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Virtual Drivers of Real Economic Growth: The EU's Complex Tax Policy Strategy

By Selva Ozelli, Esq., CPA[*]

Blockchain technology and cryptocurrency regulation have become one of the most talked-about topics among global intergovernmental organizations, European Union (EU) economic leaders, regulators, legislators, and central banks. The EU and member countries are using technological innovation — including virtual currencies and blockchain technology — as a strategic tool for income growth, national competitiveness, and economic well-being. The following countries have created blockchain innovation strategies and/or launched national blockchain innovation initiatives: Austria,[1] Belgium,[2] Estonia,[3] Finland,[4] France,[5] Germany,[6] Ireland,[7] Latvia,[8] Lithuania,[9] Luxembourg,[10] Malta,[11] Netherlands,[12] Poland,[13] Portugal,[14] Slovakia,[15] Slovenia,[16] Spain,[17] Sweden,[18] and the United Kingdom.[19] Member countries are relaxing foreign direct investment constraints, providing funding, financing, using public-private collaborations, tax breaks and asking technology companies from outside their borders — including U.S. companies — for commitments to their countries to build up their infrastructure, increase productivity, drive innovation, to diversify their economies.

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[1] Austrian Blockchain Center, available at https://www.blockchain-center.at.

[2] Kristian McCann, *Blockchain Technology Makes Headway in Belgium*, Brussels Express (Apr. 13, 2018).

[3] Nathan Heller, *Estonia: The Digital Republic*, The New Yorker (Dec. 18-25, 2017).

[4] Nordic Blockchain Association, available at http://nordicblockchain.com.

[5] William Suberg, *Blockchain Accelerator Opens in Paris With 30 Participants*, Cointelegraph.com (June 19, 2018).

[6] Blockchain Bundesverband (Blockchain Federal Association) website, https://www.bundesblock.de.

[7] Michael Scott, *Ireland Is Becoming a 'Landing Spot' for Blockchain Tech*, Bitcoin Magazine (Mar. 13, 2017); Blockchain Association of Ireland.

[8] Latvian Blockchain Association, available at http://blockchain.org.lv.

[9] Irene Kostaki, *Lithuania Debuts as EU Gateway for Global Blockchain Industry*, New Europe (Jan. 13, 2018). Kai Sedgwick, *How Lithuania Became a Hub of Cryptocurrency Innovation*, Bitcoin.com (May 28, 2018).

[10] *Launch of Lëtzblock, the Luxembourg Blockchain and DLT Association*, ITOne (June 20, 2018).

[11] Blockchain Malta, available at https://blockchainmalta.org; Selva Ozelli, *Malta Emerges as World's Cryptocurrency Hub Despite EU's TAX3 Investigation: Expert Take*, Cointelegraph.com (June 13, 2018).

[12] Selva Ozelli, *Upbeat Dutch Blockchain and Crypto Action Agenda*, Cointelegraph.com (Feb. 9, 2018).

[13] Polish Accelerator of Blockchain Technology, available at http://www.akcelerator.tech/en/home-page/.

[14] Portuguese Association of Blockchain and Cryptomoedas, at https://blockchainportugal.pt; Selva Ozelli, *Why Are Portuguese Increasingly Excited About Cryptocurrency Trading: Expert Blog*, Cointelegraph.com (Jan. 28, 2018).

[15] Blockchain Slovakia, available at https://blockchainslovakia.sk/en/.

[16] Slovenia Blockchain Association, available at http://www.sbca.si.

[17] Blockchain Espana, available at http://blockchainespana.com; Selva Ozelli, *Spain Tackles Corruption With Blockchain AI and Amendments to Its Anti-Corruptionn Laws: Expert Take*, Cointelegraph.com (June 15, 2018).

[18] *See* http://nordicblockchain.com/#.

[19] Molly Jane Zuckerman, *U.K. Financial Regulator Introduces Global Fintech Sandbox, '90%' Success Rate Domestically*, Cointelegraph.com (Mar. 19, 2018).

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The High-Level Group of Innovators — which has several blockchain technologists on its board — advises the European Commission (EC) on supporting top-class innovators, entrepreneurs, small companies and scientists with bright ideas and the ambition to scale up internationally.[20] The EC, in turn, has launched an initiative called ''The EU Blockchain Observatory and Forum,'' which is advised by ConsenSys — a U.S. Ethereum blockchain production studio — ''to help member states work collaboratively to integrate and consolidate views, analysis and visions, create a knowledge repository, accelerate innovation and identify priority use cases for blockchain technology,'' according to Ken Timsit, a managing director at ConsenSys-France.[21]

Their success is apparent from the numerous EU financial institutions testing blockchain technology for various applications in finance. ABN AMRO Clearing, Nasdaq, Euroclear, and EuroCCP have together tried out a blockchain-based collateral transfer system.[22] German Bank Commerzbank executed the first corporate foreign exchange (FX) deal on blockchain.[23] Spanish bank Banco Santander launched a cross-border payment service based on U.S. blockchain company Ripple's messaging technology that allows the bank's customers in the U.K., Spain, Poland, and Brazil to send money in many currencies around the world.[24] Polish banks are the world's first to put millions of confidential banking records on blockchain.[25] Spanish securities regulator the National Securities Market Commission (CNMV), along with major stock market operator BME, and banks Santander, BBVA, BNP Paribas, Caixa Bank, Commerzbank, and Société Générale have successfully tested a blockchain register for the issuance of warrants.[26]

However, not every financial institution has been convinced of the benefits of blockchain technology. After conducting tests for three years, the Dutch central bank concluded that blockchain is not ready to replace the current interbank payment systems.[27] Belgium-based SWIFT, which handles 50 percent of world's high-value cross-border payments, tested Hyperledger-IBM blockchain[28] between the accounts of 34 banks and concluded that blockchain is not scalable for mainstream use.[29] After issuing the first blockchain based loan, Carlos Torres, CEO of Spanish bank Bilbao Vizcaya Argentaria (BBVA) cautioned that blockchain technology is ''not mature'' and faces major challenges including the ''volatility of underlying cryptocurrencies'' and possible compatibility issues with tax authorities and financial regulators.[30]

Undeniably, on the one hand, the EU has been pushing for global cryptocurrency regulation at the G-20 level, coordinated by the Organization for Economic Cooperation and Development (OECD). But on the other hand, the EU also took the lead in proposing an EU-wide digital tax ahead of the OECD, by proposing brand new taxable nexus, ''digital presence'' or virtual permanent establishment concepts which are not addressed in current tax treaties. All the while, EU member state crypto-currency classifications for income tax and for VAT purposes, as well as their taxation, vary widely from member state to member state, with cross-border tax applications as detailed in current tax treaties uncertain. These multiple tax issues compounded with the individualized implementation of EU's anti-money laundering laws by member states could pose a barrier to pan-European blockchain implementations by creating compatibility issues with various tax authorities as well as financial regulators.

This article provides an overview of the various cryptocurrency-based EU regulatory and tax initiatives as a follow-up to an earlier article by this author.[31]

G-20'S BLOCKCHAIN AND CRYPTOCURRENCY POLICY

During the G-20 meeting held in Buenos Aires in March, the world's economic leaders, global Intergov-

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[20] *See* https://ec.europa.eu/research/eic/index.cfm?pg=hlg.

[21] Interview with Ken Timsit, Managing Director, ConsenSys-France, April 26, 2018.

Ethereum is a decentralized platform that runs blockchain smart contracts. *See* https://ethereum.org/.

[22] Cameron Bishop, *Nasdaq, Euroclear Trials Blockchain Based Collateral Transfer System*, Legal Gambling and the Law (June 21, 2018).

[23] Tim Copeland, *CommerzBank Executives First Corporate FX Deal on Blockchain in Germany*, (May 24, 2018).

[24] Martin Arnold, *Ripple and Swift Slug It Out Over Cross-Border Payments*, Fin. Times (June 5, 2018).

[25] Alix Pressley, *Poland Becomes World's First to Put Banking Records on the Blockchain* (May 29, 2018).

[26] Molly Zuckerman, *Major European Regulator, Banks Collaborate on Warrant Issuance System*, Cointelegraph.com (June 25, 2018).

[27] Anatol Antovici, *Blockchain Tests Leave Dutch C-Bank Underwhelmed* , Cryptovest.com (June 11, 2018). Karl Flinders, *Blockchain Not Ready for Cross-Border Bank Payments*, Computer Wkly. News (Mar. 26, 2018).

[28] *Hyperledger: Blockchain Collaboration Changing the Business World*, IBM.

[29] Stephen O'Neal, *Do Banks Even Want to Go to Blockchain?* Cointelegraph.com (June 23, 2018).

[30] Ana Berman, *CEO of BBVA Bank: 'Blockchain Is Immature and Has Major Challenges,'* Cointelegraph.com (June 20, 2018).

[31] Selva Ozelli, *Regulations Fall on Bitcoins Around the World*, Tax Mgmt. Memo. (Oct. 16, 2017).

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ernmental organizations, regulators, legislators and central banks, in a coordinated fashion, agreed that virtual currencies and blockchain technology, given their borderless and intangible nature, are fundamentally reshaping global cross-border financial connectedness and its increasing ability to automate cognitive tasks.

Accordingly, the G-20 settled on characterizing virtual currencies as property and not legal tender, thereby setting the stage for cryptocurrencies to be adapted as a new digital-asset-class. G-20's pronouncement came ahead of the Bank of International Settlements' (BIS) report indicating that cryptocurrencies could not scale to function as legal tender, but blockchain technology — which enables greater efficiency and speed in value transfer — could be suitable for cross-border payment transactions.[32]

Ethereum in its current form can handle about 20 transactions per second, versus the millions of transactions per second handled on the web. "We've traded all that [speed] for this new trustworthy, potentially more equitable infrastructure on which we can build better systems," explained Joseph Lubin, founder of ConsenSys and co-founder of Ethereum.[33] It is significantly more expensive to run decentralized applications on a blockchain than it is to run centralized applications. Ethereum co-creator Vitalik Buterin explained: "Blockchains by themselves are a far less efficient computer and database than technology that has existed for 40 years. If you want to talk about what blockchains are for, the answer is not simple raw efficiency. If you look at Amazon EC2 pricing, the cost of this is about $0.04 per hour. How much does it cost to make the Ethereum world computer to do stuff for you? Every Ethereum block, which comes every 14 seconds, on average takes about 200 milliseconds for my laptop seconds to process. A block has a million gas and let's assume the average gas price of 4 GWEI. The cost of filling up an Ethereum block is $13.4 per 200 milliseconds."[34]

Crypto-assets which are launched on top of blockchains have several unique features when compared to fiat currencies that present heightened risks for facilitating criminality, including money laundering, terrorist financing, bribery, fraud, and tax evasion. These unique features allow the peer-to-peer (P2P) cross-border transfer of crypto-assets without being detected by regulators or tax authorities and without the involvement of banks, bankers, accountants, lawyers, consultants, and other intermediaries.

- **P2P:** Users can P2P transfer digital crypto-assets across several borders from one country to the next beyond the purview of regulators by relying on cryptography.
- **Anonymity:** Users can conceal illicit activity including money laundering, terrorist financing, and tax evasion with crypto-assets that feature varying levels of anonymity and pseudonymity.
- **Mining:** Users can obtain crypto-assets by mining even on their smartphones,[35] without the involvement of centralized issuers, by creating them privately. However, the absence of central issuers with a mandate to guarantee the cryptocurrency's stability renders their value unstable.
- **Storing:** Users can store intangible crypto-assets in various wallets which are not regulated by anti-money laundering and terrorist financing standards (AML) and fall outside the control of regulators.[36]

Therefore, the G-20 committed to (1) implementing Financial Action Task Force's AML as they apply to crypto-assets to mitigate concerns over security, consumer protection, and financial crime; and (2) to continue effecting the OECD's Base Erosion and Profit Shifting (BEPS) framework, studying international nexus and profit allocation concepts for taxing the digital economy (BEPS Action 1) and coming up with a new cross-border digital taxation approach by 2020.

The G-20 established a July 2018 deadline for proposals for coordinated cryptocurrency regulations.

EU'S BLOCKCHAIN AND CRYPTO-ASSET REGULATIONS

From a legal framework perspective, crypto-assets — unlike financial instruments — are not greatly harmonized in the EU nor highly regulated in the majority of EU member states.[37] The differences in their approaches to crypto-asset regulation is due to the dif-

[32] *Cryptocurrencies: Looking Beyond the Hype*, Bank for International Settlements June 2018 Annual Report.

[33] CB Insights Conference NYC June 20, 21.

[34] Mark Halloway, *Blockchain Can Change the Finance Industry UGLY: Germany's Finance Chief*, Coindias.com (June 15, 2018).

A "Gwei" is a fraction of an Ether — the most commonly referenced unit when discussing Ethereum. *Call Me Gwei: Blockchains, Cryptocurrencies & Smart Contracts* (Oct. 30, 2017).

"Gas" is an Ethereum cost unit, which in a car analogy would be like a "gallon" (of gas). *See* MyEtherWallet.com.

[35] *Sugar S11 Blockchain Creation Edition: Smartphone Mines and Holds Ethereum Fog Crypto*, GMS Arena (Jan. 16, 2018).

[36] *Guide on Ethereum Wallets: Mobile, Web, Desktop, Hardware*, Cointelegraph.com.

[37] *See* European Parliament, Policy Department for Economic, Scientific and Quality of Life Policies, *Virtual Currencies and Central Monetary Policy: Challenges Ahead* (Monetary Dialogue

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ferences in their legal framework, the economies, and the institutional practices of the respective authorities.

To bridge this gap, the EC unveiled its plan for a Capital Markets Union and a single market for technology-enabled innovation in financial services (FinTech) with EU-level legislative proposals to enable the financial sector to make use of the rapid advances in new technologies including in blockchain, artificial intelligence (AI) and cloud services.[38] Members of the European Parliament also passed a blockchain resolution by the Industry, Research and Energy Committee.[39] So that after Brexit, EU remains a global hub for FinTech — operated on pan-European platforms.

So far, 22 out of 28 EU member states have signed on to the EU Blockchain partnership to share experiences and exchange expertise in technical and regulatory fields and prepare for the launch of EU-wide blockchain applications across the Digital Single Market for the benefit of the public and private sectors.[40] Croatia, Cyprus, Denmark, Hungary, Italy, and Romania have opted out (Table 1, countries listed in *italics*).

With the EU FinTech market valued at $6 billion, ''Digital technologies have an impact on our whole economy — citizens and businesses alike,'' explained Mariya Gabriel, Commissioner for the Digital Economy and Society. ''Technologies like blockchain can be game changers for financial services and beyond. We need to build an enabling framework to let innovation flourish, while managing risks and protecting consumers.''[41]

AML

Following the G-20 meeting, the EU has amended its AML for crypto-asset beneficial ownership disclosure rules on April 19, but this amendment will be transposed into member state national laws in an individualized fashion within the next 18 months by January of 2020.[42]

AML is implemented as well as enforced at the member state level. However, Vera Jourova, Member of the EC responsible for Justice, Consumers and Gender Equity, explained at a June 25 TAX3 meeting that ''there is a lack of implementation of AML by 20 member states as well as very poor cooperation among member states in enforcing AML.'' Banks are free to move capital across EU states and beyond but checks on money laundering and other financial crimes remain largely a national competence — a mismatch that EU authorities say hampers transnational/cross-border controls and creates financial stability risks. Some states are calling for a new body to be set up to counter money laundering at the EU level, while others favor the idea of giving more power to one of the existing EU financial regulators, such as the European Banking Authority (EBA). Recently, the EBA opened a formal investigation into ''shortcomings'' over how the Financial Intelligence Analysis Unit of Malta — which emerged as the global cryptocurrency trading hub but has not yet taken any known action in cases where cryptocurrencies were used for money-laundering or other fraudulent acts[43] — enforced its anti-money laundering rules.[44]

EU's Blockchain and Crypto-Asset Tax Laws

The power to levy taxes, including cryptocurrency taxes, is central to the sovereignty of EU member states, which have assigned only limited competences to the EU in this area. Since the EU lacks a uniform tax regulator, aggressive tax planning by multinational crypto-businesses is monitored by the EU Anti-Trust Commission which is in charge of policing state aid that skews competition within the EU.[45] Ricardo Cardoso, spokesperson handling Commissioner Margrethe Vestager's portfolio, said that the EC ''has no ongoing investigations concerning cryptocurrency related issues and we would never speculate on such matters.''[46]

The EU has the following EU level tax initiatives that are met with some push-back from member states.

July 2018).

[38] *Commission Presents Action Plans on Sustainable Finance and FinancialTtechnology and Adopts Legislative Proposal on Crowdfunding*, Capital Markets Union (Mar. 8, 2018).

[39] European Parliament, *Blockchain Technology: We Aspire to Make EU the Leading Player* (May 16, 2018).

[40] Press Release, European Commission, *European Countries Join Blockchain Partnership* (Apr. 10, 2018).

[41] Press Release, European Commission, *FinTech: Commission Takes Action for a More Competitive and Innovative Financial Market* (Mar. 8, 2018).

[42] Press Release, European Parliament, *Statement by First Vice-President Timmermans, Vice-President Dombrovskis and Commissioner Jourovà on the Adoption by the European Parliament of the 5th Anti-Money Laundering Directive* (Apr. 19, 2018); Press Release, European Parliament, *MEPS Vote to Shine Light on the True Owners of Companies* (Apr. 19, 2018).

[43] Selva Ozelli, *Malta Emerges as World's Cryptocurrency Trading Center*, FCPA Blog (May 8, 2018).

[44] Huw Jones, *EU Starts Formal Probe of Malta Anti-Money Laundering Agency Over Pilatus Bank*, Reuters.com (June 7, 2018); Kevin Schembri Orland, *Watch: EBA's Investigation Into FIAU Could Lead to Infringement Procedures — EU Commissioner*, Independent.com (June 14, 2018).

[45] *See* Selva Ozelli, Esq. and Roger Russell, Esq., *Tax Transparency and Its Implications for Multinational Enterprises*, Tax Mgmt. Memo. (Mar. 6, 2017).

[46] Selva Ozelli, *Malta Emerges as World's Cryptocurrency Hub Despite EU's TAX3 Investigation: Expert Take*, Cointelegraph.com (June 13, 2018).

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Digital Tax

With a long-term solution to taxing digital firms postponed to 2020 by the OECD, the EU Commission took the lead on proposing two new digital tax rules that will be submitted to the Council for adoption and to the European Parliament for consultation.

The first one suggests a common reform of the EU's corporate tax rules to enable member states to tax digital profits that are generated in their territory, even if a company does not have a physical presence there. A digital platform will be deemed to have a taxable nexus, "digital presence," or a virtual permanent establishment in a member state if it fulfils one of the following criteria:

- It exceeds a threshold of 7 million euros in annual revenues in a member state;
- It has more than 100,000 users in a member state in a taxable year, or
- It has more than 3,000 business contracts for digital services that are created between the company and business users in a taxable year.

This proposal resembles a concept of nexus by Internet "cookies," which differs from the physical presence nexus test as defined under the OECD Model Tax Convention.

The EC's second proposal imposes a temporary interim tax of 3 percent to companies with total annual worldwide revenues of 750 million euros and EU revenues of 50 million euros euro on certain digital revenues created from selling online advertising space, digital intermediary activities which allow users to interact with other users and which can facilitate the sale of goods and services between them, selling data generated from user-provided information. This interim tax will be repealed once the OECD agrees upon a long-term solution.

To minimize tax compliance burdens, for greater efficiency and better compliance the Commission may introduce a simplification mechanism based on the one-stop-shop model for declaring and collecting the tax at the EU level.

The proposed tax on digital services is intended to make companies such as Amazon, Google, and Uber pay more taxes to member states. However, this proposal drew skepticism from the TAX 3 and some EU states, which called instead for an international solution as proposed by the OECD.

VAT

Transactions involving crypto-assets are raising interesting questions and concerns in the field of taxation. The supply of electronic goods and services has implications in the field of consumption taxation, which has been harmonized in the EU through the implementation of the value-added taxation (VAT) system.

For the most part, member states characterize crypto-assets other than "legal tender" as detailed in Table 1. But despite that fact, member states — except for the Czech Republic, Estonia, and Poland — follow a 2015 decision by the Court of Justice of the European Union,[47] establishing that the exchange of fiat currency for bitcoins and vice versa constituted the supply of services under the VAT directive. However, the supply of services in question was regarded as exempt from VAT under the exemption concerning legal tender because "bitcoin" had no other purpose than to be a means of payment.

With the G-20 in agreement to treat virtual currencies as "crypto-assets" and not legal tender and with most of the EU member states characterizing crypto-assets as other than "legal tender" for tax purposes, it will be interesting to see how VAT will be applied to crypto-asset transactions across the EU in the future.

EU's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3)

TAX3 was established by the European Parliament on March 1, 2018, in response to continued revelations over the last five years via LuxLeaks, the Panama Papers, and the Paradise Papers, which shed light on the rampant tax evasion, money laundering, and corruption at EU member states that have independent citizenship programs, tax and policies.[48]

TAX3's mission is to:

- Contribute to the ongoing debate on taxation of the digital economy, including VAT;
- Assess national schemes providing tax privileges (such as sale of citizenship programs offered by Portugal, Italy, Malta, the United Kingdom, Cyprus as well as crown dependencies and overseas territories);
- Follow closely the ongoing work of, and contribution by, the Commission and member states in international institutions, including the OECD, G-20, UN and the Financial Action Task Force regarding taxation/cryptocurrency matters.

In a workshop on "Taxation and Fight Against Money Laundering: Crypto Currencies, Digitalization

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[47] *Hedqvist*, case C-264/14, CJEU judgment of 22 October 2015.

[48] *See* European Parliament, TAX3 mandate document (Feb. 7, 2018).

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and the European Semester,'' Professor Robby Houben presented his paper on the legal context of virtual currencies and blockchain and mapped the implications for financial crime, money laundering, and tax evasion, including against the backdrop of the newly adopted EU AML. He proposed adopting crypto regulations, at an EU- and maybe even at a G-20 level, that recognize crypto-assets featuring various levels of anonymity and pseudonymity as money-laundering and tax-evasion indicators, with users assumed to be guilty of these offenses.[49]

The TAX3 Committee has a 12-month mandate. At the end of this period, it will submit a report with findings and recommendations to do more to fight tax crimes, tax evasion, and tax avoidance in EU to set the stage for fairness in tax competition with many EU member states.

THE DIVERSE MEMBER STATE CRYPTO-ASSET TAX LAWS

As summarized in Table 1 below, EU member states have diverse crypto-asset tax laws and tax rates.

[49] European Parliament, Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance, Committee Meeting (June 7, 2018).

Table 1

Country	Cyrpto Tax Characterization	Individual	Business	Foreign	VAT	CRS & FATCA
Austria [50]	Asset	0% (L/T C/G)27.5%, 55%	25%	No	No	Yes
Belgium [51]	Asset	33%	50%	No	No	Yes
Bulgaria [52]	Asset	10%	10%	No	No	Yes
Croatia [53]	Asset	12%	18%	No	No	Yes
Cyprus	N/A	0%	0%	No	No	Yes
Czech Republic [54]	Virtual Currency	15%	10%	No	Yes	Yes
Denmark [55]	Not legal tender	0%	24.5%	No	No	Yes
Estonia [56]	Property	20%	20%	No	Yes	Yes
Finland [57]	Commodity	30% (C/G), 34%	20%	No	No	Yes
France [58]	Property	19% (C/G), 45%	33.3%	No	No	Yes
Germany [59]	Financial Instrument	0% (L/T C/G), 25%	15%	No	No	Yes
Greece [60]	N/A	15% (C/G) 22% - 45%	29%	No	No	Yes
Hungary [61]	Not Legal Tender	15%	9%	No	No	Yes
Ireland [62]	Investment	33%	12.5%	No	No	Yes
Italy [63]	Not Legal Tender	0%	24%	No	No	Yes
Latvia [64]	Not Legal Tender	20%	20%	No	No	Yes
Lithuania	Not Legal Tender	5%, 15%	15%	No	No	Yes

[50] Niklas Schmidt, Tax Partner, Wolf Theiss.
[51] *How Bitcoins Are Taxed in Belgium?* Taxpatria.com.
[52] Marin Marinov, *Legal and Tax Treatment of Bitcoin in Bulgaria* (Nov. 20, 2017).
[53] Filip Srdoè, *Croatia's Announcement on Taxing Cryptocurrency*, Bitfalls.com (Feb. 9, 2018).
[54] *Czech Republic Introduces Law Regulating (Restricting) Bitcoin*, CCN.com (Jan. 31, 2017).
[55] *Bitcoin in Denmark: Facts and Figures 2017.* Bitcoin.com (May 3, 2017).
[56] Library of Congress, *Estonia Rules on Taxation of Bitcoin*, Global Legal Monitor (Apr. 18, 2014.
[57] Kevin Helms, *Finland Has Identified Thousands of Bitcoin Traders Who Owe Taxes*, Bitcoin.com (Apr. 23, 2018).
[58] Adrien Soumagne, Tax Attorney, BRED INPRAT.
[59] Oberste Finanzbehörden der Länder (German Ministry of Finance), *Umsatzsteuerliche Behandlung von Bitcoin und Anderen Sog Virtuellen Waehrungen* (Feb. 27, 2018).
[60] Konstantina Theodosaki, *Bitcoin and Cryptocurrencies: An Overview*, Moussas & Partners, Attorneys (Feb. 1, 2018).
[61] *Bitcoin: Taxation of Crypto Currency*, Ecovis Hungary (Jan. 10, 2018).
[62] *Cracking the Code of Irish Cryptocurrency Tax*, Taxback.com (July 4, 2017).
[63] *Do You Pay Taxes on Bitcoin in Italy?* Vademecum Italia Legal Guides (Feb. 16, 2018).
[64] Lubomir Tassev, *Latvia Recognizes Cryptocurrencies in Order to Tax Them*, Bitcom.com (Apr. 13, 2018).

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Table 1						
Country	**Cyrpto Tax Characterization**	**Individual**	**Business**	**Foreign**	**VAT**	**CRS & FATCA**
Luxembourg	N/A	43.6% (Speculative C/G), 9% surcharge for employment funds	29.22% commercial activity; 5.718% on I/P income, royalties.	No	No	Yes
Malta [65]	N/A	0%	35% (0% to 5% ER)	No	No	Yes
Netherlands [66]	Yes	30%	25%	No	No	Yes
Poland [67]	Property	0%	0%	No	Yes, 23%	Yes
Portugal [68]	Investment	0%	21%	No	No	Yes
Romania [69]	N/A	10%	16%	No	No	Yes
Slovakia [70]	Not Legal Tender	19%, 25%	19%	No	No	Yes
Slovenia [71]	Not Legal Tender	0%(C/G), 13% to 50%	19%	No	No	Yes
Spain [72]	Not Legal Tender	19%-23% (C/G),18%- 48%	25%	No	No	Yes
Sweden [73]	Asset	30%	22%	No	No	Yes
United Kingdom [74]	Asset	28% (C/G), 45%	19%	No	No	Yes

Legend / Explanations for Abbreviations in Table	
C/G – Capital Gains	N/A: No crypto-asset tax guidance
L/T- Long Term	*Italicized country name:* Country not a partner in EU Blockchain
ER: Effective Tax Rate	Partnership

[65] Interview, Dr. Mariella Baldacchino B.A, LL.D of E&S Group, May 3, 2018.

[66] Selva Ozelli, *Upbeat Dutch Blockchain and Crypto Action Agenda*, Cointelegraph.com (Feb. 9, 2018).

[67] Molly Jane Zuckerman, *Polish Finance Ministry Rolls Back Crypto Tax, Promises Smarter Regulation*, Cointelegraph (May 21, 2018); Maria Santos, *Poland's Tax Authority Announces VAT of 23 Percent on Sale of Mined Bitcoins*, 99Bitcoins.com (Jan. 2, 2018).

[68] *Newsletter: Bitcoins — The Personal Income Tax Treatment of Bitcoin Earnings*, Rogiero M. Fernando Ferreira & Associados (Apr. 2018).

[69] Aurel Dragan, *EY: Cryptocoins Revenues Must Be Declared and Taxed, but We Need Regulations from NBR and FSA*, Romania Bus. Rev. (Apr. 13, 2018).

[70] Metodické usmernenie Ministerstva financií Slovenskej republiky è. MF/10386/2018-721 k postupu zdaòovania virtuálnych.

[71] Davèna obravnava poslovanja z virtualno valuto po ZDoh-2 in ZDDPO-2; *Tax Treatment of Cryptocurrencies in Slovenia*, Nomore-tax.eu (Apr. 13, 2018).

[72] *Taxation of Bitcoin*, Carbray.es (law firm).

[73] Maria Santos, *Sweden Plans to Regulate Bitcoin as an Asset and Implement a Capital Gains Tax*, 99Bitcoins.com (Jan. 2, 2018).

[74] Thomas McMullen, *If You've Made Cash From Bitcoin in the UK, You Could Face a Hefty Tax Bill: What You Need to Know*.

In several EU member countries where there is no specific tax legislation or guidance on cryptocurrency taxation, tax analysis concerning crypto-assets are made by reference to the existing tax rules by applying actual or effective tax rates.

There are also variances in the way cross-border international tax laws are applied to crypto-asset transactions in EU member states, as many crypto-asset-related tax issues are not directly addressed in tax treaties either. Do cross-border withholding taxes apply to cryptocurrency gains? What triggers permanent establishment (PE) for a foreign taxpayer who is cloud mining or smartphone mining cryptocurrencies in a given country to give rise to taxation?

FATCA/CRS Disclosure of Crypto-Assets

EU member states have signed on to both Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) disclosure agreements. Each member state may also have additional foreign account tax reporting requirements. For example, Spain's Form 720 does not seem to require crypto-asset disclosure. Taxpayers who hold their cryptocurrencies in an offline wallet do not need to declare them on this form either, as they are not deemed to be located outside of Spain.[75]

[75] *Taxation of Bitcoin*, Carbray.es (law firm).

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Some crypto-assets are traded on foreign exchanges. These exchanges are either a pure virtual currency exchange or one that allows exchange between virtual assets and fiat currencies.[76] These exchanges have custody of customers' virtual currencies and an exchange failure results in the loss of customer funds, in this regard making them similar to Foreign Financial Institutions (FFIs) because they behave in the same manner. While the U.S. Internal Revenue Service's Notice 2014-21 does not address foreign tax reporting requirements for crypto-assets, the American Institute of CPAs, in its second comment letter to the IRS, suggests that taxpayers be required to report the value of cryptocurrencies and fiat currencies held at foreign exchanges for FATCA and FBAR purposes if they meet the necessary threshold, but not if they hold cryptocurrency in a wallet that they own and control and for which they possess a private key.[77]

The European banks regulated by the European Central Bank (ECB) are not currently dealing in crypto-assets with the exception of Dutch,[78] German,[79] Irish,[80] Polish,[81] Bulgarian,[82] British,[83] Portuguese,[84] Spanish,[85] and Maltese banks.[86] A cryptocurrency exchange platform could be considered a financial institution for CRS purposes, because the OECD is indirectly implying that an electronic money provider is not excluded from the definition of a financial institution. However, member states may or may not require virtual asset disclosure for CRS purposes.

The diverse approach to crypto-asset taxation and reporting, at an income tax, VAT, and international level among member states, may add excessive tax burdens to cross-border crypto-asset transactions that may complicate implementing cross-border Pan European Blockchain platforms.

CONCLUSION

Albert Einstein said, ''The hardest thing in the world to understand is the income tax.'' And EU's crypto-asset tax policy and laws may be a testament to this. It's no wonder the IRS Criminal Investigation Division has assigned a special team of agents to investigate whether crypto-assets are being used to cheat the tax authority. As Don Fort, IRS-CI chief, explained to Bloomberg News: ''It's possible to use cryptocurrencies in the same fashion as Swiss bank accounts to facilitate tax evasion.''[87]

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