

The tax treatment of foundations and token sales

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The tax treatment of the foundations was a central question for the projects. A Swiss foundation with a public-benefit purpose can be exempted from profit and capital taxes. The crypto foundations argued that the development of an open protocol was in the public interest, since the protocol was available to everybody and nobody owned it. The tax authorities took a more restrictive view, since tax exemption requires that the foundation pursue a purpose in the general interest and act selflessly. A foundation that develops a protocol for the benefit of the holders of its tokens, and whose founders hold large numbers of tokens themselves, does not easily meet that standard.¹ Most crypto foundations were therefore taxed as ordinary legal entities, with the cantonal rates of Zug keeping the burden low.

The main question concerned the proceeds of the token sale. If they were taxable income of the foundation, the tax could be considerable, since the value of the proceeds in francs could reach tens or hundreds of millions. The Federal Tax Administration addressed the question in its working paper of 2019, following the classification of FINMA. Proceeds from the issue of utility tokens are generally treated as taxable income of the issuer, but the issuer can form provisions for the obligations that it has undertaken towards the token holders, for example the development of the protocol. Asset tokens that represent a debt of the issuer are treated like bonds, with the proceeds treated as borrowed capital. Asset tokens that represent a participation are treated like shares, with possible consequences for withholding tax and stamp duties.²

The canton of Zug applied these principles in agreement with the federal practice and gave advance tax rulings to projects that requested them. The rulings, which allowed projects to establish their tax position before the token sale, became a standard part of the preparation of a project in Zug. The canton's practice has been described as pragmatic: the industry

received the same service that the canton had given to holding companies and commodity traders for decades.

1 Notes

1. Federal Act on Direct Federal Taxation (DBG), Art. 56 lit. g: legal entities pursuing public or public-benefit purposes are exempt for the profit exclusively and irrevocably dedicated to those purposes; entrepreneurial purposes are in principle not public-benefit (text as reproduced on swissrights.ch). The ESTV circular no. 12 of 8 July 1994 and the practice on crypto foundations have not been re-checked here.



2. 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", 27 August 2019, updated 14 December 2021 and later, estv.admin.ch: funds received for utility tokens are taxable income of the issuer at the time of issue, with provisions permitted for documented contractual obligations; proceeds of debt-like asset tokens are borrowed capital; funds received for asset tokens with participation rights are capital contributions, with withholding tax on distributions and issuance stamp duty. The paper does not treat the proceeds of payment tokens at the level of the issuer.



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