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DLT Assets and
transactions – Malta
VAT considerations

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CONTEXT – VAT Principles

- Malta VAT charged on every **supply of goods/services** made **in Malta** by a **business** (a taxable person)
- In principle*, **VAT is neutral to business**
- Some transactions classify as **VAT-exempt**:
 - No Malta VAT charged BUT *no right to recover Malta VAT paid on related business expenditure (VAT cost)



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CONTEXT – VAT Principles – cross-border



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DLT ASSETS & TRANSACTIONS

Malta VAT Considerations

- Applying and interpreting Maltese & EU VAT legislation
- Limited EU guidance (1 ECJ Case, Commission Working Papers, VAT Committee Guidelines)
- CfR Guidelines – November 2018
- Classification: Regulatory vs. VAT
 - Terminology
 - Transactions



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DLT ASSETS & TRANSACTIONS

Malta VAT Considerations

“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.”

CfR Guidelines



DLT ASSETS & TRANSACTIONS

Malta VAT Considerations

- Is the activity carried by a taxable person acting as such?
- Is there a supply for consideration?
- What is the nature of the supply?
- Where does it take place?
- Does an exemption apply? [“currencies”, “securities”]

....VAT registration and compliance?



CLASSIFICATION

...relevance for VAT analysis

Coins:

to the extent that these are essentially an alternative to legal tender and have no purpose other than to be a means of payment, they constitute 'currencies' for VAT purposes [ECJ in C-264/14]

- VAT exemption for certain transactions in currency
- No right of recovery of VAT paid on business expenditure (input tax)



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CLASSIFICATION

...relevance for VAT analysis

Security/financial tokens:

- Is the token a 'security' for VAT purposes?

ECJ: Comparable to shares or debentures; Conferring an ownership right / debt claim;

- VAT exemption for certain transactions in securities
- No right of recovery of VAT paid on business expenditure

ECJ: "transactions liable to create, alter or extinguish parties' rights and obligations in respect of securities"



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CLASSIFICATION

...relevance for VAT analysis

Utility Tokens:

- Does the token represent “*an obligation to accept it as consideration or part consideration for a supply of goods or services, and where the goods or services to be supplied or the identities of their potential suppliers are indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument*” ?
 - Special VAT rules for “vouchers”
- Or akin to reward-based crowdfunding (pre-payment on account)?



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CLASSIFICATION

...relevance for VAT analysis

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

CfR Guidelines



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TRANSACTIONS

- Issuance (including ICOs)
- Return/yield
- Transfers (including exchange)
- Redemption
- Related services:
 - Exchange platform
 - Digital wallet
 - Mining



TRANSACTIONS

Issuance

Coins

If “currency”:

- No supply
- Outside scope of VAT

Security/ financial tokens

Issuance of “securities” for raising of finance:

- No supply
- Outside scope of VAT

Utility tokens

Is the UT a ‘voucher’?

If SPV – depends on underlying supply

If MPV – outside scope



TRANSACTIONS

Transfers for consideration

Coins

If “currency”:

- exempt

Alternative to legal tender;
No purpose other than means of payment;

Security/ financial tokens

If “security”:

- exempt

ECJ: Comparable to shares or debentures; Conferring an ownership right / claim;

Utility tokens

Is the UT a ‘voucher’?

If SPV – depends on underlying supply

If MPV – outside scope (tax point on redemption)

MPV Distributor services treated separately



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TRANSACTIONS

Transfers for consideration

Utility tokens

No connection with equity of issuer;
Not a “security” for VAT purposes;
Not an alternative to legal tender;

CfR Guidelines:

- Tokens applied in the acquisition of goods or services (on the DLT platform of issue, other network of DLT platforms or more generally)
- Tokens which may be converted into another type of DLT Asset

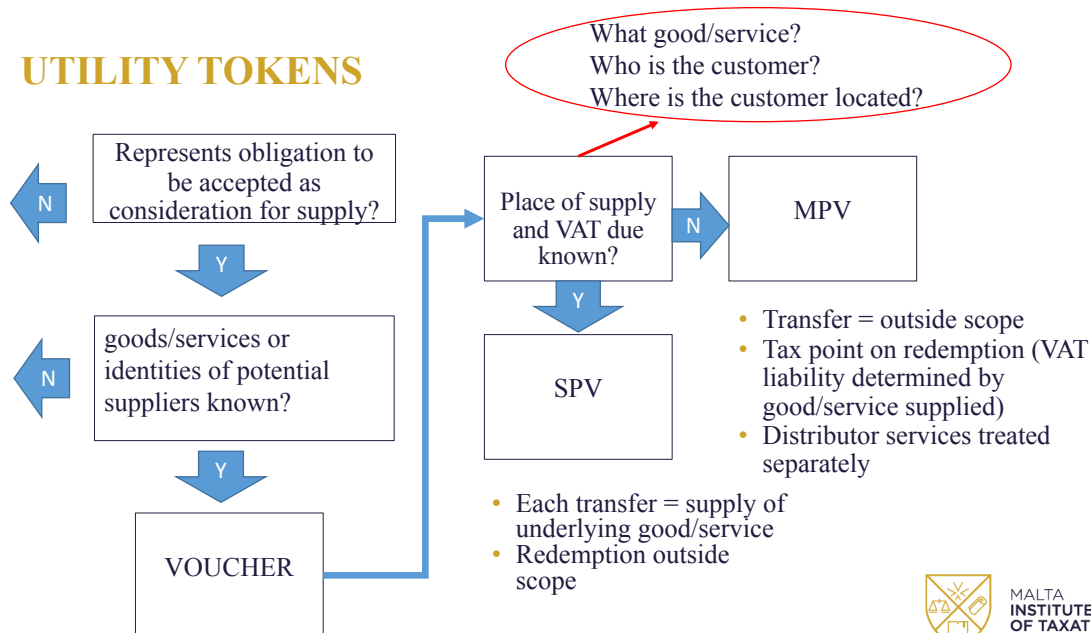
Is it a “voucher”?

- Does it represent an obligation to accept it as consideration /part consideration for a supply of goods /services? and
- are the goods/services to be supplied or the identities of their potential suppliers known?



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UTILITY TOKENS



TRANSACTIONS

trading/exchange platforms

- Online platforms which facilitate trade/exchange; coins for fiat; token for token etc
- “Electronically supplied service” (automated, minimal human intervention)
- Classification: taxable or exempt?
 - What is being traded/exchanged?
 - How does the platform operate?

TRANSACTIONS

trading/exchange platforms

- Mere technological service – taxable

- Exempt:

- Transactions in “currency”

ECJ: Bilateral transaction involving currency

- Transactions in “securities”

ECJ: transactions liable to create, alter or extinguish parties' rights and obligations in respect of securities

- “negotiation” in currency/securities

ECJ: an intermediary performing a ‘distinct act of mediation’)



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TRANSACTIONS

Digital Wallets

- Electronically supplied service? (automated, minimal human intervention)
- Classification: taxable/exempt?
 - What is the nature of the service being provided?



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TRANSACTIONS

Digital wallets

- Mere technological service – taxable

- Exempt:

- Transactions in “currency”

ECJ: Bilateral transaction involving currency

- Transactions in “securities”

ECJ: “transactions liable to create, alter or extinguish parties' rights and obligations in respect of securities”

- ‘Transaction in “Payments”/”transfers”’

ECJ: “the execution of an order for the transfer of a sum of money”



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TRANSACTIONS

Digital Wallets

- CFR’s view:

- service of 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*”

- Recognizes that the services can be “transactions concerning payments, transfers...” or “transactions in securities” for the purposes of the VAT exemptions

- Otherwise, taxable



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TRANSACTIONS

Mining

- Is there a supply for VAT purposes?
 - Is the activity carried out by a taxable person acting as such?
 - Supply for consideration?
 - Direct link
 - Reciprocal performance – relationship between miner and beneficiary of mining activity



TRANSACTIONS

Mining

- Electronically supplied service (automated, minimal human intervention)
- CfR:
 - where compensation is newly minted coins and beneficiary of activity not identifiable – outside scope of VAT
 - If activity is carried out for a fee charged to a specific customer – within scope of VAT
 - Taxable
- Potential for exemption?



CONCLUDING REMARKS

- Application of general VAT principles
- In-depth analysis of transactions on a case-specific basis
- Understanding What? By whom? From whom? and To whom?
- Practical considerations: compliance, reporting, value
- Unanswered questions...



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*This presentation is intended for educational purposes only.
Its contents should not be applied to, nor construed as advice on, the tax treatment of any specific transaction.*





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