

CRYPTOCURRENCY

DR. CHRISTIAN ELLUL, Director
www.ellulschranz.com | E: info@ellulschranz.com

How will we ensure that a delicate balance is achieved when regulating cryptocurrencies? Dr Christian Ellul, is a lawyer who specialises in blockchain and crypto advisory and according to him: "I am an advocate for regulation, insofar as I believe this is the only way we will ensure cryptocurrencies become universally accepted, useable and beneficial to all. We must however ensure there is no over-regulation or any draconian legislative measures that will kill the very nature of its decentralisation."

The European Parliament stated that Cryptocurrencies will not challenge the economic power of central banks; what is your opinion on this?

Our belief is that the main FIAT currencies will still be the principal medium of exchange for many years to come due to their widespread acceptability and legal recognition. The current volatility of cryptocurrencies makes them impractical substitutes for the more stable FIAT currencies.

In the medium term, we see cryptocurrencies increasingly being used in less developed or more unstable countries where currency volatility, as well as uncertainty, already exist.

In the future, however, with adoption, acceptability and especially a less volatile cryptoenvironment, cryptocurrencies will act as a check on central banks. The moment people will lose faith in a FIAT currency, usually due to the questionable actions of central banks, they can fall back onto these decentralised currencies, which by their very nature, cannot be controlled or influenced by a central authority.

Tax and cryptocurrencies: how does it work?

Currently Malta, like many other countries, does not have any specific tax laws, regulations, rules or guidelines in relation to the tax treatment of cryptocurrencies and therefore the general principles of taxation

would need to be applied. This is not easy since generally the biggest problem in understanding the manner in which cryptocurrencies are to be taxed falls to be a matter of classification. Are cryptocurrencies to be seen as a currency or legal tender or as a separate asset class? Are they commodities or a payment method, amongst other things? Although it is generally understood that cryptocurrencies are currently seen in Malta as an asset class, unfortunately we believe that a one size fits all approach does not seem to be a long-term solution since there are many types of cryptocurrencies that possess different characteristics. For example, where Litecoin (LTC) can today be seen as more of a mode of payment, Bitcoin (BTC) can today be seen as more akin to a holder of value, i.e. an asset. The same lack of clarity exists currently in relation to VAT. The EU VAT Directive, as implemented into Member States' domestic VAT laws including Malta, does not contain any provisions on cryptocurrencies, which means that today there is uncertainty as to how virtual currency exchange transactions should be treated for VAT purposes. We believe we will see the passing of more regulations and possibly specific tax rules on cryptocurrencies as time goes by, both domestically and at an EU level. In fact, it is understood that guidelines should shortly be published by the tax authorities in Malta in relation to the tax treatment of cryptocurrencies.

What do you think tax lawyers need to be aware of when concerning the rise of crypto?

I believe that an attempt at classifying all cryptocurrencies in the same manner and hence taxing them similarly might not be the best way forward. As explained above, there are numerous types of cryptocurrencies and crypto assets and many of them have different features, including for example tokens issued on different blockchains which can range from utility tokens to security tokens. I believe more monitoring and analysis from an EU or international point of view whether in the form of specially set up committees or task forces will help ensure a uniform adoption of certain minimum standards within the European Union or internationally. Similarly, recently in February 2018, representatives from the European Commission and 35-member countries of the Financial Action Task Force (FATF) have agreed to revise its criteria in relation to virtual currencies. This included AML recommendations aimed at improved understanding of actual risks posed by misuse of cryptocurrencies. I believe we will be seeing more and more of such initiatives all aimed at ensuring the correct mainstream implementation and use of cryptocurrencies. Tax lawyers should therefore keep themselves busy reading up on legislative developments in relation to what we believe to be a relatively new and very dynamic market. **LM**



About Dr Christian Ellul

Dr Christian Ellul, is a lawyer based in Malta and specialized in international tax. As a director of E&S Group, the first corporate and tax firm to tokenise its services, he has together with the rest of his professional colleagues, focused in the last year primarily on blockchain and crypto advisory work.

