GUIDELINES

for the

VAT Treatment

of transactions or arrangements involving

DLT assets

Issued on: 01/11/2018

These guidelines issued under article 75(2) of the Value Added Tax Act (Chapter 406, Laws of Malta), hereinafter referred to as the "Act", set out the Commissioner for Revenue's (CfR) position on the VAT treatment of transactions concerning activities involving Distributed Ledger Technology (DLT) assets. For the avoidance of doubt, these guidelines do not cover electronic money that is representative of fiat currency. These guidelines are applicable solely to the purposes of the Act (including any rules or regulations issued thereunder) and have no bearing on any other law.

A. Types of DLT Assets for Vat Purposes

For the purposes of these Guidelines, DLT assets are categorised as follows:

1. Coins

This category refers to DLT assets designed solely as a means of payment, do not have any of the characteristics of a security, have no connection with any project or equity in the issuer, and whose utility, value or application is in no way directly related to the redemption of goods or services. These are cryptocurrencies that are designed to be used as a means of payment or medium of exchange, or function as a store of value: functionally they constitute the cryptographic equivalent of fiat currencies and are meant to serve as an alternative to legal tender.

2. Tokens

a) Financial tokens

This category refers to DLT Assets exhibiting qualities that are similar to equities, debentures, units in collective investment schemes, or derivatives and including Financial Instruments. Generally, they might be known as security, asset or asset backed tokens. These tokens would be analogous to equities, debentures, units in collective investment schemes, or derivatives, where they grant rights to dividends in a similar fashion as equities/shares, or to interest payments like bonds, or to payments from units in collective investment schemes, or payments linked with the performance of a specific asset like derivatives, respectively. Alternatively, they could grant rewards based on performance, or voting rights, or represent ownership in assets, or rights secured by an asset as in asset-backed tokens, or a combination of the foregoing.

b) Utility tokens

This category refers to DLT Assets whose utility, value or application is restricted solely to the acquisition of goods or services either solely within the DLT platform on, or in relation to which they are issued or within a limited network of DLT platforms. This category also includes all other DLT Assets that are tokens whose utility is restricted solely to the acquisition of goods or services, i.e. whether or not listed on any DLT exchange, may be transferred on a peer to peer basis, or may be converted into another type of DLT Asset but only until such time as it is so converted. They do not have any connection with the equity of the issuer and do not have the characteristics of a security.

It may also be possible for tokens to contain the features of both financial and utility tokens, depending on the terms and conditions of the said tokens, such that in practice they are referred to as 'hybrids'.

Where a hybrid token is used in a particular case as a utility token then it is to be treated as such, while if in another occasion the same token is used as a coin, then it needs to be treated as such.

Ultimately the tax treatment of transactions concerning any type of DLT asset will not necessarily be determined by its categorisation, but will depend on the purpose for and context in which the transaction is made according to the Act.

B. General Approach to VAT treatment

The tax treatment of any transaction involving DLT assets shall be in accordance to existing provisions, jurisprudence and principles. Transactions that are subject to VAT need to be analysed in the same way as any other transaction, i.e. by reference to the nature of the activities, the status of the parties and the specific facts and circumstances of the particular case. Accordingly, the CfR shall apply the rules and principles applicable in terms of the VAT Act (Chapter 406, Laws of Malta), the EU VAT Directive (2006/112/EC) and relevant regulations and any relevant case-law of the Court of Justice of the European Union (CJEU), applicable according to the specific transactions.

Place of supply

For VAT purposes, before any tax is applied, the place of supply of the good or service being made must always be considered. Where according to the rules the place of supply is not in Malta, the rules of the other relevant jurisdiction would apply.

In this regard, in the case of supplies of electronically supplied services rendered to non-taxable customers established in other Member States, being services taking place where the customer is established and where the reverse charge mechanism is not applicable, the supplier may opt to register and account for VAT of the other Member State under the Mini-One-Stop-Shop system (MOSS) in terms of Part Eight of the 14th Schedule to the VAT Act.

1. Treatment of *COINS*

In terms of relevant case-law of the CJEU (C-264/14 – *Skatterverket vs David Hedqvist*), the court has ruled that instruments whose purpose is none other than to serve as means of payment accepted by certain operators must, for VAT purposes be treated like traditional currency used as legal tender. Accordingly, the exemptions provided for transactions in currency and related services in terms item 3(4), Part Two, 5th Schedule to the VAT Act would likewise apply to "*transactions, including negotiation*" in cryptocurrencies where these have as their sole purpose to serve as a means of payment as an alternative to legal tender. The exchange of cryptocurrencies for other cryptocurrencies or for fiat money where such exchange constitutes a supply of services for consideration would be covered by said exemptions.

- ***Value***

A coin's value may be determined by reference to the rate established by the relevant Maltese authority, and where such is not available by reference to the average quoted price on three reputable exchanges, on the date of the relevant transaction or event, or such other methodology to the satisfaction of the CfR.

- ***Digital Wallets***

Where digital wallet providers require the payment of fees for allowing coin users to hold and operate a cryptocurrency and create rights and obligations in relation to the means of payment, in so far as such cryptocurrency qualifies as currency for VAT purposes, such services would be exempt without credit under the provisions for transactions in currency and related services in terms of item 3(4), Part Two, 5th Schedule to the VAT Act.

Where on the other hand, the services of digital wallet providers do not constitute transactions concerning currency as above described, and where they cannot be regarded

as transactions concerning payments or transfers for the purposes of item 3(3), Part Two, 5th Schedule to the VAT Act, or transactions in securities for the purposes of item 3(5), Part Two, 5th Schedule to the VAT Act, then the services would classify as taxable. For avoidance of doubt, a mere technological service would be taxable.

- ***Mining***

For the purposes of VAT a chargeable event would arise where a supply of services is made for a consideration by a taxable person acting as such. Moreover, as established by case-law, there must be a direct link between the consideration payable and the supply made, and where, there is a reciprocal performance between the supplier and the recipient of the services.

Accordingly, where constituting a service for which compensation arises in the nature of newly minted coins, mining normally does not have a particular recipient of such service thereby, in that case, falling outside the scope of VAT since there would be no direct link between the compensation received and the service rendered and, there would be no reciprocal performance between a supplier and a receiver.

On the other hand, should miners receive payment for other activities, such as for the provision of services in connection with the verification of a specific transaction for which a specific charge to a specific customer is made, a chargeable event for VAT purposes would be triggered. In that case, in so far that such service would be deemed to take place in Malta, Maltese VAT would be applicable at the standard rate.

- ***Exchange platforms***

These are online platforms which facilitate peer-to-peer trading or exchange of DLT Assets, whether such transactions involve the exchange of Virtual Currencies with fiat, the exchange of Virtual Currencies for other virtual currencies or the exchange/sale of tokens.

The provision of a trading/exchange facility in consideration for the payment of a user/transaction fee or commission constitutes a supply of services for consideration. In principle, a supply of services falling within the scope of Malta VAT would be taxable, unless an exemption applies. The VAT treatment (as taxable or exempt) of trading/exchange platform services would depend on the nature of the service supplied, which would have to be determined on a case-by-case basis.

(a) In so far as the platform's services involves the provision of an electronic facility whereby holders of DLT Assets can trade/exchange, i.e. a technological service that enables and is a component of the execution of a transaction in DLT Assets by the holders/users, then such services should in principle be regarded as taxable**.**

(b) However, where the DLT Assets being traded classify as "currency" or "securities" for VAT purposes and where the platform's services go beyond the mere provision of a trading facility, with an increased level of involvement in the transfer or exchange, such services may potentially fall within the exemption for:

(i) transactions concerning currency (item 3(4), Part Two, 5th Schedule, VAT Act - where the functions of the trading platform are similar to those performed by a traditional currencies exchange such as buying and selling currencies); or

(ii) transactions in securities (item 3(5), Part Two, 5th Schedule, VAT Act – where the functions of the trading platform are similar to those performed by a traditional securities broker such as buying and selling Security tokens); or

(iii) intermediation/negotiation in connection with (i) transactions concerning currency or (ii) transactions concerning securities. In both

scenarios, the following principles apply to the assessment of the VAT treatment:

- The term '*negotiation*' in item 3, Part Two, 5th Schedule, VAT Act refers to the activity of an intermediary who does not occupy the position of any party to a contract relating to a financial product, and whose activity amounts to something other than the provision of contractual services typically undertaken by the parties to such contracts.

- Negotiation is a service rendered to, and remunerated by a contractual party as a distinct act of mediation. It may consist, amongst other things, in pointing out suitable opportunities for the conclusion of such a contract, making contact with another party or negotiating, in the name of and on behalf of a client, the detail of the payments to be made by either side, etc. The purpose of negotiation is therefore to do all that is necessary in order for two parties to enter into a contract, without the negotiator having any interest of his own in the terms of the contract.

2. Treatment of *TOKENS*

a) Financial Tokens

It is critical to analyse what an investor receives in exchange for financial tokens. Given that financial tokens could give rise to dividends, interest payments or other rights, one needs to examine whether such instruments would fall within scope of VAT in the first place and where such would be the case, whether they would qualify for the exemptions provided for under item 3, Part Two, 5th Schedule to the VAT Act: *Credit, banking and other services*, as 'security transactions', that is, "*transactions, including negotiation,*

excluding management and safekeeping, in shares, interest in companies or associations, debentures and other securities, excluding documents establishing title to goods".

Where a financial token is issued simply to raise capital the issue would not give rise to VAT implications in the hands of the issuer, because the raising of finance does not constitute a supply of services or goods for consideration and falls outside scope of VAT.

Services supplied by exchange platforms to buyers and sellers of financial tokens would have VAT implications as explained above under the heading "*Coins - Exchange Platforms*".

b) Utility Tokens

Where a token issued against consideration carries an obligation to be accepted as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identity of the supplier is known, such token would have the characteristics of a voucher and would have to be treated in terms of Part Nine of the 14th Schedule to the VAT Act. The consideration paid for a utility token to the issuer shall be deemed to be gross of VAT due (if any).

Single-purpose Voucher (SPV)

Where a voucher represents an underlying good or service the place of supply of which and the VAT due (if any) are known at the time of issue of the voucher, the consideration payable for that voucher would represent a payment for the supply of the underlying good or service to which the voucher relates and would accordingly create a tax point in terms of the 4th Schedule to the Act. Accordingly, consideration payable to a taxable person for the issuance and transfer of an SPV representing taxable supplies of goods or services taking place in Malta would be immediately subject to Maltese VAT in terms of the 4th Schedule to the VAT Act and Part Nine of the 14th Schedule to the VAT Act.

Multi-purpose Voucher (MPV)

In the case of a voucher which is not a single-purpose voucher, i.e. the place of supply and the VAT due on the underlying good or service is not known at the time of the issue of the voucher, this would amount to a multi-purpose voucher. VAT (if any) on the MPV's underlying goods or services would be due at the time of the redemption of the voucher.

3. Treatment of *Initial Offerings*

As already referred to above, under general VAT rules, a chargeable event would arise where a supply of goods or services is made for a consideration by a taxable person acting as such. Also, as established by case-law, there must be a direct link between the consideration payable and the supply made, and where, there is a reciprocal performance between the supplier and the recipient of the good or service.

Accordingly, where in the case of certain Initial Coin Offerings (ICO's) or token generation events, investors place their money at the ICO stage against tokens that are issued as a means of collecting funds for the development of a future project, such initial offering may not necessarily constitute a chargeable event for VAT purposes. It may be that at such point, no specific good or service is identified, nor a corresponding price for a supply could be fixed, nor would it be possible to determine whether the project undertaken would be realised whereby the investors could receive a return. Such transactions would be out of scope of VAT. Similarly, there would be no transaction in the scope of VAT if the money placed by the investor would serve to acquire a security (equity, debenture, etc.) in the issuer.

Where, on the other hand, the tokens issued would give rights to identified goods or services for a specified consideration a chargeable event for VAT purposes could arise and its proper VAT treatment would have to be examined in that context such as in the case of utility tokens, etc.