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Contributors:

**Alexandros Kazimirov,
Amedeo Rizzo, Irene Kamara,
Marie-Andrée Weiss,
Zihao Li**

Editor-in-chief: Juha Vesala

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About the contributors

Alexandros Kazimirov is an attorney admitted to practice in California. He studied civil law in Cyprus and Athens (Greece), has received an LL.M. from Berkeley Law School with a concentration in Securities Regulation and a Certificate in Regulatory & Antitrust Law from Cornell Law School. During his studies, he clerked at the Court of Justice of the European Union. He serves on the Intellectual Property Committee of the Antitrust Section of the American Bar Association and the Securities Litigation Section of the San Francisco Bar Association. His research examines the approach taken by the Securities and Exchange Commission to regulate digital asset markets compared to the European Union's Markets in Crypto-Assets Regulation. He has been a TTLF Fellow since September 2023.

Amedeo Rizzo is a D.Phil. in Law and Academic Tutor at the University of Oxford, UK, where he conducts research in taxation, innovation, and development. He is an Academic Fellow of Taxation at Bocconi University, Italy, and SDA Fellow of Tax and Accounting at SDA Bocconi School of Management, where he coordinates the Accounting & Tax Policy Observatory and the Transfer Pricing Forum. He is the director of the Innovation Policy Network and a member of the Group of Experts on anti-corruption for Transparency International Italy. As a TTLF Fellow, his research focuses on the analysis of different types of tax incentives to enhance innovation through intellectual property and research and development activities. Previously, he worked for the Directorate-General for Economic and Financial Affairs (DG ECFIN) of the European Commission as an external advisor on budget and tax policy, and for the International Tax and Transfer Pricing Team of PricewaterhouseCoopers, Milan. He also collaborated with the Centre for Budget and Governance Accountability, India, on financial transparency issues in Asia-Pacific countries. Prior to his D.Phil. in Law at the University of Oxford, Amedeo obtained an M.Sc. in Taxation from the University of Oxford (distinction), an M.Sc. in Business Administration and Law (summa cum laude) and a B.Sc. in Business Administration, both from Bocconi University.

Irene Kamara (Dr.) is Assistant Professor at the Tilburg Institute for Law, Technology, and Society in The Netherlands. Her research focuses on the protection of human rights in the digital environment, and substantive and procedural aspects of cybercrime. Irene is teaching cybercrime and cybersecurity law, legal aspects of technical standardization, and international personal data flows at master and bachelor programs. Irene has previously worked as legal researcher at the Law and Criminology Department of the Vrije Universiteit Brussel in Belgium and as attorney-at-law in law firms in Athens, Greece. She has conducted research as principal investigator for the European Cybersecurity Agency ENISA, the European Commission, the National Cyber Security Agency (NCSC) and the National Coordinator for Counterterrorism and Security (NCTV) in The Netherlands. She holds a joint PhD in law from the Vrije

Universiteit Brussel and the University of Tilburg (2021), a LL.M. in Law and Technology from the University of Tilburg (2014), a MSc in International and European Studies from the University of Piraeus in Greece (2013), and a Bachelor of Laws from the Demokritus University of Thrace in Greece. In 2021, CEN and CENELEC honoured Irene with the prestigious Standards + Innovation award for the category Individual Researcher Innovator, the first legal scholar to receive this award. Irene has been a TTLF Fellow since 2022.

Marie-Andrée Weiss is an attorney admitted in New York and in Strasbourg, France. Before becoming an attorney, she worked for several years in the fashion and cosmetics industry in New York as a buyer and a director of sales and marketing. She graduated from the University of Strasbourg in France with an M.A. in Art History, a J.D. in Business Law, an LL.M. in Criminal Law, and an LL.M. in Multimedia Law. Marie-Andrée also graduated from the Benjamin N. Cardozo School of Law in New York City with an LL.M. in Intellectual Property Law. She is an attorney in New York and her solo practice focuses on intellectual property, privacy, data protection, and social media law.

Zihao Li is a Lecturer (Assistant Professor) in Law and Technology at CREATE Centre, School of Law, University of Glasgow, UK. He has been a TTLF Fellow at Stanford Law School since 2023. Meanwhile, he has been invited as a Guest Lecturer to Trinity College Dublin, Ireland. Zihao is qualified in both Computer Science and Law. With his interdisciplinary background, his research interests concentrate on the intersection of law, data and information technology. Recently, his research mainly includes data protection law, AI and regulation, algorithmic pricing, Internet and intellectual property, and blockchain and law. Zihao's research has been published in top-tier interdisciplinary academic journals, conference proceedings and books, including Nature Machine Intelligence, Computer Law and Security Review, IEEE Communications Magazine, IEEE International Conference on Communications, and European Data Protection Law Review. His research has been cited around the world. He has also spoken at several prestigious universities, including the University of Cambridge, UK, and King's College London (KCL), UK. Zihao has been awarded the Modern Law Review (MLR) Scholarship operated by the LSE. Additionally, Zihao is a co-founder of the Scottish Law and Innovation Network (SCOTLIN), and the founding president of the Intellectual Property Society at the University of Glasgow. At Stanford Law School, Zihao principally investigates data privacy issues in algorithmic pricing within the EU and US.

Other developments

European Union

EU Adoption of DAC 8 - Mandatory Exchange of Information between Tax Authorities on Crypto Assets

By Amedeo Rizzo

On the 17th of October 2023, the Council of the European Union approved [Directive DAC 8](#) on administrative cooperation ([Press Release](#)), introducing significant modifications related to the communication and automatic exchange of information regarding proceeds from **operations in crypto-assets** and information on **advance tax rulings for high-net-worth individuals**. With this directive, the EU, considering the new opportunities brought about by digitalization, aims to expand the scope of the obligation for automatic exchange of information, fostering a higher degree of administrative cooperation among tax administrations.

¹⁷ K. Baer, R. de Mooji, S. Hebous, M. Keen (2023). Taxing Cryptocurrencies, *IMF WP/23/144*.

Crypto assets definition and tax problems

The term crypto asset refers to a digital representation of value that relies on a cryptographically secured distributed ledger to validate and secure transactions¹⁷. This mechanism establishes a tamper-resistant record of transactions within the asset without the need for a central authority. The challenge in categorizing assets within this broad class arises from ongoing innovation and the diverse range of services that specific assets can offer. Distinguishing these assets for tax purposes is complex due to these factors.

However, a fundamental tax-relevant dimension that aids in their characterization is the distinction between their use for **investment purposes** and as a **means of payment**. At one end of the spectrum are “security token,” which essentially serve as digital representations of traditional financial or other assets. An example includes “Non-fungible tokens” (NFTs), which are cryptographically protected representations of unique assets, such as works of art. Conversely, central bank digital currencies (CBDCs), might be considered to be more similar to fiat currency in digital form. While some national governments remain cautious about their adoption, the prevailing expectation is that the issuance of CBDCs will become widespread over time¹⁸.

¹⁸ Ibid.

The primary impediment in the taxation of crypto assets stems from their inherent “**anonymous**” nature, wherein transactions employ public addresses that prove exceptionally challenging to associate with individuals or entities. This characteristic introduces a heightened **susceptibility to tax evasion**, placing the onus on tax authorities to address implementation challenges effectively.

When transactions occur through centralized exchanges, the challenge becomes more manageable as these exchanges can be subjected to standard know your customer (KYC) tracking rules and potential withholding taxes.

Background and content

On December 7, 2021, the Council, in its report to the European Council regarding tax matters, communicated its anticipation that the European Commission would present a legislative proposal in 2022 for the additional amendment of Directive 2011/16/EU on administrative cooperation in taxation (DAC).

This proposed amendment specifically pertained to the exchange of information regarding crypto-assets and tax rulings applicable to individuals with substantial wealth. According to the Council, it was imperative to fortify the stipulations of Directive 2011/16/EU pertaining to the information to be reported or exchanged to accommodate the evolving landscape of diverse markets

and, consequently, to effectively address identified instances of tax fraud, tax evasion, and tax avoidance, by facilitating effective reporting and exchange of information.

In light of this objective, the Directive encompasses, among other aspects, the most recent revisions to the [Common Reporting Standard \(CRS\)](#) of the OECD. Notably, this includes the incorporation of provisions pertaining to electronic money and central bank digital currencies (CBDCs) delineated in Part II of the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard, endorsed by the OECD on August 26, 2022.

Moreover, the Directive extends the purview of the automatic exchange of information concerning advance cross-border rulings to encompass specific rulings concerning individuals. In particular, it includes in the scope of the current regulation the rulings involving **high-net-worth individuals**, as well as provisions on automatic exchange of information on **non-custodial dividends** and similar revenues.

Additionally, the Directive enhances the regulations governing the reporting and communication of **Tax Identification Numbers (TIN)**. The objective is to streamline the identification process for tax authorities, enabling them to accurately identify pertinent taxpayers and assess associated taxes. Additionally, the Directive seeks to modify provisions within the DAC concerning penalties imposed by Member States on individuals who fail to comply with national legislation

related to reporting requirements established in accordance with the DAC.

This approach is adopted to ensure uniformity and coherence in the application of these provisions across Member States.

Problems addressed by the Directive

The bottom line of the DAC 8 revolves around the imperative of instituting mandatory reporting for crypto-asset service providers falling within the ambit of the [Markets in Crypto-Assets \(MiCA\)](#) Directive. Additionally, all other crypto-asset operators offering services to residents of the EU are required to comply. Non-EU operators must undergo registration in a Member State to adhere to DAC 8 regulations, ensuring the reporting of pertinent information. This strategic approach equips tax authorities of Member States with the requisite tools to monitor income generated from crypto assets by EU users and implement necessary measures to ensure tax compliance.

The reporting mechanism entails three **sequential steps**. Initially, crypto-asset service providers collect information of the transactions subject to reporting by their users. Subsequently, the providers submit the compiled information to the competent tax authority of their Member State (for EU providers) or the competent authority of the Member State of registration (for non-EU providers). Lastly, the competent tax authority transmits the reported information, inclusive of the TIN of the reported users, to the

competent authorities of the users' respective Member States of residence.

The Directive also emphasizes **reporting requirements** concerning reportable users and crypto assets. Reportable users are mandated to furnish their:

- complete name;
- address;
- Member State of residence;
- date and place of birth;
- TIN.

Reportable crypto assets are to be identified by their complete name and the aggregate gross amount paid or the aggregate fair market value.

Reporting crypto-asset service providers are obligated to obtain a **self-certification** from users, encompassing information crucial for determining the user's tax residence, such as full name, date of birth, residence address, and TIN. The proposal allows a substantial degree of discretion in evaluating the reliability of this self-certification, permitting providers to verify information using alternative sources, including their own customer due diligence procedures, in case of doubts. If a user accesses the platform through a Member State's digital identity system, the provider is exempt from collecting certain information but is still required to obtain the user's full name, the identification service used, and the Member State of issuance.

The Directive incorporates provisions facilitating the **effective implementation** of the proposed measures, including mechanisms for enforcing compliance by non-EU crypto-asset operators with EU resident users. In instances where non-EU operators fail to comply with reporting obligations due to a lack of registration in a Member State, the DAC 8 grants Member States the authority to employ effective, proportionate, and dissuasive measures to ensure compliance, potentially encompassing measures that may prohibit the operator from operating within the EU as a last resort (*Article 8ad*).

Conclusion

In summary, the recently approved DAC8 emerges as one of the needed responses to the evolving landscape of crypto assets, acknowledging some of the inherent challenges in taxation posed by their anonymous nature and the dynamic innovation within this domain.

By bridging the information gap and enhancing reporting mechanisms, DAC 8 empowers tax administrations to monitor and enforce compliance, thus mitigating some of the potential tax risks associated with crypto assets and tax rulings. The Directive, with its comprehensive approach and emphasis on international cooperation, is a critical step towards achieving transparency in the taxation of these emerging financial instruments.