

## **Federal tax court confirms income tax treatment of cryptocurrency transactions**

Federal tax court in a long awaited decision confirms government position on taxing cryptocurrency gains as taxable income.

In a long-awaited decision dated 14 February 2023, which was published on 28 February 2023, Germany's federal tax court (BFH) ruled that capital gains from the sale of cryptocurrencies are taxable as "other income" under section 23 (1) no. 2 of the income tax code (ITC). The BFH's decision upheld the tax authority's view, as well as the decisions of the lower tax court of Cologne dated 25 November 2021 (see [GTLN dated 09 May 2022](#)) and the lower tax court of Baden-Wuerttemberg dated 11 June 2021 (see [GTLN dated 16 February 2022](#)). The decision also is in line with the Ministry of Finance's final decree dated 11 May 2022 on the tax treatment of virtual currencies and tokens (see [GTLN dated 18 May 2022](#)).

In the case decided by the BFH, the taxpayer argued that capital gains from the sale of cryptocurrencies are not subject to income taxation since cryptocurrencies are not assets for purposes of the "other income" provision of section 23 (1) no. 2 ITC. The taxpayer further argued that due to a general lack of enforcement by the tax authorities regarding the taxation of cryptocurrency gains, the constitutional principle of tax certainty would be violated if such gains are taxed.

The BFH rejected the taxpayer's arguments and upheld the view of the tax authorities, lower courts, and Minister of Finance. Furthermore, the BFH specifically rejected the argument that a violation of constitutional principles occurred. The BFH disagreed that there is a general lack of enforcement if the tax authorities do not have the ability to enforce a provision in the tax law. The BFH noted that the tax authorities possibly could issue collective information requests to the operators of trading platforms. The BFH, in this regard, highlighted the [initiatives](#) of the OECD to create a uniform framework for the automatic exchange of tax-relevant information on crypto assets (CARF). The BFH also highlighted that the tax authorities must be granted a certain transition period for the introduction of new and additional control mechanisms and that a reasonable timeframe for doing so has not yet been exceeded. The hope of tax practitioners that this issue would be referred to the Federal Constitutional Court for clarification on the lack of enforcement in regard to the principle of tax certainty was not fulfilled.

The decision of the BFH has put an end to this controversial matter between taxpayers and the tax authorities, by upholding the view of the tax authorities. Affected taxpayers should review their filing requirements and documentation with regard to their cryptocurrency transactions.

---

Diese Mandanteninformation enthält ausschließlich allgemeine Informationen, die nicht geeignet sind, den besonderen Umständen eines Einzelfalles gerecht zu werden. Sie hat nicht den Sinn, Grundlage für wirtschaftliche oder sonstige Entscheidungen jedweder Art zu sein. Sie stellt keine Beratung, Auskunft oder ein rechtsverbindliches Angebot dar und ist auch nicht geeignet, eine persönliche Beratung zu ersetzen. Sollte jemand Entscheidungen jedweder Art auf Inhalte dieser Mandanteninformation oder Teile davon stützen, handelt dieser ausschließlich auf eigenes Risiko. Deloitte GmbH übernimmt keinerlei Garantie oder Gewährleistung noch haftet sie in irgendeiner anderen Weise für den Inhalt dieser Mandanteninformation. Aus diesem Grunde empfehlen wir stets, eine persönliche Beratung einzuholen.

This client information exclusively contains general information not suitable for addressing the particular circumstances of any individual case. Its purpose is not to be used as a basis for commercial decisions or decisions of any other kind. This client information does neither constitute any advice nor any legally binding information or offer and shall not be deemed suitable for substituting personal advice under any circumstances. Should you base decisions of any kind on the contents of this client information or extracts therefrom, you act solely at your own risk. Deloitte GmbH will not assume any guarantee nor warranty and will not be liable in any other form for the content of this client information. Therefore, we always recommend to obtain personal advice.