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## Crypto Assets are Focus of Upcoming Exchange of Information–DAC8



BY OLIVER R. HOOR AND MARIE BENTLEY

Cryptocurrencies or crypto assets are digital assets that are exchanged between peers without the need of a third party such as a bank. This enables consumers to digitally connect directly through a transparent process, showing the financial amount, but not the identities of the people conducting the transaction.

Since the creation of Bitcoin in 2008, numerous new cryptocurrencies with different features have been created over the years. The total [market capitalization](#) of the crypto market recently exceeded \$1 trillion, with Bitcoin representing more than 60% of the market capitalization.

The tax treatment of capital gains depends on the tax rules applicable in the residence state of the investors. In Luxembourg, speculative capital gains realized by individuals within a six-month period following the acquisition of the crypto assets are taxable, whereas capital gains realized after six months are not taxable.

### Administrative Cooperation in Taxation

In the EU, member states have agreed to cooperate so as to be able to apply their taxes correctly to their taxpayers and combat tax fraud and tax evasion. Adminis-

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trative cooperation in direct taxation between the competent authorities of the EU member states is based upon Council Directive 2011/16/EU of February 15, 2011 on administrative cooperation in the field of taxation (“DAC”) which establishes all the necessary procedures, and provides the structure for a platform for the cooperation.

Since its adoption, DAC has been amended several times to include information on financial accounts (DAC2), on tax rulings and advance pricing agreements (DAC3), on country-by-country reports (DAC4), on beneficial ownership (DAC5) and on reportable cross-border arrangements (DAC6). On July 15, 2020, the European Commission published a draft directive proposal to amend DAC once more to also include information on digital platforms (DAC7).

In this context and as part of the “[Action Plan](#) for fair and simple taxation supporting the recovery,” on November 24, 2020, the Commission published an [Inception Impact Assessment](#) concerning a potential future proposal for an EU Council directive amending DAC for an eighth time to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto assets and e-money (DAC8).

At this stage, no draft directive proposal has been published. Stakeholders were invited to provide input by December 21, 2020 and now have until June 2, 2021 to submit comments in the framework of a public consultation, taking the form of a questionnaire, launched by the European Commission.

The European Commission seems to believe in the continued success of decentralized crypto assets, as DAC8 aims at providing tax administrations with information to identify taxpayers who are investing in and using crypto assets. While most crypto exchanges are

already subject to know your client and anti-money laundering requirements, DAC8 will elevate exchange of information in the crypto space to a new level.

## Purposes of Impact Assessment

The EU initiative aims at improving cooperation between national tax authorities in newly developing areas as well as on existing matters.

The main problems that the initiative aims to tackle are dual:

- The lack of information at the level of national tax administrations about the emergent use of crypto assets and e-money, possibly resulting in revenue losses also for the EU budget. In this respect, the initiative aims at providing tax administrations with information to identify taxpayers who are using new means of exchange, notably crypto assets and e-money. It will also ensure consistency with ongoing work at EU level (such as the [Digital Finance Strategy](#) adopted on September 24, 2020 and the [proposal](#) for a Regulation on Markets in Crypto-assets) and at international level, on the taxation on crypto assets and e-money.

- The disparity in the sanctions applied based on the current provisions and other necessary adjustments/improvements to be made to DAC. The differences between EU member states with regard to the effectiveness of sanctions are still broad and should therefore be addressed.

## Exchange of Information

The existing provisions of DAC, as amended by DAC2, provide for an obligation for financial intermediaries to report to tax administrations and for an exchange of information between EU member states. There is currently no such obligation for the relevant intermediaries to report crypto assets and e-money. Overall, the level of tax transparency is very low in relation to these new technologies.

In light of the exchange of information from financial institutions on financial accounts set up by DAC2, the EU Commission fears that the development of crypto assets and e-money leads to the erosion of the integrity of such exchanges as a tool in tackling offshore tax evasion.

The compliance of crypto assets and e-money institutions with the DAC2 exchange requirements is thus assessed and should be tackled by the ongoing Impact Assessment performed by the European Commission. It should result either in a self-standing provision or an extension to existing DAC2 provisions, or even both, in order to cover all the unique particularities of these in-

struments. The idea would be that crypto assets and e-money are not treated more adversely and with a greater burden than regular financial services, which present similar opportunities for abuse.

As the objective of this initiative is to ensure adequate tax transparency, with a view to ensuring proper taxation, the ongoing Impact Assessment will need to define crypto assets in order to determine the material scope of the amendments to DAC as well as to identify the relevant intermediaries for tax, common reporting and due diligence purposes.

The Impact Assessment will also consider which assets should be included (e.g., so-called stablecoins and e-money), and what data should be collected and exchanged among national tax administrations. The aim would be to collect only the data necessary to perform the risk analysis and facilitate tax control of the crypto assets and e-money. The baseline scenario used as a benchmark will consider current national practices and legislation (where existing) on mandatory transmission of data on crypto assets and e-money to national tax authorities.

## Going Forward

Crypto assets have seen an unprecedented rise over the last decade. The European Commission recognized this trend and would like to ensure through additional exchange of information that investors in crypto assets pay their fair share of tax.

Numerous institutional investors and multinational groups announced their investments in the crypto space which raises awareness, builds trust and, ultimately, should result in a more wide-spread use of crypto assets. Crypto assets became a store of value and a hedge against the inflation of fiat currencies (U.S. dollars, euros, etc.) due to a massive expansion of currency supply by central banks.

Last but not least, the expected creation of central bank digital currencies (that could be combined with a [social credit score](#) system), replacing cash, will likely be another trigger for people to look more seriously into cryptoassets.

*This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.*

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