



The Importance of the Correct Classification of a DLT Asset

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What is a DLT Asset?

DLT asset means -

- (a) a virtual token;
- (b) a virtual financial asset;
- (c) electronic money; or
- (d) a financial instrument,

that is intrinsically dependent on, or utilises, Distributed Ledger Technology;

Virtual Token

- **Must not** have a Token Standard that allows the Digital Ledger Technology (DLT/BLOCKCHAIN) asset's conversion into another DLT asset type;
- **Must not** have a Token Standard supporting Atomic Swapping or any other type of interoperability outside (i) the DLT platform on or in relation to which it was issued or (ii) a limited network of DLT platforms.
- The issuer **must not** list or admit a DLT asset to trading on an exchange, either locally or abroad.
- **Is a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services.**

Electronic Money

- ...issued by the issuer on receipt of funds **at par value**, and redeemable **at par value** with the issuer upon request of the holder.
- ...have **a claim against the issuer's assets** arising from the funds originally placed against the issuance of such DLT assets.
- ...used for the purpose of a payment transaction, which may be initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee?
- the electronically stored monetary value **is accepted** by a natural or legal person other than the financial institutions that issued the electronic money.

Financial Instrument

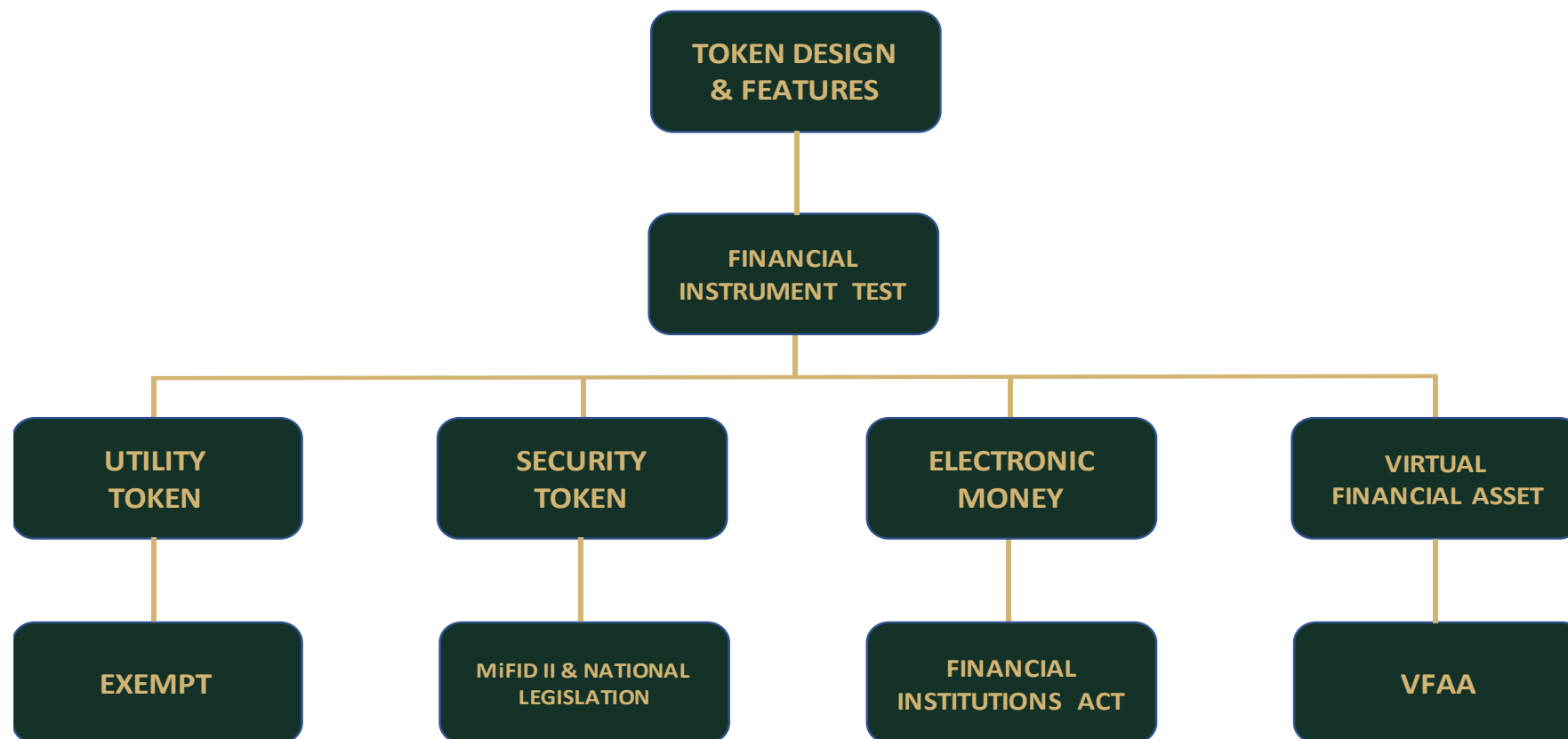
- Transferable securities;
- Money market instruments;
- Collective investment schemes;
- Financial derivative instruments; and
- Emission allowances.

Virtual Financial Asset

Virtual financial asset or VFA means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not –

- (a) electronic money;
- (b) a financial instrument; or
- (c) a virtual token;

Why classify a DLT Asset?



Responsibility of getting it right?

ICO

In determining whether a DLT asset qualifies as a Virtual Financial Asset, an Issuer of a DLT asset shall, prior to offering such DLT asset to the public in or from within Malta, or applying for its admission on a DLT exchange, undertake the Financial Instrument Test, which shall be signed by its Board of Administration, and endorsed by its VFA Agent in terms of Chapter 1 of this Rulebook.

VFA Services

In so far as a determination has not already been made by an Issuer pursuant to Chapter 2, a Licence Holder shall, in determining whether a DLT asset qualifies as a virtual financial asset and prior to offering a VFA service in relation to such DLT asset, undertake the Financial Instrument Test, which shall be signed by its Administrators, and endorsed by its Compliance Officer.

Consequences of getting it wrong?

Art 48 VFAA

(1)...an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be

Art 38(5) VFAA Regulations made under this article may impose:

(c) administrative penalties and fines higher than one hundred and fifty thousand euro (€150,000), where deemed necessary or appropriate for any contravention of or failure of compliance with any EU Directive or EU Regulation or of any regulations made under this article to transpose or to give effect to any EU Directive or EU Regulation.

Tokenomics

- As Service Providers we should take the responsibility to clearly explain not only the technical implications of an *Issuance/ Listing* but also the Regulatory & Tax Implications.
- Whitepapers commonly only focus on the technology behind the token.
- Fintech – Fin and Tech not much in sync, when it comes to regulation and taxation. Service Providers need to manage expectations.

Taxation - ICOs

	Income Tax	VAT	DDT
Coins	?	?	Exempt
Utility Token	Taxable	Taxable	Exempt
Investment Token	Exempt	Exempt	Exempt
Hybrids	Need to be classified as Investment or Utility Tokens		

Why should we get it right?

- Not only Regulatory Reasons.
- Thorough understanding of the token i.e. Scope and strategic purpose of the token.
- Let's talk about tax... baby!
- There might be tax / regulatory planning to consider.

Thank you!



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