

The legal environment of the early years

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Entrepreneurs who came to Zug in 2014 and 2015 found no law that dealt with crypto-assets and Digital Assets, an absence that was itself an attraction. Swiss private law is based on general principles, from which Swiss lawyers were used to reasoning, that can be applied to new phenomena without legislation. A token could be analysed as a claim, as a right of participation or as a mere factual value without any legal content. A transfer on the blockchain could be analysed under the general rules on the assignment of claims or as a factual act. Neither analysis was certain, but both were available and allowed lawyers to give opinions on which projects could rely.

Public law was equally open. Because federal financial market law applied to activities, the question was whether a given crypto activity fell under one of the regulated categories. The Anti-Money Laundering Act of 1997 covered financial intermediaries who accept or hold assets belonging to others or help to transfer them. FINMA had indicated in 2014 that the professional exchange of Bitcoin and the operation of trading platforms fell under that Act.¹ The Federal Council had published a report on virtual currencies in June 2014 which concluded that there was no need for special legislation at that stage.² For projects that issued tokens without taking deposits, operating exchanges or managing assets for others, the regulatory position was therefore relatively favourable.

Tax law followed the same pattern. The cantonal tax administrations treated Bitcoin as a foreign currency for wealth tax purposes and published year-end rates for valuation. Capital gains on private movable assets are tax-free in Switzerland, which made the country attractive for individuals who held crypto-assets and Digital Assets privately. The treatment of token issues by companies and foundations remained open until the Federal Tax Administration published its working paper in 2019, which Chapter III examines.³

1 Notes

1. Die Volkswirtschaft, "Bitcoin: Virtuelle Währung mit Chancen und Risiken", September 2014, dievolkswirtschaft.ch/de/2014/09/sansonetti-3/: the professional purchase and sale of Bitcoin falls under the Anti-Money Laundering Act, as do trading platforms that transfer funds between users; refers to the FINMA publication issued together with the Federal Council report of 25 June 2014. The FINMA fact sheet of 2014 itself was not retrieved. ↩
2. Federal Council, "Bericht des Bundesrates zu virtuellen Währungen in Beantwortung der Postulate Schwaab (13.3687) und Weibel (13.4070)", 25 June 2014, news.admin.ch; summary in "Das Wesentliche aus dem Bericht des Bundesrates zu virtuellen Währungen", eskommtdaraufan.com, 11 July 2014: virtual currencies a marginal phenomenon that does not operate in a legal vacuum, hence no current need for legislation. ↩
3. Federal Tax Administration (ESTV), Arbeitspapier "Kryptowährungen und Initial Coin/Token Offerings (ICOs/ITOs) als Gegenstand der Vermögens-, Einkommens- und Gewinnsteuer, der Verrechnungssteuer und der Stempelabgaben", original version 27 August 2019, updated 14 December 2021 and later (current version of 3 August 2022 listed on estv.admin.ch, page "Kryptowährungen – Besteuerung"); sets out the tax treatment of payment, asset and utility tokens for investors and issuers. ↩

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