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**LEGAL REGULATION OF CRYPTOCURRENCY
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LEGAL REGULATION OF CRYPTOCURRENCY TAXATION IN EUROPEAN COUNTRIES

Kateryna SOLODAN¹

Abstract

The features of legislation concerning taxation of cryptocurrency in different countries of Europe are analyzed in this article. The author uses the anthroposociocultural approach as the basis for the study of the problem. From the point of view of anthroposociocultural approach, the necessity of proper legal regulation of taxation of cryptocurrencies has been determined to ensure the realization of the human right to taxes. The legal regulation of taxation of cryptocurrency at the European level is analyzed. The author notices that there is still no unified approach to defining what cryptocurrencies are, and how countries can develop a common policy for taxing them. This is due partly to the anonymity of users, and partly to the ambition of virtual currencies to circumvent traditional financial institutions. The author specifies what taxes can cryptocurrencies be taxed by (tax on income, capital gains tax), analyzes European approaches to solving the problem of taxation of cryptocurrencies. The author notes that Eastern Europe states have more simple and attractive tax rates. The author of the article analyzes the European judicial practice in the field of taxation of IT activities, in particular cryptocurrencies, focuses on the practice of the European Court of Justice.

Keywords:

Cryptocurrency; legal regulation of cryptocurrency taxation; legal regulation of taxation of IT-activities; human right to taxes.

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I. Concept of Cryptocurrency

During the last four years in the world there are lively discussions about the nature and significance of such a category as "cryptocurrency". Despite the hypothesis that cryptocurrency is to some extent a financial pyramid and will not have a long history of existence, developed world countries are already developing and implementing legal rules regulating activities related to cryptographic currencies, thereby creating the basis for attracting additional tax revenues to the budgets of countries [25]. Proper legal regulation of the taxation of such a new phenomenon as cryptocurrency is necessary for the qualitative provision of human rights to taxes [12], since entities receiving large profits through activities related to cryptography, avoid paying taxes, do not participate in the creation of a public good, thus violating the right to taxes of other people.

Category "cryptocurrency" is nearly new and is not disclosed in the financial science, so it is appropriate first of all to cover cryptocurrency interpretation and activities for its receipt. Such a term began to spread in 2011, after the publication of the article on the existence of bitcoin - a kind of cryptocurrency in the Forbes [16]. Cryptocurrency, or in other words, digital money, based on the technology of cryptography, that is, data encryption. This currency has no physical appearance, but exists only in electronic form, that is, it is a computer code. Its main characteristics are anonymity, decentralization and security. Cryptocurrency provides a convenient and fast way to conduct anonymous transactions with high data security, without the participation of banking institutions and without payment of fees for payments. The main features of such a currency are the following: its issue is not within the competence of the central bank, while the issue size depends exclusively on the features of the system in which it exists; the course of such a currency has no connection with the economy of any country, but is determined exclusively by the market, that is depends on the demand for it; safe storage and settlement, as all operations with cryptographic goods are irreversible, and when they are executed, they use unique computer codes that are physically impossible to trace. The digital currency is considered a unique combination of digits obtained as a result of complex mathematical calculations and algorithms [25]. Cryptocurrency is a cryptographically protected and decentralized digital currency whose transaction information is entered and stored in Blockchain [18].

II. International Regulation of Cryptocurrency Taxation

At the international level, the issue of taxation of operations using cryptocurrency was violated in the statement by the head of the delegation of Brazil when considering the draft OECD report on tax challenges of the digital economy in October 2017 [22]. The championship in government initiatives for regulating the digital economy belongs, of course, to international organizations, first of all, the OECD, which published the final report on the tax challenges of the digital economy [21] (work on the report was conducted by the Working Group established in September 2013, which published a draft of the public discussion in April 2014, and in September 2014, the final report), as well as the European Commission, which in 2015 adopted a strategy for the transition of Europe to a single digital market [6]. Among the 15 measures of the OECD Action Plan to counteract the base erosion and profit shifting (BEPS), the first item is "Action 1. Address the tax challenges of the digital economy ". Action 1 aims to identify the main difficulties encountered in applying the current rules of international taxation of companies operating in the digital sector and to develop detailed options for addressing emerging issues, taking into account the global approach and the direct and indirect taxation regime. The Action Plan provides for an analysis of the following issues: • "digital" presence in the country without creating a tax presence; • attributing the value created by the transfer of information to users through the sale / provision of digital products and services; • qualification and definition of income source in new business models; • provision of VAT tax / tax on trade activities and provision of services for the activities of international companies operating in the digital sector. However, the question of taxation of cryptocurrencies was not the focus of international organizations. The initiatives of individual states in developing approaches to tax regulation of organizations in the digital economy should also be noted. Thus, in France, in 2013, a government report on the taxation of the digital economy (known as "the report of Collin") was published. [4]. Based on the supernatural nature of the cryptocurrency, one can assume that there is a certain jurisdiction with a substantially low tax burden, within which a number of taxes can not be levied - at least in relation to the production of new cryptocurrency. The anonymity of users makes cryptocurrency is an analogue of offshore, and despite the fundamentally different nature (cryptocurrencies are popular because of low transaction costs, tax avoidance is not a factor in their development - offshore is claimed exclusively as tax harbors), the risks of dilution of the tax base at the expense of cryptocurrency is even higher,

considering that they do not depend on financial intermediaries - banks, the interaction with which today allows the tax authorities to receive information on the movement of capital [20; 24].

At this stage, none of the European Union authorities has adopted special rules for the regulation of cryptocurrency activities. Taxation of cryptographic transactions and transactions with it is carried out in accordance with the national legislation of the Member States of the European Union, depending on the nature of the cryptocurrency transaction. In this case, as a rule, a digital currency for the purpose of taxation is treated as an intangible asset or commodity, and not as a currency or money. The exception is the value added tax, as in November 2015, the European Court of Justice ruled that Bitcoin's purchase and sale operations for traditional financial money are not subject to it. In 2016, the European Commission proposed the introduction of additional legal regulation for cryptoexchange counterparts and companies that provide cryptographic currency wallets to users. In particular, it was proposed to provide compulsory registration or licensing of cryptoexchange exchanges that exchange crypto currency for cash and vice versa, as well as companies providing cryptocurrency wallets to users. In addition, it was proposed to introduce a central database of information about users of digital currencies. Instead of the term "cryptocurrency", European authorities use the term "virtual currency". At the same time, it is considered as a means of payment. However, such an approach has been criticized by the European Central Bank, because it considers the definition of cryptocurrency as a virtual currency to be imperfect. In addition, according to its conclusion, cryptocurrency is a means of exchange, not payment, and is neither money, nor currency. Legal regulation of cryptocurrency and operations with it takes place within the framework of counteraction to the legalization of proceeds from crime and terrorist financing. According to statements by representatives of EU bodies, cryptocurrencies should not be subject to official regulation [28].

EU authorities use the term "virtual currency" instead of the term "crypto currency", while it is considered, among other things, as a means of payment. The directive of the European Commission outlines the proposal for the introduction of additional regulation for the activities of cryptoexchange counterparts and providers of cryptographic wallets. At the same time, according to the explanations of the European Central Bank, digital currency is a means of exchange, not payment, and is neither money, nor currency [10]. The procedure for taxation of cryptocurrency and transactions with them is regulated in accordance with the national legislation of each Member State depending on the nature of the

cryptocurrency transaction. In this case, as a rule, a digital currency for taxation purposes is treated as an intangible asset or commodity, and not as a currency or money. The purchase and sale operations of cryptoexchange for traditional currencies are not subject to value added tax. In Norway, Finland and Germany, cryptocurrencies are taxed on capital gains and wealth taxes. In Bulgaria, the digital currency is considered as a financial instrument and is taxed accordingly. In Austria, cryptocurrency is considered by the tax authorities as an intangible asset, and its ownership is an operational activity. Consequently, the income received as a result of its alienation is subject to an income tax [19]. In 2018, in Germany cryptocurrency is officially recognized as a currency. The virtual currency (cryptographic currency, such as bitcoins) equates to legal means of payment, if used by transaction participants as an alternative contractual and immediate form of payment, and has no other purpose other than use as a form of payment [25].

According to the ECHR ruling in the "Hedwick v. Sweden" case dated 22.10.2015, operations with bitcoins and other virtual currencies in the EU territory should not be subject to value added tax. Such a court decision actually equates virtual currencies to traditional currencies in the tax area. The view is expressed that, despite the different attitude of individual states towards Bitcoin, cryptocurrency exists and functions effectively as money with certain features (absence of an issuing center, anonymity of payments, lack of real value provision, etc.). It is unlikely that the refusal to resolve the issue of normative regulation of cryptography or the delay with its solution will stop their distribution, but in this approach, the owners and participants of other transactions will continue to be out of the protection and sometimes (in the case of a direct prohibition) outside the legal circle. The widespread distribution of Bitcoin as a means of payment requires at least initiating this kind of cryptocurrency of a certain legal status, creating a mechanism for regulating transactions and transactions, maximizing the identification of participants in payment transactions with the use of Bitcoin, monitoring and overseeing the activities of entities using Bitcoin, etc. [30].

In 2012, the European Central Bank published a report stating that traditional regulation of the financial sector does not apply to bitcoins. The Bitcoin itself in the document was defined as a convertible decentralized virtual currency [31]. The European Banking Authority drew attention to the fact that cryptoexchange markets are not banks, and their activities are currently not regulated, so users are not protected from cash losses in the event of their closure [9]. Since 2016, the European Commission has announced plans to strengthen the reporting standards for cryptoexchange counterparts and companies that provide cryptographic currency wallets to users. In particular, the European Commission planned to oblige European

cryptoexchange counterparts and providers of cryptographic wallets to carry out compulsory identification of users [27]. In turn, the Committee on Economic and Monetary Affairs of the European Parliament indicated that direct regulation of cybercurrencies should be avoided, but it would be possible to bring the legal status of cryptocurrencies in line with the existing anti-money laundering legislation, from crime and terrorist financing. At the same time, the European Commission proposed adopting a directive to prevent the use of the financial system for the purpose of money laundering and terrorist financing (2015/849/EC). Thus, it was proposed to introduce compulsory registration or licensing of cryptocurrency exchanges that exchange cybercurrencies on fiat money and vice versa, as well as cryptocurrency purse providers. The draft directive also provides for the creation of a central database of information on users of digital currencies [26]. At the same time, the proposed directive will fall within the scope of only those cipher-currency purse companies that store at least one personal key on their server (servers) [8]. As a result, the European Central Bank pointed to the inadequacy of cryptocurrency as a means of payment and noted that the digital currency is neither currency nor money and the widespread adoption of digital currencies can negatively affect the ability of regulators to control the money supply in circulation [23]. In November 2015, the European Court of Justice ruled that bitcoins should be considered as the currency (means of payment), and not as a commodity. At least in terms of taxation. Thus, transactions for the purchase and sale of bitcoins for traditional currencies should not be subject to value added tax [17]. Prior to this, national regulators treated the tax differently for the cryptocurrency. The procedure for taxing cryptocurrency and transactions it with other taxes is governed by the national legislation of the Member States, depending on the nature of the crypt-exchange transaction. In general, the legal regulation of cryptocurrency and operations with it in the European Union is carried out within the framework of the policy of combating money laundering and terrorist financing [7].

III. Great Britain's Legal Regulation of Cryptocurrency Taxation

Great Britain is a leader in cryptocurrency integration and one of the most favorable and comfortable jurisdictions for conducting cryptocurrency business. Moreover, the state provides support for startups associated with the digital currency. However, the government's final position on the legal regulation of activities related to digital money has not yet been made. In essence, cryptocurrency is in the gray zone (legal vacuum). At the same time,

the state intends to streamline cyber-currency relations, firstly, in order to prevent the criminal use of the digital currencies for legalization (laundering) of proceeds from crime, financing of terrorism and other illegal activities, and secondly, to support innovation in this area. Income of the entity is taxed on capital gains tax, as well as corporate and income tax. In 2014, the Office confirmed that Bitcoin is not a currency, and not money, so cryptocurrency can not in any way be regulated by UK financial legislation. Thus, the digital currency in the UK is considered a unique combination of digits obtained as a result of complex mathematical calculations and algorithms. Therefore, Bitcoin is also not subject to the UK Money Laundering Regulations 2007 [3]. In April 2016, the first cryptocurrency company in the UK (Circle) was registered with the Office. Thanks to this, the Barclays Bank agreed to cooperate with it, which was essentially the first precedent for the joint work of a large banking institution and a cryptocurrency company. Commenting on this situation, the Secretary of the Economic Secretary to the Treasury noted that "by such actions we confirm our decision to present the most progressive and far-sighted regulatory regime" [2]. Also, in April 2016, the Action Plan of the Treasury on the combating of the legalization (laundering) of the proceeds of crime and the financing of terrorism was published. In the document, the Treasury proposed to apply the legislation in the field of legalization (laundering) of proceeds from crime, in relation to the exchanges and other cryptoexchange companies that carry out currency exchange. However, such legislation should not apply to companies that provide cryptocurrency wallets to users but do not provide digital exchange services [1]. In 2014, the Her Majesty's Revenue and Customs Office issued a policy paper on taxation of cryptocurrency transactions. According to it, income derived from the valuation of digital money and their exchange for pounds sterling or other currency should not be subject to value added tax. However, VAT should be levied on suppliers of any goods or services sold for cybercurrency. In this case, the value of goods or services subject to VAT, must correspond to the value of cryptocurrency in pounds sterling at the time of such an operation. In addition, depending on the situation, the entity's income (profit) is taxed on capital gains tax, as well as corporate tax and income tax. [18; 29, 15] The income derived from the valuation of digital money and their subsequent exchange for pound sterling or other currency is not subject to value added tax (VAT). Exempted from VAT are cryptocurrencies for other activities (except for the extraction of such currencies), for example, providing services in connection with the verification of individual transactions that have undergone special transactions. No VAT is charged and in the case of payment of commission fees (in any form) made in part not covered by the

value of cryptographic currency for the organization or conduct of any transactions with cryptocurrencies [25; 29].

In 2013, the Ministry of Finance of the Federal Republic of Germany issued a resolution recognizing Bitcoin as the official settlement tool. You only need to obtain a special permit (license) for interacting with it for commercial purposes. Companies that have decided to use Bitcoins in Germany are controlled by the Federal Financial Supervision Authority. They must also meet established requirements, such as regular reporting, availability of a detailed business plan and qualified staff, a minimum authorized capital of at least 750 thousand euros, and the use of counter-terrorism financing and legalization of proceeds from crime [14]. A true revolutionary leap in cryptocurrency made Belarus. On December 21, 2017, President of the Republic of Belarus Alexander Lukashenko signed Decree No. 8 "On the Development of the Digital Economy". Thanks to this document, Belarus became the first country in the world with a comprehensive legal regulation of cryptographic operations and activities of individuals and legal entities related to blockchain technology. The law is liberal in nature and provides for the conditions for conducting operations with cryptocurrency for legal entities and individuals. Thus, Belarus is now "Mecca" for entrepreneurs, whose activities are related to cryptographic currencies [5; 32].

Thus, European countries have not developed a unified approach to the legal regulation of taxation of cybercurrencies. In our opinion, from the point of view of the anthroposociocultural approach and the human right to taxes [11; 13], the approach of the UK, which introduced one of the most progressive legal regimes for cybercriminals, which allows it to be properly taxed, is advisable. However, there is a need for further international cooperation to develop common approaches to regulation cryptocurrency taxation, because of its supranational character.

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