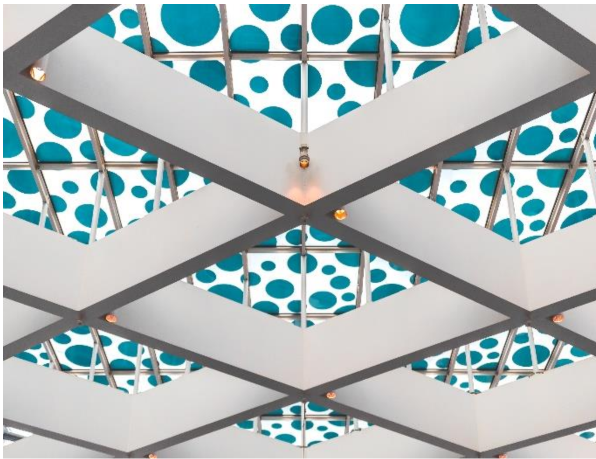
Tax treatment of crypto mining in Austria

The Austrian Federal Court has recently ruled that crypto mining cannot be deemed as an economic activity for VAT purposes.



In a recent ruling, the Austrian Federal Court has decided that the mining of crypto currencies cannot automatically qualify as "economic activities" for VAT purposes. However, the activity as such has a gambling character that can lead to VAT exempt betting and gambling revenues in conjunction with § 6 Abs. 1 No. 9 lit d sublit aa Austrian VAT law (Art. 135 (1) lit i RL 2006/112/EC).

In this particular case, the complainant operated an online platform that guaranteed a certain amount of processing power to a potential customer. In exchange for this guaranteed processing power, the customer had to pay a fee. The fee itself could be regarded as the rent of the server. The processing power was used for crypto data mining in the name of and on behalf of the customer on blockchain-based, crypto currency platforms. The mined crypto currencies would be exchanged into bitcoins and credited to the customers balance (wallet).

The complainant entered into a contract including "managed hosting services" with its customers and sold these packages with Austrian VAT (20%) included. Owing to this situation, the complainant deducted the VAT credit from the purchase of the mining rigs (i.e. the necessary hardware) and used the argument that the "mining rigs" were used for taxable services.

The Austrian financial office concluded that these packages had to be regarded as a VAT exempt currency exchange under § 6 Abs. 1 No. 8 lit. b Austrian VAT law (Art. 135 (1) lit d RL 2006/112/EC). The financial office argued that, from an economic point of view, conventional currency regarding the "managed hosting services" (i.e. the cost of the rented server) would be provided by the customer and in exchange for this money the complainant had to transfer a specific amount of crypto currency to the customer's wallet, which had been mined by the complainant himself beforehand.

The Austrian Federal Court has then assessed this case from a technical perspective. A subsequent deeper look into the existing contracts has brought to light that the actual services provided by the complainant did not match with the description of "managed hosting services". Due to this description, the customer would carry out the mining himself. However, in the current case, only the complainant took care of the mining in the name of and on behalf of the customer on blockchain-based, crypto currency platforms. In this light, the Austrian Federal Court concluded that bitcoin mining has a gambling

character because the whole risk of profit and loss in this constellation lies with the customers themselves. The customers have no guarantee that the benefit of the mining will exceed the cost of the rented server. In addition, the customers, in this particular case, could not influence the process of mining. Therefore, the Federal Court stated that this kind of crypto mining causes an irrational expectation regarding a possible profit because the chance of gaining this profit is rather comparable to winning a lottery prize. Owing to this assumption, the Federal Court qualified such mining activities as gambling revenues.

By contrast, the Federal Court pointed out that the exchange of the mined crypto currencies must be regarded as a VAT exempt currency exchange. This assumption is based on the ECJ decision C-264/14 (*Hedqvist*), which covered the exchange of an official currency into bitcoins but not the mining itself.

The Austrian Federal Court's ruling represents the first instance level in the Austrian judicial system regarding tax matters. At present, there is an appeal against the Federal Court's decision, and so the Austrian High Court is likely to assess the Federal Court's findings.

Key points

This Federal Court's decision has been the first in Austria dealing with the VAT implications of crypto mining. The Federal Court has analysed very deeply the technical side of mining to generate an understanding of the underlying process. Its decision pointed out that the ECJ decision C-264/14 (*Hedqvist*) covers only one part of the complainant's provided package; the complainant´s services basically consist of two different activities that have to be classified differently from a VAT point of view (mining and currency exchange).

It is interesting that the Federal Court concluded that in general it cannot be excluded that a miner performs some kind of business activity. This is because there is a relation of used resources ("mining rigs") and the mined bitcoins. However, when it comes to the consideration if there is an economic activity under Art. 9 RL 2006/112/EG, the Federal Court doubted if these criteria could be fulfilled by a mining activity. The Federal Court's decision referred to the University of Graz's research and certain of its specific papers on this matter. The conclusion is that the probability of mining success is essential. If good fortune predominates in the mining activities, then there is no room for an economic activity under Art. 9 RL 2008/112/EG. It is a matter of fact that increasing computing capacities (i.e. increasing the so-called hash power) causes an increased difficulty-rate, thus the calculation of the block-hash that could lead to the aimed block-reward cannot be influenced and is therefore determined by luck. The Federal Court figured the probability of success as 1:8,000000 and compared this to winning the lottery.

In summary, the Federal Court has stated that any kind of crypto mining - if the principles are the same as the ones analysed in the current case - will lead to a finding of gambling. In this context the miner will be regarded as a "player", the crypto currency platform (network) will be regarded as an entrepreneur who is basically the host for the players, and the mining itself will be regarded as the game being played. As mining is regarded as an activity that must come under the Austrian law concerning gambling (§ 1 (1) GSpsG), there is no right for any input VAT deduction.

When it comes to the exchange of crypto currency, the Federal Court has followed the ECJ's common understanding. Thus crypto currency is regarded as a tradable and widely accepted means of payment. Owing to this, the exchange itself has to be regarded as a

service under Art. 2 (1) RL 2006/112/EC; however it is VAT exempt.

As this is the first ruling dealing with the VAT implications of mining, there has been the attempt to generate a legal precedent. However, whether this decision will last will be seen soon. On the one hand, it is very likely that the Austrian High Court will assess the Federal Court's findings again because at the moment there are no comparable decisions. On the other hand, at the moment the Austrian Federal Court has a whole range of questions to consider concerning pending income tax matters that concern the correct tax treatment of "mining-companies" and their customers. That is why we can expect a very broad range of Austrian rulings very soon dealing with both income tax and VAT matters at the same time.

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