

CROSS-BORDER TAXATION OF CRYPTOCURRENCIES

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1. Is a cryptocurrency (Bitcoin) money ?

- ▶ John Locke (1632-1704) - money, **backed by property (fruits of labour)** and the **natural rights of people**, becomes the basis for expansion beyond the subsistence level of property.
- ▶ European Directive 2009/110/EC (the e-Money Directive) :
 - ▶ “electronic money” means “**electronically stored monetary value** as represented by a **claim on the issuer** which is **issued on receipt of funds** for the purpose of making payment transactions [...], and which is accepted by a natural or legal person **other than** the electronic money issuer””
- ▶ **Bitcoin** is: **neither backed by private property, nor represented by a claim on its issuer.**
- ▶ Jamie Dimon and Warren Buffet’s views on Bitcoin
- ▶ Espinoza Money laundering case (Miami Circuit Court 2016):
« *Bitcoin has a long way to go before it is the equivalent of money* » - characterisation under criminal law
- ▶ **Stone money (rai)** in Micronesian islands – Guam, Palau, Yap

2. 2,000-year old v/s new cryptocurrency

Stone money (Yap Island)

1. Mined from a quarry
2. Oral history of ownership
3. Limited quantity (6,000 *rai*)
4. Physical ownership unnecessary (agreed to be kept in a secure location)
5. Transfer of ownership witnessed by the tribe
6. Currency mined with less effort (modern tools) has lower value

Bitcoin

1. « Mined » from a machine
2. Digital history of ownership
3. Limited quantity (21m BTC)
4. Physical ownership unnecessary (agreed to be kept in a secure wallet)
5. Transfer of ownership witnessed by 51% of the « digital tribe »
6. Bitcoin competitors less valuable

3. An elusive target for taxation

- ▶ Significance acknowledged by **BEPS Action Plan - Action I** – addressing tax challenges of the digital economy:
 - ▶ “[...] features include **mobility, reliance on data, network effects, the spread of multi-sided business models, a tendency toward monopoly or oligopoly and volatility**”
- ▶ **2015 OECD Final Report on Action I:**
 - ▶ “Policy issues posed by the **anonymous** nature of transactions. Bitcoin transactions can be made on an entirely anonymous basis, since **no personally identifying information is required to be provided to acquire or transact in bitcoins**”
- ▶ **Public comments received by OECD on the tax challenges of digitalisation as at November 2017**
 - ▶ “the impact of virtual currencies can be overwhelming. There is **no sovereignty** and there is no financial system in the virtual world. Transactions are **peer-to-peer, unstoppable and instant** across any boundary. **How to establish an international tax system if there is no nation?**” – Pedro Mariani, Brazil

Further queries:

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