

MOF updates draft guidance on compliance and documentation requirements for virtual currency and token transactions

Draft guidance replaces earlier 2022 draft guidance, final guidance would be incorporated into existing virtual currency decree.

The German Ministry of Finance (MOF) on 6 March 2024 published updated draft guidance related to compliance and documentation requirements for virtual currency and token transactions. Almost two years ago, on 10 May 2022, the MOF issued a final decree related to the income tax treatment of virtual currency and token transactions (see [GTLN dated 05/18/2022](#)). The decree, however, did not include any guidance related to compliance and documentation requirements for taxpayers that generate income from such transactions. The MOF later, on 18 July 2022, issued a first draft of guidance related to such requirements, and the draft guidance now issued on 6 March 2024 updates the draft guidance from 18 July 2022. The draft guidance is open for public comments until 3 April 2024 and is expected to apply to all open cases.

Once finalized, the guidance related to compliance and documentation requirements for virtual currency and token transactions would be incorporated into the 10 May 2022 decree, which would result in a single decree for all rules related to such transactions.

The updated draft guidance does not include any surprises and mostly follows the 2022 draft guidance. Apart from the updates related to compliance and documentation requirements, the draft guidance also includes some minor updates related to the general description and income tax treatment chapters of the 10 May 2022 decree (e.g., definition of the terms “transaction overview” and “tax reports,” optional use of exchange value instead of obligatory use to determine acquisition costs).

Under the draft guidance, taxpayers would be required to provide accurate and complete information where transactions are conducted via centralized and decentralized platforms; the mere provision of the “public key” for such platforms to the tax authorities would not be sufficient. If transactions involve foreign platforms, the increased compliance obligations based on section 90 (2) of the General Tax Code would apply. Taxpayers would be required to regularly download transaction overviews and bear the burden of missing transaction overviews and data loss. The tax authorities would be allowed to estimate the income of the taxpayer if there is missing or insufficient data (section 162 of the General Tax Code). Under a specific provision in the draft guidance, such an estimate would not be subject to penalties against the taxpayer.

The draft guidance includes specific compliance and documentation requirements for both business and private transactions and a catalogue of data points that could be requested by the tax authorities.

The draft guidance provides helpful insight into the expectations from the tax authorities in regard to, and highlights the importance of, compliance and documentation requirements for virtual currency and token transactions. However, in practice, it might be difficult to comply with these requirements, in particular to past transactions where data is no longer available or the platform no longer exists.

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