the case that the ‘other securities’ referred to in that provision have to be regarded, at the very least, as also being ‘securities’. Accordingly, they have to be regarded as being comparable in nature to the other securities specifically mentioned in that provision*”²⁸.

The latter finding is supported, according to the CJEU, by those securities expressly excluded from that exemption, namely (i) documents establishing title to goods and (ii) shares or interests equivalent to shares giving the holder rights of ownership or possession over immovable property. The nature of those shares or interests as ‘securities’, in that they represent, inter alia, rights of ownership over movable or immovable property, constitutes an indication of what is to be understood by ‘security’ for the purpose of Article 135(1)(f) of the VAT Directive notwithstanding their exclusion from the exemption provided for in that provision.

²⁶ <http://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf> (see p. 27).

²⁷ See <http://cryptome.org/2013/11/fec-bitcoins.pdf>

²⁸ *Granton Advertising*, paragraphs 27-34.

The interpretation of the exemptions laid down in Article 135 of the VAT Directive needs to be strict, but it should also take into account the objectives pursued by the exemptions. According to settled case-law²⁹ of the CJEU, transactions exempt from VAT under Article 135(1)(b)–(f) of the VAT Directive are, by their nature, related to the sphere of financial transactions, although they do not necessarily have to be carried out by banks or other financial institutions.

As regards the question of whether discount cards³⁰ are securities, the CJEU in *Granton Advertising* rejected this approach: “*it must be pointed out, first of all, that when a consumer purchases such a card, he acquires neither a right of ownership over the company Granton Advertising, nor a claim against that company, nor any related right. The Granton card confers on its holder only a right to obtain reductions in the prices of goods and services offered by the affiliated businesses (...) It is clear from an examination of the main features of the Granton card, as they can be seen from the file submitted to the Court, that it has no nominal value and that it cannot be exchanged for money or goods from the affiliated businesses. In those circumstances, the sale of such a card to consumers does not constitute, by its nature, a financial transaction*”³¹.

Thus, according to the test used by the CJEU, an instrument would only qualify as a security for the purposes of Article 135(1)(f) of the VAT Directive if: (i) the acquisition of the instrument implies a transfer of rights related to the issuer of the instrument; and (ii) the transfer of such instrument has a financial nature, meaning that it can be exchanged for money or goods.

As to transactions in Bitcoin, its financial nature would be justified by the fact it is an instrument with a nominal value that can be exchanged for either goods or money. However, it is dubious that the holder of bitcoins has any right of ownership against the Bitcoin organisation. Neither does it have any claim against any company or organisation, nor any similar right. This is because Bitcoin has become a generally accepted form of payment very similar to cash³², which does not itself entitle the holder to any right.

This approach is confirmed by the opinion of the AG in *Granton Advertising*³³, which is even more precise in the definition of a security: “*The Court has not yet defined what constitutes a security for the purposes of the tax exemption (...). In this connection, two questions are raised in principle: (i) what types of rights come under the concept of a security; and (ii) does such a right have to be evidenced, that is to say associated with a particular document or other object?*”³⁴.

²⁹ *Velvet & Steel*, paragraphs 21-22; and *Granton Advertising*, paragraph 29.

³⁰ See footnote 15 for more information regarding the facts of *Granton Advertising*.

³¹ *Granton Advertising*, paragraphs 31-32.

³² LAMBOOIJ, M.: *Retailers Directly Accepting Bitcoins: Tricky Tax issues?*, 16 *Derivs. & Fin. Instrum.* 3 (2014), *Journals IBFD*.

³³ *Granton Advertising*, points 18-37.

³⁴ In respect of the second question, the AG pointed out that it is “*irrelevant to the dispute in the main proceedings, since in any event the Granton card attests to a right because it has to be presented to the undertaking in question in order to make use of the rights associated with it*”. Similarly, the transfer of bitcoins is necessary in order to carry out any transaction in this virtual currency. Hence, the second question shall not be dealt with.

The AG held that the concept of a security in any event encompasses the following rights: “*shareholding rights in a company, rights to money as against a debtor and the derivatives of those rights. Since the first two types of rights are expressly referred to in the provision, the words ‘other securities’ therefore refer to the derivatives of those rights*”³⁵.

Hence it is difficult to see bitcoins themselves as granting any rights against companies or debtors.

3.1.5. *Voucher*

It is possible that Bitcoin could be seen as a voucher, an instrument that can be used in exchange for goods or services by the final consumer. Besides the fact the VAT treatment of vouchers is not harmonised at EU level, although a Commission proposal³⁶ is currently under discussion in the Council, one can identify certain common characteristics of vouchers.

Vouchers are issued with a particular purpose in mind: either the underlying goods or services to be received in exchange for the voucher may be already identified at the moment of issue (a specific good or service provided by a specific supplier); or the voucher may allow a higher degree of discretion to its holder regarding the choice of the goods or services to be received in exchange of the voucher, and/or its corresponding suppliers, from within a limited range.

Bitcoin, however, aims at being used as a medium of exchange to obtain any goods and services, *i.e.*, the holder of Bitcoin can freely choose the goods or services to be obtained, only subject to its acceptance by the supplier.

Moreover, Bitcoin lacks another characteristic of a voucher: the obligation for the supplier to provide goods or services in exchange for the voucher.

Therefore, it is difficult to think of Bitcoin as fitting the concept of a voucher for VAT purposes.

None of the Member States refer to bitcoins as vouchers.

3.1.6. *Digital product*

Bitcoin could potentially be seen as a commodity or a product (intangible property such as software, music, text, pictures, video and sound) that can be stored in digital form. If so, it would for VAT purposes be considered an electronically supplied service³⁷.

³⁵ For a more detailed analysis, see *Granton Advertising*, points 22–28.

³⁶ Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers (COM(2012) 206).

³⁷ On the basis of Article 25 of the VAT Directive, the assignment of intangible property is considered a supply of a service. Also according to the Communication from the Commission on electronic commerce and indirect taxation (COM(98) 374 final), guideline 2: “*All types of electronic transmissions and all intangible products delivered by such means are deemed, for the purposes of EU VAT, to be services*”.

In that respect, Article 7(1) of the VAT Implementing Regulation³⁸ states that: “*electronically supplied services as referred to in Directive 2006/112/EC shall include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology*”. Also Article 7(2)(c) considers “*services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient*” to be an electronically supplied service.

Due to its digital character, it might seem bitcoins fall within the definition of electronically supplied services. Indeed, bitcoins are delivered over the Internet or an electronic network, and they are generated from a computer via the Internet or an electronic network in response to specific data input by the recipient.

But while it is undoubtedly so that bitcoins are transferred electronically, the question is whether there is a supply of services, in the terms of the VAT Directive.

Notably, the classification of transfers in Bitcoin as supplies of services may be controversial in cases where its functioning and purpose is equal to that of a means of payment because for VAT purposes payments are not consumption, but measure the consumption (see section 3.2.1).

Among the Member States who expressed a view, some regard Bitcoin as a digital product.

3.2. VAT treatment of certain activities concerning Bitcoin

The VAT implications of activities involving bitcoins being exchanged for goods or services or bitcoins being traded in their own right shall be examined in further detail, covering: (i) supplies of goods and services, subject to VAT, remunerated by way of Bitcoin; (ii) services concerning the arrangement of transactions in Bitcoin; (iii) services concerning the verification of transactions in Bitcoin (mining activities); and (iv) services concerning the exchange of Bitcoin.

Such classification stems from the three primary existing ways of obtaining bitcoins: accepting them in exchange for goods and services, buying bitcoins on an exchange platform, and producing new ones.

As stated, the VAT treatment of virtual currencies in each case will depend on their nature (see section 3.1). While it seems unlikely that Bitcoin could be seen as e-money, a currency, a security or a voucher, it is not clear whether it meets the characteristics of being a digital product (electronically supplied service) or a negotiable instrument. This is why we have mainly focused on these two last options.

In order to ease the scrutiny of each scenario, it is useful to present a very simplified overview of the operating system of Bitcoin, as the Commission services understands it,

³⁸ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 13.03.2011, p. 1).

focusing on all relevant elements from the VAT perspective. However, it needs to be taken into account that we do not operate on a certain-fact case, due to the peer-to-peer decentralised and anonymous nature of the Bitcoin system, as well as the technical complexity.

- Bitcoin scheme participants and their role

Users

A user of bitcoins is a natural person or a legal entity that obtains virtual currency in order to purchase goods or services, send personal remittances to another person, or to hold the virtual currency for other purposes such as investment.

Merchants

A merchant is a user of bitcoins who, for business purposes, accepts virtual currency in exchange for goods or services.

Digital wallet providers

Users hold their virtual currency accounts and keep a record of their balances by means of digital wallets. These digital wallets are software platforms provided by third parties that can be either stored offline in the user's personal computer or, more frequently, stored and accessed through online connection. Usually, digital wallets also allow users to transact among each other by sending and receiving virtual currency. Just like an e-mail, all wallets can interoperate with each other.

Digital wallet providers may decide to ask for fees in exchange for the arrangement of transactions. They can also act as an intermediary between users sending bitcoins and miners, in respect of any transaction fees borne by the sender.

Miners

Miners, who perform the activity of mining, provide security to the functioning of the Bitcoin system by validating requests for Bitcoin transactions. They work anonymously, on a voluntary basis, and are rewarded with (i) new bitcoins generated automatically by the system for every block of transactions validated; and/or (ii) fees usually borne by the sender of bitcoins. These rewards constitute incentives to the performance of this activity.

Exchange platform operators

Exchange platforms are persons or entities involved in the exchange of virtual currency for either legal tender currency or other virtual currency, and vice versa. These platforms may accept a wide range of payments. Comparable to traditional currency exchanges, the larger exchange platforms provide with an overall picture of a virtual currency's exchange price and volatility.

- How does a Bitcoin transfer work?

In order to start a Bitcoin transaction, a user needs to have a digital wallet, which allows holding and trading with a virtual currency. Digital wallet providers may apply fees to transactions akin to those charged for debit card use.

For transferring a certain amount of bitcoins from his wallet to the recipient's digital wallet, the sender issues a transaction request that flows into the public Bitcoin network.

A transaction request needs to be confirmed by miners in order to successfully reach its recipient with certain guarantees regarding the identity of the user sending the virtual currency, and the availability of the amount to be sent. This is supposed to solve the problem of “double-spending”, *i.e.*, trying to use the same bitcoins for several transactions.

The functioning of the Bitcoin system differs slightly from traditional remittances. While a transfer of money made through traditional banking systems either arrives or not to the recipient, the transfer of bitcoins is a more progressive process: the transfer request needs to be verified at least once by miners, before the recipient can start using the received bitcoins, but to increase its reliability it can be verified more times³⁹. The recipient of the transfer of bitcoins may decide which degree of security he requires for the operation, *i.e.*, how many miners have to verify the transaction.

The more confirmations of the transaction, the less risk of double spending. Miners perform a crucial role by validating Bitcoin transactions. People who undertake this mining activity do so on a voluntary basis and under an incentive system. Miners are rewarded newly⁴⁰ created bitcoins every time they verify a certain number of transactions.

Besides, miners may ask for a minimum fee⁴¹ in order to verify a transaction. These fees are normally borne by the sender of the Bitcoin transfer, and are based on the total byte size of the signed transaction. It has to be taken into consideration that whilst the payment of fees can be voluntary⁴² for the person making the Bitcoin transaction, miners may decide not to work for free. Therefore, the transaction fee can be seen as an incentive for the miner, paid by the user, in order to make sure that a particular transaction will be verified and successfully completed.

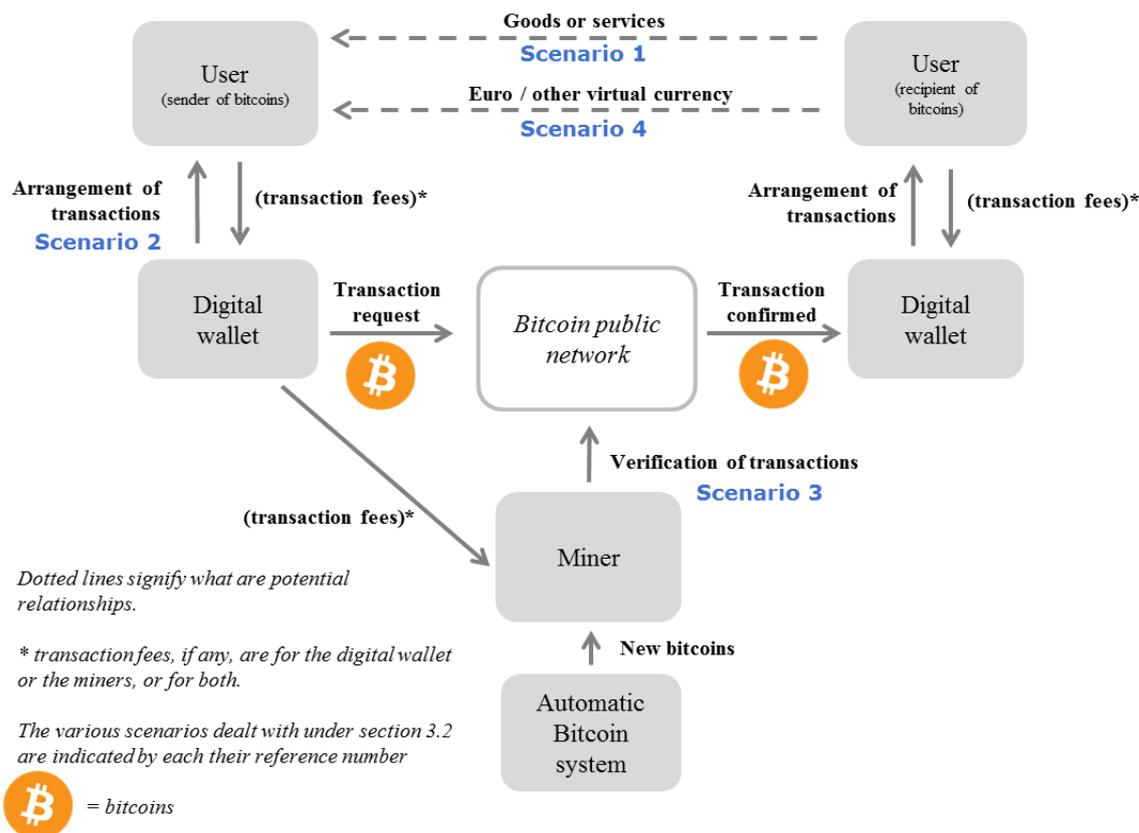
³⁹ To be regarded reliable, a transaction would need to be verified at least 6 times: *"Although this number is somewhat arbitrary, software handling high-value transactions, or otherwise at risk for fraud, should wait for at least six confirmations before treating a payment as accepted"*. See <https://bitcoin.org/en/developer-guide#verifying-payment> (Payment processing – verifying payment).

⁴⁰ Mining is the only way to create new money in the Bitcoin scheme, which is designed as a decentralised system where no central monetary authority is involved. Hence the supply of bitcoins does not depend on the monetary policy of any virtual central bank, but rather evolves based on interested users performing a specific activity: mining. So, there exists no single organisation in charge of the currency, but everyone (collectively) *«is»* the bank.

⁴¹ Miners are expected to finance themselves only via transaction fees from around year 2040, as from which no new bitcoins will be created, and the ceiling of 21 million existing bitcoins will be reached. See https://en.bitcoin.it/wiki/Transaction_fees for more information.

⁴² At least, at the present moment. As stated in footnote 41, it is expected transaction fees will become the only source of income for miners, as from 2040.

The following diagram aims at summarising a Bitcoin transaction, as explained:



3.2.1. Supplies of goods or services, subject to VAT, remunerated by way of Bitcoin (scenario 1)

The Commission services believe that the supplies of any goods and services subject to VAT, remunerated by way of Bitcoin, should be treated in the same way as any other supplies for VAT purposes.

The taxable amount of the goods or services shall, according to Article 73 of the VAT Directive, be everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party. When such consideration is expressed in bitcoins, the taxable amount on which VAT is levied should be the equivalent value in a legal tender currency of the consideration, when the transaction takes place.

At this point, a problem with the exchange rate to apply may arise. Since Bitcoin is traded on multiple exchange platforms, its fair market value with respect to other currencies (such as Euro) varies at any given moment depending on the exchange platform. This phenomenon is common also for legal tender currencies, but central banks publish foreign

exchange reference rates⁴³. In contrast, since Bitcoin does not have a central authority, such a reference rate does not exist⁴⁴.

Regarding the Bitcoin itself, should it be seen as a digital product, the use of bitcoins for payment would be considered an electronically supplied service for VAT purposes, as seen in section 3.1.6. This fact would have consequences in every activity carried out in relation to Bitcoin, but noticeably when bitcoins are exchanged for goods or services, because payment in Bitcoin could then be regarded as barter.

Barter implies the existence of two reciprocal supplies, each of which is considered to be remuneration for the other: (i) the customer acquires goods or services from the company; and (ii) the company accepts Bitcoin from the customer. The asymmetric nature of such trading (taxable v non-taxable person) would create practical issues in VAT, generating extra costs for the business participant. Moreover, were trade involving Bitcoin to be regarded as transactions within the scope of VAT, private individuals could become taxable persons for VAT purposes where the annual turnover exceeded the allowed thresholds. Anonymity of traders would represent an added difficulty in identifying taxable persons and the place of supply. So, practical implications suggest this would be a cumbersome outcome.

Instead, the transmission of bitcoins in exchange for goods or services rather seems to act as a means of payment and, therefore, to fall outside the scope of VAT. Money transferred as expenditure is not a supply in itself: *“a taxable person who only pays the consideration in cash due in respect of a supply of services, or who undertakes to do so, does not himself make a supply of services for the purposes of Article 2(1) of the Sixth Directive”*⁴⁵. In VAT payments are not consumption from the recipient, but a measure of the consumption. In other words⁴⁶, *“undifferentiated purchase power is exchanged for goods and/or services”*.

VAT is a general indirect tax on consumption (expenditure). So, in principle, VAT must be construed as tax on expenditure for private consumption, as largely confirmed by the CJEU⁴⁷ and the doctrine⁴⁸. Hence the question should be whether the provider of goods or services that receives bitcoins in exchange is acting as a “consumer” of those bitcoins.

According to the doctrine *“consumption itself is not directly observable but what we can hope to observe is spending and where it takes place. It is presumed that the expenditure represents the net present value of the future consumption of the goods or services supplied or imported. Hence, VAT is seen as an acquisition of the potential inherent to goods or services to be used for private needs”*⁴⁹. In the light of these reflections, it is doubtful that one can think Bitcoin itself can satisfy any private need in this scenario,

⁴³ For Euro, see <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html>

⁴⁴ Bitcoin Price Index (BPI) attempts to become a reference rate <http://www.coindesk.com/price/bitcoin-price-index/>

⁴⁵ CJEU, judgment of 9 October 2001 in case C-409/98 *Mirror Group*, paragraph 26.

⁴⁶ KAJUS, J. and TERRA, B.: *Commentary – A Guide to the Sixth VAT Directive (Historical Archive) – Chapter 10 Exemptions*. (2014), IBFD Tax Research Platform.

⁴⁷ CJEU, judgment of 24 October 1994 in case C-317/94 *Elida Gibbs*, paragraph 19; and judgment of 21 February 2008 in case C-271/06 *Netto Supermarkt*, paragraph 21.

⁴⁸ ECKER, T.: *A VAT/GST Model Convention – Chapter 8 Basic principles* (2012), IBFD Tax Research Platform: *“Although in its legal design it is a tax on transactions, it is undisputed that a modern VAT should only burden the final consumer. As Van Siemens already held 90 years ago when first proposing a VAT, in the end it is always the consumer that pays the tax”*.

⁴⁹ *Op. cit.*

apart from being a tool whereby a sum of money can be obtained. Or that we could consider the goods or services provided to constitute expenditure from the point of view of the provider.

The idea that bitcoins are not an aim⁵⁰ in itself for the supplier when received in exchange for goods or services could be similar to the question raised in *MacDonald Resorts*⁵¹, which dealt with the sale through a holiday club of points rights granting entitlement to use timeshare holiday accommodation. According to Article 25(a) of the VAT Directive these points could arguably be intangible property, the sale of which might constitute the provision of a service subject to VAT.

The same approach could be argued in respect of a transfer of bitcoins, despite differences⁵² between the Bitcoin scheme and the facts analysed in *MacDonald Resorts*.

According to the CJEU, this approach was however rejected in *MacDonald Resorts*, for the points represented “*in a way the means of payment that customers use*”⁵³. Moreover, “*The customer completes the (...) transaction not to collect points, but with the intention of temporarily using accommodation or of obtaining other services which he will choose at a later date. Therefore, the purchase of ‘Points Rights’ is not an aim in itself for the customer. The acquisition of such rights and the conversion of points must thus be regarded as preliminary transactions in order to be able to exercise the right to temporarily use a property, or to stay in a hotel or to use another service*”⁵⁴.

Thus, following that same reasoning, the transmission of bitcoins would not be a supply of a service itself, because the recipient does not seek to satisfy a private “need of bitcoins” when acquiring them, *i.e.* bitcoins do not constitute consumption but a means of payment for the goods or services provided.

Concerning the fact that the user did not pay the price agreed directly to the supplier but through intermediation, it should be pointed to the settled case law of the CJEU⁵⁵, according to which the eventual payment service provided by the intermediary needs to be regarded as an independent transaction, thus only one supply of goods or services occurs.

If bitcoins were deemed to be negotiable instruments (see section 3.1.3), payments in Bitcoin would fall within the exemption of Article 135(1)(d) of the VAT Directive.

⁵⁰ According to the CJEU, the concept of ‘supply of goods’ is “*objective in nature and it applies without regard to the purpose or results of the transactions concerned and without its being necessary for the tax authorities to carry out inquiries to determine the intention of the taxable person in question*”. See *inter alia* judgment of 21 February 2006 in case C-255/02 *Halifax*, paragraph 55 where reference is made to activities carried out with the sole aim of obtaining a tax advantage, without any other economic objective. As regards bitcoins, the aim of the supplier of the service is being taken into account in order to evaluate the very existence of consumption, which is not even questioned in *Halifax*.

⁵¹ CJEU, judgment of 16 December 2010 in case C-270/09 *MacDonald Resorts*.

⁵² Noticeably, the holiday club did not only sell points rights, but was involved in the provision of the subsequent lodging service. This is why the outcome of the sentence is based on the reasoning that VAT cannot become chargeable when the points are acquired, because the goods or services to receive in exchange for the points have not been identified yet. The service is not fully supplied until those points are converted.

⁵³ *MacDonald Resorts*, paragraph 21.

⁵⁴ *Op.cit.*, paragraph 24.

⁵⁵ CJEU, judgment of 25 May 1993 in case C-18/92 *Bally*, paragraph 16.

Some Member States consider a transfer of bitcoins in exchange for goods or services to be an electronically supplied service in itself. Others however believe it should not be treated as such, either because the transfer falls outside the scope of the VAT, or because the exemption in Article 135(1)(d) of the VAT Directive for negotiable instruments applies.

3.2.2. Services concerning the arrangement of transactions in Bitcoin (scenario 2)

Fees may be asked by digital wallets for providing users with an environment for holding and using bitcoins.

If bitcoins were seen as digital products (see section 3.1.6), these services would fall within the scope of VAT and no exemption would apply. Despite major differences, digital wallets would equate to platforms such as Netflix⁵⁶ or Spotify⁵⁷, which allow users to access and use digital information through a specific software.

However, the role played by digital wallet providers in the Bitcoin scheme perhaps more reminds of the facts analysed by the CJEU in *SDC*⁵⁸ where a data centre provided the technical and legal framework which allowed payment operations to take place, by connecting banks and Payment Service Providers. The CJEU examined whether the operations carried out by the data centre could be described as transactions within the meaning of Article 135(1)(d) of the VAT Directive, on the basis of transactions concerning payments and transfers.

It stressed that the mere fact that a constituent element is essential for completing an exempt transaction does not warrant the conclusion that the service which that element represents is exempt⁵⁹. In contrast, “for ‘a transaction concerning transfers’, the services provided must therefore have the effect of transferring funds and entail changes in the legal and financial situation. A service exempt under the Directive must be distinguished from a mere physical or technical supply, such as making a data-handling system available to a bank. In this regard, the national court must examine in particular the extent of the data-handling centre’s responsibility vis-à-vis the banks, in particular the question whether its responsibility is restricted to technical aspects or whether it extends to the specific, essential aspects of the transactions”⁶⁰.

The CJEU in *Nordea*⁶¹ dealt with similar facts. In this case, a SWIFT company provided a messaging system for interbank money and security transactions, through which banks and financial institutions could securely transmit the details of transactions to be effected. The question arose as to whether these SWIFT transactions could qualify as VAT exempt under Article 135(1)(d) of the VAT Directive, on the basis of transactions concerning payments and transfers.

It ruled that SWIFT services should be subject to VAT and not exempted. Although they were essential for payment transactions, it did not mean automatic exemption. In order for

⁵⁶ <https://www.netflix.com>

⁵⁷ <https://www.spotify.com>

⁵⁸ CJEU, judgment of 5 June 1997 in case C-2/95 *Sparekassernes Datacenter*.

⁵⁹ *SDC*, paragraph 65.

⁶⁰ *SDC*, paragraph 66.

⁶¹ CJEU, judgment of 28 July 2011 in case C-350/10 *Nordea*.

a service to be regarded as a payment service, it must bring about changes in the legal and financial status. That was not the case with SWIFT services which were regarded as mere technical supplies.

As a matter of fact, the role played by SDC or SWIFT, seems to be similar to that of digital wallet platforms, which connect users, merchants and miners that verify the transactions among them. The question is whether this service entails any change in the legal and financial situation or is a mere technical supply.

We must bring up the fact that it is difficult to think of transactions in bitcoins as payments or transfers within the meaning of Article 135(1)(d) of the VAT Directive, regardless of them actually acting as such. The definition of exempted transfers is focused on the banking system, as stated by the CJEU: “ *a transfer is a transaction consisting of the execution of an order for the transfer of a sum of money from one bank account to another. It is characterized in particular by the fact that it involves a change in the legal and financial situation existing between the person giving the order and the recipient and between those parties and their respective banks and, in some cases, between the banks*”⁶².

Should bitcoins be considered to be negotiable instruments (see section 3.1.3), these services would fall within the exemption of Article 135(1)(d) of the VAT Directive.

Some Member States are of the view that services concerning the arrangement of transactions in Bitcoin should be treated as a supply of services for consideration and no exemption should apply. Others believe that the exemption pursuant to Article 135(1)(d) of the VAT Directive for negotiable instruments should apply.

3.2.3. Services concerning the verification of bitcoin transactions (mining) (scenario 3)

Transactions involving bitcoins typically require the payment of transaction fees⁶³ based on the total byte size of the signed transaction. These fees are usually borne by the sender of a transaction in Bitcoin, and so it is ultimately up to each miner to choose the minimum transaction fee they will accept. Besides, miners are rewarded new bitcoins for their services.

As a preliminary matter, it is worth remarking that it may not be evident who the recipient of such services is. Technically speaking, the verification of transactions is provided to the public Bitcoin network through anonymous codes. However, since the economic cost of the fee is borne by the sender of the transaction, it shall be assumed that the miner renders a service to this latter user.

The first question must be whether mining activities could be considered to constitute a supply of services for consideration, for VAT purposes. From the settled case-law of the CJEU⁶⁴, the basis of assessment for a supply of services is everything which makes up the

⁶² SDC, paragraph 53.

⁶³ See <https://bitcoin.org/en/developer-guide#transaction-fees-and-change> (transactions – transaction fees and change).

⁶⁴ CJEU, judgment of 23 November 1988 in case C-230/87 *Naturally Yours*, paragraph 11; and judgment of 8 March 1988 in case C-102/86 *Apple and Pear Development Council*, paragraphs 11 and 12.

consideration for the service supplied. The supply of services is however taxable only if there is a direct link between the service provided and the consideration received.

Regarding Bitcoin, it seems quite straightforward that there is a direct link between the supply of a service consisting in the verification of transactions in bitcoins (mining activities), and the consideration received, either in the form of new bitcoins or transaction fees.

However, having a direct link between the services provided and any consideration received does not suffice. In addition to a direct link, there must be a legal relationship between the person receiving consideration for a service and the person paying it.

As the CJEU stated in *Tolsma*, a supply of services is effected for consideration within the meaning of Article 2(1)(c) of the VAT Directive, and hence is taxable, “*only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient*”⁶⁵. In this case, a musician played a barren organ on the public highway and invited passers-by to leave a donation in a tin, it was held that playing music on the public highway for which no consideration was stipulated did not constitute a supply of services effected for consideration.

As regards bitcoins, the analysis of a legal relationship can be controversial, for the Bitcoin system does not fall within the traditional parameters. Note that, on the one hand, the transaction fees which may be due for the verification services provided by miners are usually borne by the sender of bitcoins while the consideration received by miners in the form of new bitcoins is sent by an anonymous automatic system.

However, the requirement for there to be a “legal relationship” between the parties seems to refer to the existence of a prior agreement whereby the conditions of the supply are established and a consideration agreed.

Unlike the *Tolsma* case, where payments are entirely voluntary, uncertain and the amount is practically impossible to determine, there is certainty in the Bitcoin scheme concerning the conditions under which the service is provided: for every verification that takes place, regardless of the recipient of the services, new bitcoins and/or a transaction fee⁶⁶ will be rewarded to the miner.

Finally, according to Article 2(1)(c) of the VAT Directive, transactions fall within the scope of VAT when performed by a taxable person “acting as such”. Pursuant to Article 9(1) of the VAT Directive, a taxable person shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Also according to this article, the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

⁶⁵ CJEU, judgment of 3 March 1994 in case C-16/93 *Tolsma*, paragraphs 13 and 14.

⁶⁶ We refer to footnote 41, regarding the future evolution of new bitcoins and transaction fees.

As for bitcoins, in order to perform the activity of mining it is necessary to dispose of some powerful hardware able to unravel mathematical problems. Indeed, there is a direct relationship between the hardware tools available and the capacity to carry out complex calculations and, therefore, find solutions. Since the algorithms to be solved in order to receive newly created bitcoins become more and more complex, also supplementary computing resources – more sophisticated than regular PC hardwares – are required. This extra effort proves the determination of current miners for obtaining bitcoins.

Consequently, mining activities could be seen as an economic activity and, under the given circumstances, they would constitute a supply of services for consideration.

If bitcoins were instead considered to be negotiable instruments (see section 3.1.3), verification services provided by miners would fall within the exemption of Article 135(1)(d) of the VAT Directive.

If bitcoins were seen as digital goods (see section 3.1.6), these services would fall within the scope of VAT and no exemption would apply.

Note that services concerning the verification of Bitcoin transactions could also be seen as a subtype of services concerning the arrangement of Bitcoin transactions (see section 3.2.2). While digital wallet platforms allow interaction between all the actors of the Bitcoin scheme, miners are those who ultimately verify transactions and ensure that they are carried through. Hence it is difficult to exclude miners from actually providing services concerning the arrangement of transactions in Bitcoin.

Among the Member States who expressed an opinion, only a few had a position regarding services concerning the verification of transactions in Bitcoin. They believe these services should fall outside the scope of VAT.

3.2.4. Services concerning the exchange of bitcoins (scenario 4)

Bitcoins are often exchanged for legal tender currencies, such as euros or dollars, or vice versa, in online exchange platforms⁶⁷. Bitcoin being exchanged for other virtual currencies⁶⁸ is also an option that, although regarded as a marginal practice at the moment, may be a growing trend in the near future. Such platforms may apply charges.

The platforms may buy/sell bitcoins themselves, thereby acting as owners of the virtual currency, or may act as an intermediary between buyers and sellers. The latter aims at enabling trade between other users by offering a virtual market place and the platform would normally in that case charge a fee for making use of its trading tool.

Exchange services provided by online platforms need to be distinguished from the transfer of bitcoins, in order to assess thoroughly the VAT treatment.

⁶⁷ For more information, see <http://howtobuybitcoins.info/>

⁶⁸ Such as litecoins and peercoins. For more information on alternative virtual currencies, see <http://www.forbes.com/sites/reuvencohen/2013/11/27/the-top-30-crypto-currency-market-capitalizations-in-one-place/>

- Transfer of Bitcoin itself

Regarding the transfer of bitcoins, should bitcoins potentially be seen as a digital product (see section 3.1.6), it would be treated as an electronically supplied service for VAT purposes. The service would be provided by the sender of the virtual currency, which may not be the exchange platform, but a private user. As to the implications (see section 3.2.1), it could see private individuals become taxable persons for VAT purposes and they would then need to register for VAT purposes where the annual turnover is exceeded and anonymity of traders would represent an added difficulty in identifying taxable persons and the place of supply.

If bitcoins were considered to be negotiable instruments (see section 3.1.3), their transfer would fall within the exemption of Article 135(1)(d) of the VAT Directive.

- Services concerning the exchange of bitcoins

Regarding the services provided by exchange platforms, should Bitcoin be treated as a currency (see section 3.1.2), the reasoning laid out by the CJEU in *First National Bank of Chicago*, concerning exchange services, could perhaps apply according to which: “*Transactions between parties for the purchase by one party of an agreed amount in one currency against the sale by it to the other party of an agreed amount in another currency, both such amounts being deliverable on the same value date, and in respect of which transactions the parties have agreed (whether orally, electronically or in writing) the currencies involved, the amounts of such currencies to be purchased and sold, which party will purchase which currency and the value date, constitute supplies of services effected for consideration within the meaning of Article 2(1) of the Sixth Directive*”⁶⁹.

Even when no commission is charged, transactions are regarded as supplies of services for consideration, since “*to hold that currency transactions are taxable only when effected in return for payment of a commission or specific fees would allow a trader to avoid taxation if he sought to be remunerated for his services by providing for a spread between the proposed transaction rates rather than by charging such sums*”⁷⁰. It remains the case that the customer goes to the online platform and asks for means of payment to be made available to him or her in a particular currency in return for means of payment in another currency. Even if no commission is charged, the customer is receiving a supply of services, which is the platform's preparedness to conclude such transactions.

It was also confirmed that these exchange services would be exempt on the basis of Article 135(1)(e) of the VAT Directive as “*foreign exchange transactions normally have no bearing on taxation, since, under Article 13B(d)(4) of the Sixth Directive, they are exempt from value added tax*”⁷¹.

If bitcoins were considered to be negotiable instruments (see section 3.1.3), exchange services would fall within the exemption of Article 135(1)(d) of the VAT Directive.

If bitcoins were seen as digital goods (see section 3.1.6), these services would fall within the scope of VAT and no exemption would apply.

⁶⁹ CJEU, judgment of 14 July 1998 in the case C-172/96 *First National Bank of Chicago*, paragraph 35.

⁷⁰ *First National Bank of Chicago*, paragraph 33.

⁷¹ *First National Bank of Chicago*, opinion of Advocate General Lenz of 16 September 1997, point 25.

Regarding services concerning the exchange of bitcoins, as well as the transfer of Bitcoin itself, some Member States are of the opinion that they should be treated as supplies of services for consideration and no exemption would apply. Others believe that the exemption pursuant to Article 135(1)(d) of the VAT Directive for negotiable instruments should apply in either case.

3.3. Final considerations

As a stateless digital currency outside traditional commerce and finance or supervision, Bitcoin's increasing worldwide popularity has raised questions about taxation. It is necessary to reach a common and consistent position on the VAT treatment for Bitcoin and similar digital currencies implemented across the EU.

The VAT treatment of Bitcoin depends on its nature. While it seems unlikely that Bitcoin could be seen as e-money, a currency, a security or a voucher, it is not clear whether it meets the characteristics of being a digital product (electronically supplied service) or a negotiable instrument.

Treating bitcoins as a digital product seems a step too far, certainly in those cases where the virtual currency acts clearly as a means of payment and is used in the exchange of goods or services. It could result in the transaction becoming a barter.

Regarding the concept of negotiable instruments, the recent ruling in *Granton Advertising* has provided some guidance that likens a negotiable instrument to a right to claim a sum of money, closely linked to a payment instrument. Certainly, Bitcoin acts as an alternative currency akin to money, although some concerns may arise as to the negotiability of virtual currencies.

As to supplies of any goods and services subject to VAT remunerated by way of Bitcoin, they should be treated in the same way as any other supplies for VAT purposes. When payment for goods or services is made in bitcoins, it is difficult to imagine that the payment itself constitutes a supply of services, because Bitcoin does not represent consumption but acts as a means of payment, *i.e.*, its supply would fall outside the scope of VAT. Alternatively, if bitcoins were treated as a digital product, the transaction could become a barter. If bitcoins were seen as a negotiable instrument, the exemption under Article 135(1)(d) of the VAT Directive would apply.

Services involving the arrangement of transactions in Bitcoin allow users to interact with each other – *i.e.*, providing an environment for trading and using bitcoins. Should bitcoins be seen as a digital product, these services would be subject to VAT and no exemption would apply. Bitcoins seen as a negotiable instrument, however, would imply that these services are exempt under Article 135(1)(d) of the VAT Directive.

The provision of services in connection with the verification of transactions in Bitcoin (the mining activity) seems to be carried out for consideration subject to VAT, for there exists a direct link between those services and the consideration received. If bitcoins were considered a negotiable instrument, however, these services would be exempt under Article 135(1)(d) of the VAT Directive.

As regards the trade of Bitcoin in its own right in exchange for legal tender currencies or other virtual currencies, the transfer of Bitcoin itself would be considered an electronically

supplied service if bitcoins were seen as digital goods. If they were seen as negotiable instruments, its transfer would be exempt under Article 135(1)(d) of the VAT Directive.

As to the exchange services offered by virtual exchange platforms, if bitcoins were treated as a digital product, these exchange services would fall within the scope of the VAT. Were bitcoins seen as a negotiable instrument, the services could benefit from the exemption pursuant to Article 135(1)(d) of the VAT Directive.

The harmonised treatment of Bitcoin and similar virtual currencies for VAT purposes should aim at keeping EU VAT legislation abreast of technological changes in the wider world. Virtual currencies are often hard to fit within the existing legal parameters, but their VAT treatment should not ignore the economic reality underlying the transactions carried out, as well as the nature of the VAT.

4. DELEGATIONS' OPINION

The delegations are requested to give their opinion on the following:

- (1) the legal status of Bitcoin; and
- (2) the VAT treatment of certain activities concerning Bitcoin.

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Question from the United Kingdom

Overview

Bitcoin is a decentralised digital currency which can be used to pay for goods or services at merchants where it is accepted. It lends itself in particular to buying and selling online because it is a direct peer-to-peer payment method, avoiding the cost of conventional bank transfers and credit and debit card payments. In the UK there are already a number of internet retailers and home delivery food outlets that accept payment by bitcoin. However, the anonymity associated with the currency also lends it for use in the shadow economy and other illegal operations. Like any other currency, the price may vary against demand and, as the Bitcoin exchange rate has been exceptionally volatile, the primary use of bitcoin so far has been for speculative investment purposes.

Put simply, bitcoin is a number associated with a bitcoin address which can be exchanged without any third party intervention as no person or institution claims ownership over the money supply. It is not currently recognised as legal tender anywhere in the world and is not secured against any commodity (e.g. gold) or against the debt of any country. The bitcoin market participants, however, are able to self-regulate and can exclude other participants from the market in certain instances.

New bitcoin comes into existence by people employing high powered computers to solve complex algorithms and, if successful, earn bitcoin. These people are known in the bitcoin community as ‘miners’. There is a limit to the amount of new bitcoin that can be ultimately mined – 21,000,000 by 2040, of which 98% will have been issued by 2030 – and it is becoming increasingly difficult to obtain.

Use of the currency needs to be supported by a market of vendors and exchanges. Bitcoin vendors buy from miners and sell to investors/users. The exchanges charge additional fees for providing facilities for parties to trade bitcoin with other currencies.

We understand a number of bitcoin vendors and exchanges are currently establishing themselves in the EU. This is driven in part by the barriers to trade they are experiencing from authorities in the US and Far East. China has decided that bitcoin is not a real currency and has forbidden its banks from involvement in bitcoin transactions. Whilst in the US, the inconsistency in requirements imposed by different states is causing considerable difficulties for businesses trying to set up there.

VAT Issues

The UK is receiving an increasing number of enquiries about the regulatory and tax issues associated with bitcoin. A significant number of these enquiries concern the VAT treatment of bitcoin related transactions because VAT is fundamental to whether a bitcoin operation is viable.

The VAT issues are as follows:

1. Should supplies of any goods and services subject to VAT, remunerated by way of bitcoin, be treated in the same way as any other supplies for VAT purposes?
2. If so, is this is a form of barter transaction so that, where both parties are taxable persons and the supplies are by way of business, VAT is also due on the value of the bitcoin exchanged for those goods and services.
3. Is there a supply within the scope of VAT when a taxable person sells bitcoin in exchange for legal tender currency (e.g. Euros)?
4. If so, is VAT due on the full value of the bitcoin itself or just on any amounts received by the taxable person over and above the value of the bitcoin at the time the supply takes place.
5. If there is a supply of the bitcoin itself, what is the nature of that supply and does it fall within one of the Article 135(1)(c)-(f) exemptions?
6. What is the nature of supplies made by bitcoin exchanges when they charge for arranging and facilitating trades between buyers and sellers of bitcoin and other, recognised, currencies and could they fall within one of the Article 135(1)(c)-(f) exemptions?

Relevant factors when considering these questions are:

1. ‘Consideration’ for VAT supply purposes includes all forms of payment whether by way of legal tender currency or by any other means.
2. There is nothing in the nature of bitcoin to indicate that they share the characteristics of either single or multi-purpose vouchers.
3. Bitcoin has no function other than as a form of virtual currency.
4. Article 135(1)(e) exempts transactions concerning currency but only when it is used as legal tender.
5. Advocate General Kokott in her recent opinion in Granton Advertising BV (C461-12) considered the nature of the financial exemptions in Article 135(1) and decided that “other negotiable instruments” in Article 135(1)(d) covers rights which, without being a debt or a cheque, confer entitlement to a sum of money. Saying that:

“This analysis also conforms to the purpose which we recognise in respect of the exemption of transactions concerning negotiable instruments. We are convinced that this is a question here of rights which the public compares to money and which, in terms of VAT, call for the same system as the remittance of money itself. It is unanimously conceded that the remittance of money is not taxed as such, but is merely the consideration for a taxed service either because it is not question of either a supply of goods or a supply of services

within the meaning of Article 2(1) of the Sixth Directive or because it is exempted from taxation by Article 13(B)(d)(4) of the Sixth Directive.”

6. If bitcoin transactions were not included within the exemptions for financial services and were subject to VAT this could create considerable difficulties in arriving at the taxable base in instances where no explicit fee were charged but rather, in accordance with the findings of the ECJ in First National Bank of Chicago (C-172/96), consideration was determined by way of the overall result of the currency transactions over a given period of time.
7. Because something is treated in a particular way for regulatory purposes it does not necessarily follow that it should be treated in the same way for VAT purposes.

UK views on the VAT position

The UK is still considering the position and has yet to form a final view on the VAT treatment of bitcoin transactions. However our preliminary view is that:

1. There is no supply of the bitcoin itself when it is sold for recognised currency (or when it is exchanged for goods and services). The closest analogy (and we admit that this is by no means a perfect one) is the ECJ’s decision regarding the treatment of ‘Points Rights’ in the MacDonald Resorts case (C-270/09). There the Court held that it was only once the points were used to obtain the holiday accommodation that the service could be seen as fully supplied – in effect at the time they were issued the points were disregarded for VAT purposes. It has to be remembered that in that the case the company was responsible in some way for the provision of the underlying services which is not the position in relation to the sale of Bitcoin.
2. Whilst bitcoin has all the key characteristics of a currency, bitcoin transactions cannot be exempt from VAT under Article 135(1)(e) “... *transactions* *concerning currency*” because bitcoin does not meet the requirement that the currency is legal tender.
3. Given its similarity to traditional currency, the UK feels that transactions in bitcoin should, however, still fall somewhere within the financial services exemptions.
4. This is also in keeping with one of the recognised reasons why financial services are exempt – i.e. to avoid the difficulties of taxation where there is no explicit charge – which would apply in instances where bitcoin is traded for speculative purposes, as per point 6 above.
5. As Article 135(1)(e) is not currently a possibility, therefore, our preliminary view is that any additional charges made for transactions in bitcoin – i.e. either for selling bitcoin or for arranging trades in bitcoin – should be exempt from VAT under Article 135(1)(d) as “...*transactions, including negotiation, concerning... other negotiable instruments*”.

Conclusions

Bitcoin use is growing rapidly worldwide. It is the first digital currency that has acquired widespread use, and there is a common view that bitcoin will be the first of many such currencies. This means that regardless of its acceptability to the regulatory or fiscal authorities in individual member states, bitcoin is increasingly being used as a means of both payment and investment so VAT is already an issue. We think it is important to try to reach a consensus view at this stage, rather than waiting until possibly inconsistent member state bitcoin VAT treatments emerge causing significant problems particularly in respect of cross-border transactions. This is an opportunity for member states to share their knowledge and experiences, and if possible to reach a common and consistent position on the VAT treatment of bitcoin and similar digital currencies.