

Transparency of crypto-asset industry 3/24/23



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The crypto-asset sector has made changes to the payment and investment markets and challenged the tax authorities to trace capital gains arising on crypto-asset trades. On 16 May 2023 the EU Council supported the European Commission's proposal to require crypto-asset service providers to report on transactions their EU customers perform in crypto-asset markets. This will help the tax authorities monitor crypto-asset trading and revenues, thereby reducing the risk of tax fraud and tax evasion. The reporting system is to be implemented with amendments to the Directive on Administrative Cooperation ("DAC"), which is the main system for exchanging data between the tax authorities. The new reporting rules have been passed in addition to the Regulation on Markets in Crypto Assets ("MiCA") amending Directive (EU) 2019/1937, and to the Regulation on information accompanying transfers of funds, and these rules are fully consistent with the OECD's crypto-asset reporting initiative.

DAC does not apply to collecting and paying taxes but ensures the member states obtain and exchange related tax information to promptly prevent fraud. DAC has been revised six times over the last decade (DAC1-DAC7) to expand the range of taxpayers and the types of data to be disclosed.

The tax authorities currently lack the necessary information to supervise revenues from the use of crypto-assets, which may be easily traded across borders. The European Commission believes that DAC8's requirement that all EU crypto-asset service providers regardless of their size should report on their EU-resident customers' transactions will improve the member states' ability to detect and combat tax fraud, tax evasion and tax avoidance. Moreover, the directive has been expanded in scope, requiring the financial institutions to report on dealings in e-money and central bank digital currencies, and to secure automatic exchange of information on earlier cross-border rulings enforced against individuals.

The MiCA Regulation aims to protect investors and consolidate uniform rules across the EU on:

- Transparency and information disclosure requirements for crypto-asset issuance and admission to trading
- Authorisation and supervision of crypto-asset service providers, issuers of asset-referenced tokens and issuers of e-money tokens
- Operations, organisation and governance of issuers of asset-referenced tokens, issuers of e-money tokens and crypto-asset service providers
- Consumer protection rules relating to issuance, trade, exchange and holding of crypto-assets
- Measures for preventing market abuse to secure the integrity of crypto-asset markets

The MiCA Regulation will apply to persons that are involved in issuing crypto-assets or provide crypto-asset related services across the EU. A crypto-asset is a digital representation of value or rights that can be transferred and stored electronically using distributed ledger technology or similar technology.

The MiCA Regulation defines the following crypto-assets:

- An asset-referenced token is a type of crypto-asset that aims to maintain a stable value by referring to the value of several paper currencies that are legal tender, of one or more goods, of one or more crypto-assets, or of a combination of such assets.

- An e-money token is a type of crypto-asset that is mainly used as a medium of exchange and aims to maintain a stable value by referring to the value of a paper currency that is legal tender.
- A utility token is a crypto-asset that is designed to provide digital access to a product or service available in distributed ledger technology and is accepted only by the issuer of that token.

The MiCA Regulation also defines a comprehensive list of services and activities to be classified as crypto-asset services:

- Holding and managing crypto-assets on behalf of third parties
- Maintaining a crypto-asset trading platform
- Exchanging crypto-assets for a paper currency that is legal tender
- Exchanging crypto-assets for other crypto-assets
- Carrying out instructions related to crypto-assets on behalf of third parties
- Placing crypto-assets
- Accepting and transferring instructions related to crypto-assets on behalf of third parties
- Providing advice on crypto-assets

The MiCA Regulation will also prescribe a single service providers licensing system so that crypto-asset service providers will not have to take out a licence to operate in each member state separately, as the licence to operate in one member state will allow them to operate across the EU. It's important to note that the MiCA requirements will apply to all EU crypto-asset market participants regardless of their place of registration.

Latvia does not have a uniform legal framework in place for crypto-assets, so they are governed by separate pieces of legislation. This is why Latvia will have to align its current enactments, such as the Financial Instruments Market Act, with the new rules, and draft new rules for the registration and licensing of crypto-asset service providers.

The new reporting requirements for crypto-assets, e-money and central bank digital currencies are coming into force on 1 January 2026. Although the year 2026 is a long way off, we encourage you to become familiar with the MiCA Regulation's requirements and prepare in advance for upcoming legislative changes in Latvia.