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German Tax and Legal News

MOF publishes draft decree on tax treatment of virtual currencies and tokens

Draft guidance includes detailed description of virtual currencies and related income tax consequences.

The German Ministry of Finance (MOF) published a draft decree on 17 June 2021, in which the tax authorities provide a detailed description of various virtual currencies and guidance on the income tax treatment of transactions using virtual currencies and tokens.

Virtual currency (or virtual money) is a type of unregulated digital currency that is available only in electronic form and that is used and accepted as means of payment among certain parties, typically members of a specific virtual community or dedicated network. A virtual token can be described as a digital representation of value that is digitally tradable and that functions as a medium of exchange, unit of account, or storage of value.

The first part of the draft decree provides an overview and explanation of certain key elements of the virtual currency environment, e.g., tokens, blockchains, wallets, initial coin offerings, staking, forks, lending, and airdrops.

The second part of the draft decree provides guidance on the treatment of virtual currency and related transactions for income tax purposes. In particular, the draft decree describes in what scenarios income derived from transactions with virtual assets would qualify as income from a trade or business, employment income, capital income, or other income, respectively. The categorization of the income depends on whether the virtual assets are being held as private assets or (deemed) business assets. The income category is relevant not only to the question of whether the income would be subject to tax in Germany, but also to the questions of how the income would be determined/calculated (on an annual basis) for income tax purposes and at what rate the income would be taxed.

The draft decree provides some initial insights on how the tax authorities consider transactions involving virtual currencies and tokens. The draft decree is still being discussed with trade associations, and coordination with the state tax authorities will be necessary before a final decree is issued. In the meantime, taxpayers that possess virtual currencies and tokens should carefully review the draft guidance and consider the potential tax treatment of their transactions in light of the draft decree.

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