



Cryptocurrencies / Tokens / ICO / ITO: Swiss Regulation

In February 2018, the Swiss Financial Market Supervisory Authority (“FINMA”, Eidgenössische Finanzmarktaufsicht) has issued general ICO (initial coin offering) guidelines.

There are several ways in which an ICO may be covered by existing financial market regulation. **Case-specific enquiries** for qualification of a specific case described in a “white paper” can and shall be submitted to FINMA. Based on these guidelines - to clarify the principles - FINMA will respond to such specific enquiries.

Given the wide variety of types of tokens and ICO set-ups, it is not possible to generalise. Circumstances must be considered in each individual case. FINMA will base its assessment on the underlying economic purpose of an ICO, most particularly when there are indications of an attempt to circumvent existing regulations.

According to these guidelines, there are **three categories of tokens**:

- **Payment Tokens:** Payment tokens (synonymous with cryptocurrencies; well-known examples are Bitcoin, Ether) are tokens which are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer. Cryptocurrencies give rise to no claims on their issuer.
- **Utility Tokens:** Utility tokens are tokens which are intended to provide access digitally to an application or service by means of a blockchain-based infrastructure.
- **Asset Tokens:** Asset tokens represent assets such as a debt or equity claim on the issuer. Asset tokens promise, for example, a share in future company earnings or future capital flows. In terms of their economic functions, asset tokens are analogous to equities, bonds or derivatives. Tokens which enable physical assets to be traded on the blockchain also fall into this category.

The individual token classifications are not mutually exclusive. Asset and utility tokens can also be classified as payment tokens (referred to as **hybrid tokens**).

Given that **payment tokens resp. cryptocurrencies** are designed to act as a means of payment and are not analogous in their functions to traditional securities, FINMA will not treat payment tokens as securities.

The objective of the **Anti-Money Laundering Act (AMLA)** is to protect the financial system from money laundering and the financing of terrorism. Anyone who provides payment services or who issues or manages a means of payment is a financial intermediary subject to the AMLA (Article 2 para. 3 let. b AMLA). The issuing of payment tokens constitutes the issuing of a means of payment subject to this reg-

ulation as long as the tokens can be transferred technically on a blockchain infrastructure. This may be the case at the time of the ICO or only at a later date.

Swiss VAT regulations on cryptocurrencies

In June 2018, the Swiss Federal Tax Administration (“SFTA”, Eidgenössische Steuerverwaltung) has issued **draft** amendments to their practice in regard to the VAT (value added tax)-treatment of cryptocurrencies, especially Initial Coin/Token Offerings (ICO/ITO). On an international level, the SFTA is among the first that provide a legal framework for such activities which enables certainty and tax planning opportunities.

In general, the SFTA follow FINMA’s qualifications of tokens. **Case-specific enquiries** can and shall be submitted to the SFTA once FINMA has provided their qualifications. Paying with cryptocurrencies/payment tokens is deemed to be as paying with a legal currency. Exchange of cryptocurrencies to legal currencies and vice-versa, commissions, etc. are treated as VAT-exempt services without the right to claim related input VAT. The provision of wallets (saving and storing) is - in general - treated as a service subject to VAT. VAT implications of mining/block rewards are regulated as well.

Companies domiciled outside Switzerland that perform electronic or similar services to individuals in Switzerland are advised to **monitor their liability for Swiss VAT registration**.

ICOs or ITOs are regulated as well. Depending on the category of token, VAT consequences can be planned. Following the categories of FINMA, VAT implications are as following:

- **Payment Tokens:** They are deemed to be as paying with a legal currency.
- **Utility Tokens:** Financing with tokens that give the right for receiving a future benefit such as access to a service are in general treated as a service subject to VAT at the place of destination (if there does not exist an exemption).
- **Asset Tokens** (also asset backed tokens): Financing with tokens that give the right for a (financial) share on future profits, future turnovers or the right to vote or similar are - in general - treated as exempt from VAT without the right to claim related input VAT.

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Contacts: **Richard J. Wuermli**, Certified Tax Expert, Managing Partner, TAX EXPERT International AG
Christoph M. Meier, lic. oec. publ., MWST-Experte FH, VAT Manager, TAX EXPERT International AG

A Partnership for Success

TAX EXPERT International AG
Löwenstrasse 11
CH-8021 Zürich
Tel. +41(0)44 225 85 85
Fax +41(0)44 225 85 95
info@taxexpert.ch
www.taxexpert.ch

Treuhand EXPERT Global AG
Löwenstrasse 11
CH-8021 Zürich
Tel. +41(0)44 225 85 50
Fax +41(0)44 225 85 55
info@treuhandexpert.ch
www.treuhandexpert.ch

Financial EXPERT Global AG
Löwenstrasse 11
CH-8021 Zürich
Tel. +41(0)44 225 85 25
Fax +41(0)44 225 85 95
info@financialexpert.ch
www.financialexpert.ch

ADDED VALUE Wirtschaftsprüfungen
Riedmatt 9
CH-6300 Zug
Tel. +41 (0)41 711 08 00
Fax +41 (0)41 711 08 90
info@avwp.ch
www.avwp.ch

