

# KONCEPCIA ZDAŇOVANIA KRYPTOAKTÍV V SLOVENSKEJ REPUBLIKE

## CONCEPT OF CRYPTO-ASSETS TAXATION IN THE SLOVAK REPUBLIC<sup>1</sup>

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### ABSTRAKT

*Táto práca predstavuje nové východiská pre zdaňovanie kryptoaktív. Popisuje stav zdaňovania kryptoaktív de lege lata a zameriava sa na reflexiu pripravovanej európskej legislatívy (nariadenie MiCA a súvisiace predpisy) a odstránenie nedostatkov de lege lata. Zdôvodňuje vhodnosť uplatnenia niektorých inštitútov daňového práva s poukazom na iné štáty. Základným cieľom práce je vytvoriť koncepciu zdaňovania kryptoaktív de lege ferenda, počnúc filozofiou zdaňovania, úpravou terminológie a zavedenia nových inštitútov, ktorá bude predstavovať spravodlivejšiu alternatívu reflektujúcu potreby spoločnosti.*

### ABSTRACT

*This paper presents new starting points for the taxation of crypto-assets. It describes the state of taxation of crypto-assets de lege lata and focuses on the reflection of forthcoming European legislation (MiCA Regulation and related regulations) and the elimination of de lege lata shortcomings. It then justifies the appropriateness of applying certain institutions of tax law with reference to other states. The basic goal of this paper is to create a concept of taxation of crypto-assets de lege ferenda, starting with the philosophy of taxation, the adjustment of terminology and the introduction of new institutions, which will be a fairer alternative reflecting the needs of society.*

### I. INTRODUCTION

Crypto-assets are no longer news to most of us. They are slowly working their way up from a reviled outsider to tolerated, if not accepted, assets upon which more and more significant and legitimate global business is being created. This is one of the reasons (apart from the often fabulous profits) why the tax issue was one of the first issues addressed in crypto-asset legislation. Gradually, the concept of virtual currency<sup>3</sup> was introduced into our legal system and the income from the sale of virtual currency appeared in the substantive legislation under the category of other income. Subsequently, in the Slovak Republic, with only a few bright exceptions<sup>4</sup>, crypto-assets have ceased to receive legislative attention. We would dare say that the concept of crypto-assets taxation as we know it today is a relatively simple and not very fortunate solution. Crypto-assets have been pigeonholed into a framework that does not

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<sup>3</sup> Although the term **virtual currency** is a legal term, in our opinion it is not appropriate and correct, while at the European level (also in legislation) the more appropriate term **crypto-asset** is applied, also used by the professional public, which we will use in the following text.

<sup>4</sup> For example, the introduction of the seizure of virtual currency into the Code of Criminal Procedure (Section 96d of the Code of Criminal Procedure).

sufficiently reflect the nature of crypto-assets, the functioning of this ecosystem as a whole, and also its individual parts, which probably stems from a lack of understanding of this still relatively new segment of business and the economy. In particular, for the above reasons, the current legislation on the taxation of crypto-assets appears to us to be incorrect, insufficient and, above all, not reflective of the needs of society.

In the following text, we will mainly use the method of analysis, attempting to identify the main reasons for the inappropriateness of legislation on the taxation of crypto-assets *de lege lata* and the problems it entails, emphasising that our primary aim is to focus on the taxation of natural persons – non-entrepreneurs (i.e. “ordinary people”). At the same time, we will use analytical data to assess the impacts of a possible change in the legislation on the state budget. Subsequently, using the method of comparison of some institutions of tax law, we will touch on the main points that can inspire the development of a new concept, and at the same time, using the method of induction, we will try to form general conclusions that could also be applied to the area of crypto-assets taxation. Finally, by means of a synthesis, we will try to propose the basic pillars of a new concept of taxation of crypto-assets, which will reflect not only the forthcoming European regulation, but also their specific nature and the needs of society. The aim of this paper is not only to address partial issues of crypto-assets, but to provide a comprehensive solution and concept for their taxation with clearly identified priorities and concrete changes that can serve as a basis for the preparation of potential legislative changes. The scientific hypothesis is to investigate the possibility of tax exemption of transactions with crypto-assets as well as the scope of this exemption in accordance with the role of crypto-assets in today’s world. This paper was submitted within the framework of student scientific and professional activity and represents a partial output of the project APVV-19-0124 “Tax law and new phenomena in the economy (digital services, sharing economy, virtual currencies)”.

## II. CRYPTO-ASSETS FROM THE VIEW OF REGULATORS AND THEIR TAXATION *DE LEGE LATA*

In the introductory chapter, we focus on the view of regulatory institutions on crypto-assets, in particular in the context of the MiCA Regulation proposal<sup>5</sup>, which is still in the legislative process<sup>6</sup> at the time of writing this paper, and which should establish new and clear rules for this business in Europe. We then describe the *status quo* of crypto-assets taxation in Slovak law.

### 1. Looking at crypto-assets from a MiCA perspective

One of the relatively friendlier attitudes of regulatory institutions was held by the Czech National Bank (the “CNB”), whose approach to crypto-assets was presented by CNB Vice-Governor Mojmír Hampl: “*Do not help, do not protect, do not harm, do not keep on lead.*”<sup>7</sup> While this approach will not facilitate the development of business and the convenience of crypto asset holders, at least it does not actively erect barriers for them. Mojmír Hampl very presciently declared caution when trying to regulate the crypto-asset segment: “*Let us not try to create some prescriptive, detailed rules for regulating cryptocurrencies, because that will be counterproductive in the end.*” The MiCA proposal reflects this idea by stating at the outset the priority that the EU financial services regulatory framework is innovation-friendly and does not pose obstacles to the application of new technologies.<sup>8</sup> The EU perceives that the lack of a

<sup>5</sup> COM (2020) 593 final: REGULATION OF EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 of 24.9.2020.

<sup>6</sup> The proposal is due to be discussed at first reading in the European Parliament.

<sup>7</sup> WOLF, K. *Mojmír Hampl (ČNB): Náš postoj ke kryptoměnám? Nepomáhat, nechránit, neškodit, nevodit za ruku.* [online]. 2017. [cit. 18. 3. 2022]. Available at: <https://www.lupa.cz/clanky/mojmir-hampl-cnb-nas-postoj-ke-kryptomenam-nepomahat-nechranit-neskodit-nevodit-za-ruku/>.

<sup>8</sup> Explanatory Memorandum to the Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, p. 1.

legal framework increases the level of legal uncertainty and makes it more difficult for crypto-asset issuers and service providers to operate, in particular by limiting the availability of funding or access to necessary financial services (bank accounts).<sup>9</sup>

MiCA is intended to be a partial alternative to MiFID II<sup>10</sup> for the area of crypto-assets not covered<sup>11</sup> by MiFID II<sup>12</sup>. Other important acts are the proposal for a Pilot Regime Regulation<sup>13</sup> and the proposal for a directive to clarify or amend certain related European Union (“EU”) financial services rules<sup>14</sup>. Although MiCA has not yet been adopted, we can infer from the proposal the direction in which EU-wide regulation is to move<sup>15</sup>.

MiCA aims to harmonise the regulation of crypto-assets across the EU<sup>16</sup>, which the drafters believe cannot be achieved effectively in the form of a directive. By replacing fragmented national laws, MiCA seeks to provide legal certainty for crypto-assets not covered by existing EU financial services legislation and to introduce uniform rules for crypto-asset issuers and service providers at EU level. Four main objectives are pursued: legal certainty, supporting innovation, an adequate level of customer and investor protection and market integrity, and financial stability.<sup>17</sup> Due to the extent of this paper, we will only focus on selected areas.

One of the most important tasks of MiCA is undoubtedly the establishment of uniform definitions and categorisation. In the following text we will select some of the most important ones<sup>18</sup>:

*Distributed ledger technology or DLT means a type of technology that supports the distributed recording of encrypted data. Holders also know this technology as **blockchain**.*

*Crypto-asset means a digital representation of value or rights that may be transferred and stored electronically, using distributed ledger technology or similar technology. This is a broad definition capable of encompassing all types of crypto-assets.*

<sup>9</sup> IBIDEM, p. 4.

<sup>10</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (the so-called MiFID II).

<sup>11</sup> LINS, B., PRAICHEUX, S. *Digital and Blockchain – based Legal Regimes: An Eea Case Study Based on Innovative Legislations – Comparison of French and Lichtenstein Domestic Regulations*. In: *Financial Law Review*. vol. 22, y. 2021, i. 2, 1-17, p. 6, DOI: <https://doi.org/10.4467/22996834FLR.21.009.13977>.

<sup>12</sup> The application of MiFID II to crypto-assets is still inconsistent across the EU due to the different implementation of the Directive in national laws. It is for this reason that in the case of MiCA, the form of regulation has been chosen. The impossibility of applying MiFID II to crypto-assets in the Slovak Republic has also been declared by the National Bank of Slovakia. For more details see: <https://www.nbs.sk/sk/dohlad-nad-financnym-trhom/fintech/kryptoaktiva-a-initial-coin-offerings-icos#3>.

<sup>13</sup> In order to allow for the development of crypto-assets that qualify as financial instruments and DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be useful to create a pilot regime for DLT market infrastructures. A pilot regime for DLT market infrastructures should allow such DLT market infrastructures to be temporarily exempted from some specific requirements under the Union financial services legislation that could otherwise prevent them from developing solutions for the trading and settlement of transactions in crypto-assets that qualify as financial instruments. The pilot regime should also enable the European Securities and Markets Authorities (ESMA) and competent authorities to gain experience on the opportunities and specific risks created by crypto-assets that qualify as financial instruments, and by their underlying technology. For further details, see the Proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (EU) 2020/0267.

<sup>14</sup> This change is intended to ensure that doubts about the scope of MiFID II in the area of crypto-assets caused by different implementation in national laws are removed. For further details see Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 – COM(2020) 596.

<sup>15</sup> Crypto-assets are to be legally categorised, with the regulation of each category divided between several legal acts (MiCA, MiFID II, etc.). More details on this division are provided below.

<sup>16</sup> NBS. *Návrh právnych predpisov EÚ v oblasti regulácie kryptoaktív*. [online]. 2022. [cit. 18. 3. 2022]. Available at: [https://www.nbs.sk/\\_img/Documents/\\_Dohlad/Fintech/kryptoaktiva/Navrh\\_pravnych\\_predpisov\\_EU\\_v\\_oblasti\\_regulacie\\_kryptoaktiv.pdf](https://www.nbs.sk/_img/Documents/_Dohlad/Fintech/kryptoaktiva/Navrh_pravnych_predpisov_EU_v_oblasti_regulacie_kryptoaktiv.pdf).

<sup>17</sup> Explanatory Memorandum to the Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, p. 2.

<sup>18</sup> Article 3(1) of the Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937.

**Utility token** means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token. A utility token may also be known as a utility or governance token.

**Asset-referenced token** means a type of crypto-asset that purports to maintain a stable value by referring to the value of multiple fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets. This definition includes the type of so-called stablecoins.

**Electronic money token** means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender. This definition also includes stablecoins.

No further categorisation of crypto-assets can be found in the definitions. MiCA **does not apply**<sup>19</sup> to crypto-assets that meet the characteristics<sup>20</sup> of **financial instruments**<sup>21</sup>, **electronic money**<sup>22</sup>, **deposits**<sup>23</sup> and **structured deposits**<sup>24</sup> and/or **securitisation**<sup>25</sup>. It follows that the established categorisation into payment, utility and investment tokens is slightly modified and MiCA covers only some of these categories. At the same time, we have to consider that the nature of the individual crypto-assets may be very different (financial instrument vs. electronic money), which may also be an important factor in designing the concept of their taxation.

The application of the categorisation is to be ensured under Title II, Article 4 of MiCA, for example, by imposing various obligations on the issuer prior to the issuance of a crypto-asset, in particular to publish a whitepaper<sup>26</sup>, to categorise the crypto-asset, to justify the categorisation and to inform the competent authority<sup>27</sup>. The above is not subject to *ex ante* approval, but the competent authorities should have the power to suspend or prohibit the offering, require the inclusion of additional information in the whitepaper, or make public the fact that the issuer is not complying with the Regulation.<sup>28</sup> Subsequently, the whitepaper will also be published in the filings of the European Securities and Markets Authority (“ESMA”). For these reasons, there should be no disputes over the categorisation of the crypto-assets issued.

However, the problem is that MiCA will not (with the exception of electronic money tokens and asset-referenced tokens) apply to crypto-assets issued prior to its entry into force. Thus, it remains an open question how to deal with the large number of crypto-assets that have been created so far and will not fall under the established categories. In addition, there are several exceptions to the application of the MiCA obligations, e.g. in the case of a small capitalisation

<sup>19</sup> BOČÁNEK, M. *First draft of crypto-asset regulation (MiCA) with the European Union and potential implementation*. In: *Financial Law Review*. vol. 22, y. 2021, i. 2, 37-53, p. 41, DOI: <https://doi.org/10.4467/22996834FLR.21.011.13979>.

<sup>20</sup> It is important to note that crypto assets cannot yet be categorised. In the USA, there has been an ongoing dispute for several years between the SEC (US Securities and Exchange Commission) and Ripple Labs, a company that has issued a crypto-asset called XRP, which the SEC claims is an unlicensed security. A respected categorisation will only be possible when the above-mentioned proposed legal acts take effect.

<sup>21</sup> Under the definition in Article 4(1)(15) of Directive 2014/65/EU.

<sup>22</sup> Under the definition in Article 2(2) of Directive 2009/110/EC except where they qualify as electronic money tokens under this Regulation.

<sup>23</sup> Under the definition in Article 2(1)(3) of Directive 2014/49/EU of the European Parliament and of the Council.

<sup>24</sup> Under the definition in Article 4(1)(43) of Directive 2014/65/EU.

<sup>25</sup> Under the definition in Article 2(1) of Regulation (EU) 2017/2402 of the European Parliament and of the Council.

<sup>26</sup> A whitepaper is a mandatorily published document that is a kind of prospectus introducing the issuer and the crypto-asset being issued. It must contain specified elements such as a description of the issuer, a detailed description of the issuer’s project, information on whether it is a public offering of electronic money tokens or their admission to a trading platform, as well as information on the risks related to the electronic money issuer, the electronic money tokens and the implementation of any potential projects.

<sup>27</sup> In the Slovak Republic, this authority is likely to be the National Bank of Slovakia, as follows from the definition of a competent authority under Title I, Article 3(24) of MiCA.

<sup>28</sup> Article 82(1) of the Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937.

of the issue (below EUR 1 million within a twelve-month period), the addressees of the issue (only qualified investors), etc.

Overall, the MiCA proposal can be viewed positively, as it legitimises crypto-assets and seeks to create the right conditions for the development of this sector, while avoiding burdensome bureaucratic requirements. The attention paid to the definitions is equally important and we believe that it would be appropriate to adopt the definition of crypto-assets in the sense of this proposal, thus replacing the inappropriate concept of virtual assets in Slovak law.

## 2. Taxation of crypto-assets *de lege lata*

Income from the sale of crypto-assets (virtual currency) is taxed as other income<sup>29</sup> for a **taxpayer – non-entrepreneur** with unlimited tax liability in Slovakia and is not exempt from tax in any part. In the case of a **taxpayer – entrepreneur** who determines the tax base or tax loss pursuant to Section 17(1) of Act No. 595/2003 Coll. on income tax, as amended (the “ITA”)<sup>30</sup>, the income derived from the sale of a crypto-asset is taxable income, which is treated accordingly as income derived from financial assets.<sup>31</sup>

The definition of the sale of virtual currency is a legislative concept and can be found in Section 2(ai) of the ITA, under which, for the purposes of the ITA, *the sale of virtual currency means an exchange of virtual currency for property, an exchange of virtual currency for another virtual currency, an exchange of virtual currency for the provision of a service, or a transfer of virtual currency for consideration.* It follows from this definition that the object of taxation is defined very broadly and covers *de facto* any transaction in crypto-assets other than the transfer between wallets without selling them. This approach may give rise to a number of complications, which we discuss in more detail below. At the same time, at this point we consider it important to point out that income from the sale of inherited or donated crypto-assets is also subject to tax, where the object of taxation is the amount by which the value of the crypto-assets at the time of their sale exceeds the value of the crypto-assets at the time of their acquisition. Income from the sale of crypto-assets is included in the tax return for the tax year in which the sale takes place. In the case of a taxpayer – natural person, a type B tax return is filed.

Income from the sale of crypto-assets may be reduced by the expenses demonstrably incurred to earn it (the aggregate of the input prices of the crypto-assets in the tax year in which the sale or exchange takes place).<sup>32</sup> At this point, we would like to emphasize that if the purchase and sale of crypto-assets take place in different tax years (which in reality may be less than one day apart), the input prices cannot be applied, which may cause a number of complications for the taxpayer. If the expenses are higher than the total income earned, the difference is disregarded. In the case of the acquisition of crypto-assets by mining, the actual expenses demonstrably incurred to mine them (payment of energy consumed in connection with mining) can be claimed.<sup>33</sup> In the case of gratuitous acquisition by donation or inheritance, the actual expenses demonstrably incurred in connection with the acquisition of the crypto-asset (notarial

<sup>29</sup> Under Section 8(1)(t) of the ITA.

<sup>30</sup> The determination of the tax base or tax loss of the taxpayer is based on the profit/loss reported in the accounts or the difference between income and expenses.

<sup>31</sup> PIROHANIČOVÁ, L. *Virtuálne platidlá (Bitcoin, Ethereum a pod.) a ich zdaňovanie v SR a vo svete.* In: POPOVIČ, A., SÁBO, J., eds.: *Aktuálne výzvy daňového práva.* Košice: Univerzita P. J. Šafárika v Košiciach, 2021, pp. 32-42, p. 36.

<sup>32</sup> GECÍKOVÁ, S. *Virtuálne platidlá (Bitcoin, Ethereum a pod.) a ich zdaňovanie v SR a vo svete.* In: POPOVIČ, A., SÁBO, J., eds.: *Aktuálne výzvy daňového práva.* Košice: Univerzita P. J. Šafárika v Košiciach, 2021, pp. 20-31, p. 26.

<sup>33</sup> GECÍKOVÁ, S. *Virtuálne platidlá (Bitcoin, Ethereum a pod.) a ich zdaňovanie v SR a vo svete.* In: POPOVIČ, A., SÁBO, J., eds.: *Aktuálne výzvy daňového práva.* Košice: Univerzita P. J. Šafárika v Košiciach, 2021, pp. 20-31, p. 26.

fee paid at the time of donation or inheritance) may be included in the expenses.<sup>34</sup> At the same time, a health insurance levy paid can be recognised as a tax expense.<sup>35</sup>

Another very important parameter for the taxation of crypto-assets is the tax rate. Pursuant to Section 15(a) of the ITA, a tax rate of 19% or 25% is applied to a taxpayer who is a **natural person – non-entrepreneur**, depending on the amount of the taxpayer's tax base (determined pursuant to Section 4(1)(a) of the ITA) (if the tax base exceeds EUR 37,981.94, a tax rate of 25% is applied to the excess amount).<sup>36</sup> At this point it is important to note that this income is also subject to a health insurance levy<sup>37</sup> of 14%, which means that the tax and levy burden on the taxpayer may be 33%, which is almost a third of the income, or as much as 39%, which is close to half of the income. This level of burden on ordinary natural persons seems to us to be disproportionate to the point of being draconian. For a taxpayer – entrepreneur, tax rates may vary. In the case of a **natural person – entrepreneur** who earns income under Section 6(1) and (2) of the ITA (income from business and other self-employment), the tax rate may be 15% if the tax base determined pursuant to Section 4(1)(b) of the ITA does not exceed EUR 49,790.00, or a combined tax rate of 19% and 25% if the tax base determined pursuant to Section 4(1)(b) of the ITA exceeds EUR 49,790.00 (19% tax rate is applied to the part of the tax base not exceeding EUR 37,981.94 and 25% tax rate to the excess amount).<sup>38</sup> In the case of a **legal person**, the current tax rate is 15% if the taxpayer's tax base reduced by the tax loss does not exceed EUR 49,790.00 or 21% if the taxpayer's tax base reduced by the tax loss exceeds this amount.<sup>39</sup> Legal persons, unlike natural persons, do not need to pay health insurance levies. It follows from the above tax rate setting that in the case of entrepreneurs, the more successful ones (those with higher incomes) are affected by higher taxation, while for non-entrepreneurs the lower tax rate of 15% is excluded. It is not our aim to contradict this philosophy in this paper, but it may be worth reflecting on whether it is appropriate to apply this rule to income from the sale of crypto-assets.

### 3. Shortcomings of the legislation on the taxation of crypto-assets *de lege lata*

On taxation *de lege lata*, a few criticisms should be made in relation to both common practice and the MiCA concept. The taxable transactions are conceived in a very broad manner, not reflecting the different nature of crypto-assets.<sup>40</sup> As an example, consider the exchange of a crypto-asset for another crypto-asset – the purchase of security tokens, which by their nature closely resemble some form of digitised securities or utility tokens, the issuers of which will have to comply with specified requirements and will also be subject to a regulated market (like securities). Stablecoins will also be regulated in the same way, although currency pair trades (forex trades) are considered derivative transactions and fall equally into the category of other

<sup>34</sup> IBIDEM.

<sup>35</sup> PUKALOVIČ, D. *Zdaňovanie kryptomien (virtuálnych mien)*. [online]. 2021. [cit. 21. 3. 2022]. Available at: <https://www.podnikajte.sk/dan-z-prijmov/zdanovanie-kryptomien-virtualnych-mien>.

<sup>36</sup> GEČÍKOVÁ, S. *Virtuálne platidlá (Bitcoin, Ethereum a pod.) a ich zdaňovanie v SR a vo svete*. In: POPOVIČ, A., SÁBO, J., eds.: *Aktuálne výzvy daňového práva*. Košice: Univerzita P. J. Šafárika v Košiciach, 2021, pp. 20-31, p. 25.

<sup>37</sup> PUTERA, M. *Kryptomeny a ich využitie pri zdaňovaní*. Diplomová práca. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta. 2020. 69 s. p. 46. [online] 2020. [cit. 12. 3. 2022] Available at: <https://opac.crzp.sk/?fn=detailBiblioForm&sid=8DB42373D07F62A0DCAD25DA4370&seo=CRZP-detail-kniha>.

<sup>38</sup> FS SR. *Sadzba dane za rok 2021*. [online]. 2022. [cit. 21. 3. 2022]. Available at: <https://podpora.financnasprava.sk/424014-Sadzba-dane-za-rok-2021>.

<sup>39</sup> FS SR. *Informovanie o dani z príjmov právnických osôb*. [online]. 2022. [cit. 21. 3. 2022]. Available at: <https://www.financnasprava.sk/sk/podnikatelia/dane/dan-z-prijmov/pravnicke-osoby/informovanie-dan-prijem-po#SadzbaDane>.

<sup>40</sup> MAUME, P., FROMBERGER, M. *Regulation of Initial Coin Offerings: Reconciling U.S. and E.U. Securities Laws*. In: Chicago Journal of International Law, vol. 19, y. 2019, i. 2, 548-585, p. 558, DOI: <https://dx.doi.org/10.2139/ssrn.3200037> or XU, Ch., JIN, B. *Digital currency in China: pilot implementations legal challenges and prospects*. In: Juridical Tribune, vol. 12, y. 2022, i. 2, 177-194, p. 179, Available at: <http://www.tribunajuridica.eu/arhiva/An12v2/2.%20Xu,%20Jin.pdf>.

income.<sup>41</sup> Even the eventual adoption of MiCA and related legal acts would not automatically change the scope of taxable crypto-asset transactions, so we find it important to reconsider this definition.<sup>42</sup>

The set taxation rules do not incentivise holders to invest for the long term, to create wealth responsibly and to have lower time preferences. A completely different case can be seen in the taxation of income from the sale of securities, which we discuss more below.

The practical aspect of taxing crypto-assets is also problematic. Under the legislation, it is necessary to keep detailed records of the date and time of the transaction and the individual exchange rate (not only between crypto-assets but also against the euro), as the price of a crypto-asset can change by several tens of percent within a single day. Even with only slightly more frequent trading, it can be a big problem to correctly determine the amount of tax, not to mention entrepreneurs or professional traders who may make thousands of transactions per day. Crypto-assets can be used to pay in many places nowadays, and “crypto” payment cards can be used at any places where card payments are accepted. With a bit of hyperbole, we dare say that it makes no sense to tax every payment for coffee. The above is not only a problem for the taxpayer, the same (if not greater) difficulties and costs may arise for the tax authorities under the current legislation in the case of a tax audit. The question then arises again as to how to set up the legislation appropriately.

Last but not least, we would like to draw attention to the human factor and the taxpayer’s motivation to declare and tax his income. We deal with this subject in the last chapter, but for the time being we can state, to lighten things up, that it does not help tax discipline if a taxpayer in such a high-risk sector makes a profit on his investment and then the state, which has been warning him against this activity all along, reduces his success by a third or almost half. High tax rates, together with the difficulty of calculating the tax base, act as a disincentive for taxpayers. In the table below, we can see the evolution of the number of taxpayers who declared income and expenses from the sale of crypto-assets for the tax years 2018 to 2020, as well as the amount of income declared.

**Table 1<sup>43</sup> – Declared income from the sale of crypto-assets** (own elaboration)

| Tax year | Number of taxpayers | Declared income from the sale of virtual currency | Value in EUR     |
|----------|---------------------|---|------------------|
| 2020     | 611                 | Income  | 11,776,148       |
|          | 461                 | Expenses  | 9,452,470        |
|          | -                   | <b>Difference</b>                                 | <b>2,323,678</b> |
| 2019     | 105                 | Income  | 3,562,592        |
|          | 71                  | Expenses  | 2,997,176        |
|          | -                   | <b>Difference</b>                                 | <b>565,416</b>   |
| 2018     | 114                 | Income  | 9,401,463        |
|          | 73                  | Expenses  | 4,907,905        |
|          | -                   | <b>Difference</b>                                 | <b>4,493,558</b> |

The data above show a significant decrease in the tax year 2019. However, the reason for this decrease cannot be clearly identified, as there was no significant drop in crypto-asset prices in this period, nor were taxpayers affected by the impacts of the crisis associated with the COVID-19 pandemic. Income increased again in the tax year 2020, which is likely related to the increase in the price of crypto-assets in this period. How taxpayers’ willingness to declare

<sup>41</sup> FS SR. *Zdanenie príjmov z forexových obchodov*. [online]. 2022. [cit. 21. 3. 2022]. Available at: <https://podpora.financnasprava.sk/945574-Zdanenie-prijmov-z-forexovych-obchodov>.

<sup>42</sup> DAUDRIKH, Y. V. *AML smernica – aplikačné problémy súvisiace s reguláciou virtuálnych mien*. In: *Časopis pro právní vědu a praxi*. vol. 30, y. 2022, i. 1, 191-214, p. 198 DOI: <https://doi.org/10.5817/CPVP2022-1-8>.

<sup>43</sup> The data were provided by the Financial Administration of the Slovak Republic on the basis of an application for disclosure of information under Act No. 211/200 Coll. on free access to information, amending certain acts (Freedom of Information Act), as amended, dated 30 March 2022, Application No. 132717/2022.



income from the sale of crypto-assets will evolve is likely to be empirically observable in subsequent tax years.

### Chart 1<sup>44</sup> – Price development of the strongest representative of crypto-assets - bitcoin (BTC) in EUR

Bitcoin to EUR Chart



In the above chart, we can see that in 2018 and 2019, the price of bitcoin did not increase significantly. A significant increase started to occur only at the end of 2020 and in the following period.

Table 2<sup>45</sup> – Comparison of income of natural persons (own elaboration)

| Tax year | Total amount of declared income of natural persons, EUR | Amount of other income under Section 8 of the ITA | Income from the sale of virtual currency, EUR | Share of income from the sale of virtual currency in other income under Section 8 of the ITA, % | Share of income from the sale of virtual currency in all income of natural persons, % |
|----------|---|---|---|---|---|
| 2020     | 15,945,130,568  | 1,441,945,360                                     | 11,776,148                                    | 0.82  | 0.07  |
| 2019     | 16,786,652,369  | 918,100,853                                       | 3,562,592                                     | 0.39  | 0.02  |
| 2018     | 16,575,937,827  | 883,630,238                                       | 9,401,463                                     | 1.06  | 0.06  |

In Table 2, we attempt to demonstrate the marginal impact of income from the sale of crypto-assets on the state budget. Income from the sale of crypto-assets averaged less than 1% of other income of natural persons under Section 8 of the ITA over the periods under review, and 0.05% of all income of natural persons.

The above-mentioned shortcomings are also confirmed by the answers of respondents from the questionnaire of the National Bank of Slovakia (the “NBS”), by which the NBS tried to monitor the situation and requirements of crypto-asset service providers: *“The respondents mentioned the lack of legislation, the impossibility of maintaining a bank account, the non-conceptual taxation of transactions (crypto-crypto, crypto-goods) and the high tax burden as the biggest obstacles to further development of business in the area of crypto-assets.”*<sup>46</sup> Who

<sup>44</sup> *Bitcoin (BTC)*. [online]. 2022. [cit. 13. 4. 2022]. Available at: <https://coinmarketcap.com/currencies/bitcoin/>.

<sup>45</sup> The data were provided by the Financial Administration of the Slovak Republic on the basis of an application for disclosure of information under Act No. 211/200 Coll. on free access to information, amending certain acts (Freedom of Information Act), as amended, dated 30 March 2022, Application No. 132717/2022.

<sup>46</sup> NBS. *Prehľad trhu s kryptoaktívami v Slovenskej republike*. [online]. 2020. [cit. 21. 3. 2022]. Available at: [https://www.nbs.sk/\\_img/Documents/\\_Dohlad/Fintech/kryptoaktiva/SK-kryptoaktiva-prehľad.pdf](https://www.nbs.sk/_img/Documents/_Dohlad/Fintech/kryptoaktiva/SK-kryptoaktiva-prehľad.pdf).



else is a more representative sample than those who are trying to legitimately do business in this area and are in the best position to know the market conditions and needs. As noted above, the same obstacles were identified in the Explanatory Memorandum to MiCA.

We recognise that if legislation is to retain its generality and clarity, it cannot adequately address each individual situation in detail.<sup>47</sup> However, if legislation of this magnitude is to be adopted, i.e. if it is to establish a legal framework for an entire segment of the economy, it is, in our view, also necessary to consider whether it is not appropriate to refine the legislation so that it is not a general “one-size-fits-all” solution but reflects the specific and multidisciplinary nature of crypto-assets. Good legislation, especially tax legislation, is a huge advantage for the state and an opportunity to capture the emerging digital segment, which is undoubtedly a declared objective of the EU.

### III. CONCEPT OF THE TAXATION OF CRYPTO-ASSETS DE LEGE FERENDA

In the last chapter, we want to present the basic pillars of a new concept of crypto-assets taxation, which, in our opinion, represents a fairer, more appropriate and acceptable alternative to the *status quo*.

#### 1. Important institutions and aspects taken into account in the development of the concept of taxation

A time test is a tax incentive tool<sup>48</sup> commonly found in Slovak tax law<sup>49</sup> and can be simply characterised as a statutory period of time after the expiry of which income derived from the ownership of a statutory property is exempt from tax. The ownership of the property must be uninterrupted during this period of time.

In the Slovak legal system, for example, the following are the best-known examples of tax exemption after the time test has been met:

- a) income from the sale of real property after the expiry of five years from the date of its acquisition (Section 9(1)(a) of the ITA),
- b) income from the sale of real property acquired by inheritance after the expiry of five years from the date of its acquisition (Article 9(1)(b) of the ITA),
- c) income from the sale of securities admitted to trading on a regulated market after the expiry of one year from the date of their acquisition (Article 9(1)(k) of the ITA).

The legislature’s motivation to exempt income from tax can vary and need not be a purely incentive-based policy. The purpose of the time test may be to tax only those cases in which the purpose of the sale is financial enrichment. According to the case law of the Supreme Administrative Court of the Czech Republic (the SAC CR), the above approach is applied, for example, in the first two examples, since if the period between the acquisition and the sale of real property exceeds five years, it is not, in principle, a sale for profit (a so-called speculative transaction). In Judgment 2 Afs 70/2007 – 55, the SAC CR clarifies this approach further by stating that “...*the logic of the tax exemption in these cases is based on the fact that it is actually not income in the sense of an increase in the property of the taxpayer, but only a transformation of the ownership of the thing (real property) into its cash equivalent.*”<sup>50</sup>

By contrast, the exemption from tax of income from the sale of securities has a completely different objective, for example to stimulate the growth of savings<sup>51</sup> or the development of the

<sup>47</sup> BABČÁK, V. *Daňové právo na Slovensku a v EÚ*. Bratislava: Ing. Miroslav Mračko – EPOS, 2019. 912 p., p. 446.

<sup>48</sup> AMBRA, T. *Analýza opatrení na podporu kapitálového trhu*. [online]. 2015. [cit. 10. 3. 2022]. Available at: [https://www.nbs.sk/\\_img/Documents/\\_PUBLIK\\_NBS\\_FSR/Biatec/Rok2015/06-2015/03\\_biatec\\_15-6\\_Ambra.pdf](https://www.nbs.sk/_img/Documents/_PUBLIK_NBS_FSR/Biatec/Rok2015/06-2015/03_biatec_15-6_Ambra.pdf).

<sup>49</sup> Also in tax law of other OECD countries, as described in more detail below.

<sup>50</sup> Judgment of the Supreme Administrative Court of the Czech Republic of 16.05.2008 in Case No 2 Afs 70/2007 - 55

<sup>51</sup> Explanatory Memorandum to Act No. 253/2015 Coll. amending Act No. 595/2003 Coll. on income tax, as amended, amending certain acts.

local capital market<sup>52</sup>. The Explanatory Memorandum to the amendment to the Income Tax Act<sup>53</sup>, which introduced this exemption into the legislation, explicitly states that the proposed changes are aimed at *promoting long-term investment savings by natural persons as a favourable form of investing funds in a portfolio carried out through authorised institutions after meeting the established conditions, or increasing the tax motivation of the population to invest on the capital market in order to promote the development of the capital market and increase the financing of the Slovak real economy from the long-term savings of the population*. To this end, a one-year time test has been introduced, which is a very favourable regulation for (both long-term and short-term) investors. By comparison, our Czech neighbours have a three-year time test for the sale of securities in their legislation. This, like elsewhere in the world, is set in favour of long-term investors, which was highlighted in 2014 when the time test was extended from six months to three years.<sup>54</sup> In Germany, they consider crypto-assets to be private money for tax purposes and apply a one-year time test, i.e. income from the sale of crypto-assets is tax-free if you hold the crypto-assets for more than 1 year<sup>55</sup>.

In the Czech legislation, we also find in the case of income from the sale of securities an alternative to the time test – the so-called **value test**. If a natural person's income from the sale of securities does not exceed CZK 100,000 (approx. EUR 4,000) in a tax year, it is exempt from tax even if the time test is not met<sup>56</sup>. The tax rate, which is 15% for natural persons and 19% for legal persons, is also interesting.<sup>57</sup> The German legislation applies a value test for natural persons in the amount of EUR 600<sup>58</sup>. This approach can ensure that the taxpayer and the tax authorities are not burdened by low-value transactions such as the above-mentioned payments for coffee, lunch, etc.

The support of (especially long-term) investors is undoubtedly an important instrument of the state, which significantly contributes to the gradual building of the wealth of the population. Long-term investing and wealth building is often underestimated, but it is in the interest not only of investors, but also of the state to support such activities of its citizens, as this can lead to a higher standard of living, lower dependence of pensioners on state benefits, higher consumption and/or overall economic activity of citizens and a number of other positives, which will ultimately have positive effects on the state budget.

It can certainly be counter-argued that a lower tax burden will result in a shortfall in state revenue, but with reference to Table 2 above, the data clearly show that the shortfall, if any, would be marginal. The opposite may be true, as we must remember that holders of crypto-assets ultimately spend on real-world goods. Taxpayers will not be afraid to declare or spend their income on goods, and what is more, a reasonable tax burden may be an attraction for many entrepreneurs in the digital business, which may be a high added value for us.

The taxation of crypto-assets should be designed as a combination of several complementary instruments to ensure rational taxation of transactions. The rationality of taxation should aim at not affecting micro-transactions (the recording of which is burdensome for both the taxpayer

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<sup>52</sup> APOLEN, P. *Finančná správa zneistila investorov: Budú sa zdaňovať aj výnosy z ETF fondov?* [online]. 2021. [cit. 10. 3. 2022]. Available at: <https://www.forbes.sk/novy-vyklad-zakona-zacnu-sa-z-etf-platit-dane/>.

<sup>53</sup> Explanatory Memorandum to Act No. 253/2015 Coll. amending Act No. 595/2003 Coll. on income tax, as amended, amending certain acts.

<sup>54</sup> KUDLÁŠEK, P. *Časový test u investic: Co to znamená a jak může ovlivnit návratnost vašich investic?* [online]. 2021. [cit. 10. 3. 2022]. Available at: <https://finex.cz/casovy-test-u-investic/>.

<sup>55</sup> SKDP. *Zárobky z obchodovania s kryptomenami musíte zdaňovať*. [online]. 2018. [cit. 25. 3. 2022]. Available at: <https://www.danovecentrum.sk/aktuality/zarobky-z-obchodovania-s-kryptomenami-musite-zdanit-aktualita-dc-3-2018.htm>.

<sup>56</sup> Section (4)(1)(w) of Act No. 586/1992 Coll. on income tax.

<sup>57</sup> FINEX.CZ. *Zdanění kryptoměn – Kompletní návod pro rok 2022*. [online]. 2022. [cit. 25. 3. 2022]. Available at: <https://finex.cz/zdaneni-kryptomen-kompletni-navod/>.

<sup>58</sup> *Die steuerliche Behandlung von Kryptowährungen in Deutschland*. [online]. 2022. [cit. 25. 3. 2022]. Available at: <https://www.winheller.com/bankrecht-finanzrecht/bitcointrading/bitcoinundsteuer/besteuerung-kryptowaehrungen.html>.

and the tax authority), motivating taxpayers to invest and create wealth over the long term, creating an attractive environment for both entrepreneurs and users, and at the same time guaranteeing appropriate (bearable) taxation when crypto-assets are exchanged for real-world goods. Tax bearability is subjective in nature and represents a certain threshold beyond which the taxpayer feels reluctant to pay the tax.<sup>59</sup> An unbearable tax burden can cause taxpayers to develop tax aversion, resulting in tax evasion, which is one form of expression of taxpayers' dissatisfaction with the state's tax policy.<sup>60</sup> Changing this attitude may be a key factor in motivating taxpayers to declare income from the sale of crypto-assets.

## 2. Terminology, definition of taxable transactions and value test

In the context of the proposed MiCA Regulation, it seems to us appropriate to **replace the inappropriate term “virtual currency” with the generally accepted term “crypto-asset”** as defined in MiCA. This term should be replaced not only in the ITA but also in other legislation in which it appears (Code of Criminal Procedure, Accounting Act).

At the same time, it is necessary to assess whether crypto-assets need to be further differentiated for taxation purposes, as some of them will be considered financial instruments, some will be considered electronic money, and some will not be covered by the new regulation at all. Favouring certain crypto-assets would probably be difficult to justify. Investment tokens fund a business, utility tokens serve users of a particular platform or application, and payment tokens allow holders to make global payments.<sup>61</sup> Each type contributes in some way to a specific project, and each (successful) token represents a certain added value. **If a crypto-asset creates these values (which is a prerequisite for its appreciation), in principle we see no reason to further categorise it for taxation purposes** as it is necessary to ensure **the generality and clarity of legislation and to avoid undermining the neutrality of taxation** by possible discrimination between issuers and holders of crypto-assets. In our opinion, it is the grasp of the values created that is relevant for the taxation of crypto-assets and not the manner in which those values are created. **However, we consider it important to exempt stablecoins** (electronic money token or asset-referenced token) **from this rule** as they are *de facto* fiat currencies and this exemption is key to the proposed parts of this concept.

We see room in the new concept to **change the scope of taxable transactions**. As noted above, it is counterproductive to track and recalculate every micro-transaction (“coffee” transaction). This approach is clearly uneconomic for both the taxpayer and the tax authorities. At the same time, in our opinion, it would be appropriate to apply a **value test** at this point, e.g. up to 21 times the applicable subsistence minimum amount (EUR 4,579.26 in 2022<sup>62</sup>), as is the case for the annual amount of the tax allowance under Section 11(2)(a) of the ITA.

We consider the exemption of “crypto-crypto” transactions and the exclusion of “crypto-goods” transactions to be relevant proposals in the change of the scope of taxable transactions. However, these options may be mutually exclusive under certain conditions. In our opinion, **it does not make sense to tax crypto-crypto transactions as there is no real profit to the holder unless the multiplied crypto-assets are exchanged for real-world goods**. Even in the case of exchanging a crypto-asset for a stablecoin, where it is a *de facto* alternative to fiat currency, as long as the holder holds them in a wallet, he has no real benefit from that profit. **Exempting such transactions from taxation would make the holders' records and**

<sup>59</sup> BABČÁK, V. et al. *Daňové úniky, ich vznik a eliminácia*. Košice: ŠafárikPress, 2020. 302 p., p. 68.

<sup>60</sup> IBIDEM, p. 67.

<sup>61</sup> For legal categorisation of crypto-assets, see chapter 1.1.2 or PUTERA, M. *Finančnoprávne aspekty kryptoaktív*. In: ŠTRKOLEC, M., VARTAŠOVÁ, A., STOJÁKOVÁ, M., SIMIČ, S. (eds.): IV. SLOVENSKO-ČESKÉ DNI DAŇOVÉHO PRÁVA. Košice: Univerzita P. J. Šafárika v Košiciach, 2021, pp. 305-318, p. 308.

<sup>62</sup> TALDOVÁ, S. *Nezdaniteľné časti základu dane v roku 2022*. [online]. 2021. [cit. 25. 3. 2022]. Available at: <https://www.podnikajte.sk/dan-z-prijmov/nezdanitelne-casti-zakladu-dane-2022>.

**potential tax authorities' audits extremely simple**, as both inputs and outputs would be easily identifiable. **If a taxpayer exchanged crypto-assets for any service, commodity or other goods, a taxable transaction would occur.** At the same time, however, this approach may interfere with the time test (the taxpayer exchanges bitcoins for stablecoins and waits three years for that income to be exempt from tax). The second option would mean that the taxable transaction would only be the exchange of a crypto-asset for fiat currency (or stablecoins), which would partially relieve the taxpayer when spending on goods, but he would still be burdened with micro-transaction taxation in the case of exchanges for fiat currency and stablecoins. In addition, a situation could arise where a taxpayer's crypto-asset is appreciated by a factor of 100 (e.g. from a thousand euros to a hundred thousand euros) and the taxpayer does not exchange the crypto-asset for fiat currency or stablecoins, but buys a car (e.g. Tesla allowed payment in bitcoins for a certain period of time) or real property. With the gradual adoption of crypto-assets, more and more people will accept crypto-assets as payment, and so the taxpayer could very easily avoid taxation even on extremely high profits.

A compromise may be the following alternative: **The exchange of a crypto-asset for another crypto-asset is not a taxable transaction, except for the exchange for stablecoins** – the application of the time test will not be jeopardized, as the exchange is not a taxable transaction, but **the time test starts to run when the crypto-asset is acquired. The exchange for stablecoins, which are *de facto* fiat currency, remains a taxable transaction. At the same time, however, we propose that the value test be applied – an exchange of a crypto-asset for goods, crypto-assets or fiat currency up to 21 times the amount of the applicable subsistence minimum amount in the tax year is not a taxable transaction.** The value test prevents wasteful taxation of micro-transactions burdening both the taxpayer and the tax authorities.

### 3. Time test, tax rates and health insurance

As mentioned above, our aim is also to encourage people's interest in long-term forms of investing, gradual wealth building and financial responsibility, or a preference for lower time preferences. In practice, this does not mean speculative trading, but purchases with the aim of holding for several years. In the crypto-asset environment, the popular term "HODL"<sup>63</sup> is known to reinforce the application of low time preferences. Low time preferences imply a preference for satisfying our needs in the future, as long as we receive either more goods or goods of higher quality in the future as a reward for this waiting.<sup>64</sup> This approach leads to long-term planning, cooperation and peace, as conflict brings uncertainty.<sup>65</sup> It is the introduction of the so-called HODL rule (time test for holding crypto-assets) that should sufficiently reflect the objectives of this concept.

In the case of income from the sale of securities, a 1-year time test is established in our legislation, and in the neighbouring Czech Republic it is a 3-year time test. In our considerations we analysed the options of a 1-, 3- and 5-year time test, where the choice between these options is only a matter of the legislature's preference. In our view, even the shortest option would be sufficient to demonstrate that this is not speculative trading, but in the end **we decided to work with a compromise along the lines of the Czech time test and apply the 3-year HODL rule.** Three-year "hodling" of crypto-assets in such a volatile environment leads the holder to be patient and, at the same time, due to the gradual long-term market growth, reduces the risk that

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<sup>63</sup> HODL is a term derived from a misspelling of the English word "hold". The author is GameKyuubi, a bitcointalk.com forum user, who wanted to declare that he would not sell his bitcoins and wrote "I AM HODLING" in a discussion about the bitcoin price drop. HODL has become an inherent term in the world of crypto-assets, giving rise to a number of terms such as **hodler** – a person who holds (does not sell) crypto-assets for a long time, or **hodl, hodling** – an activity (holding crypto-assets for a long time) or an attitude (a determination to hold crypto-assets for a long time).

<sup>64</sup> TĚTEK, J. *Bitcoin: Odluka peněz od státu*. 1. vydání. Praha: Braiins Systems, 2021. 120 p., p. 29.

<sup>65</sup> IBIDEM.

the holder will sell his crypto-assets in panic in a steep downturn. **If the purchase of a crypto asset is profitable after three years, it means that it is a solid project, creating real value, or is popular and supported by the market for some reason. In the case of suspicious speculative crypto-assets and fraudulent projects, it is highly unlikely that the holder will be profitable after three years of hodling, which will ensure that such legislation will not support fraudulent projects, but only functioning businesses.**

The question remains whether crypto-assets should also be subject to a condition of admission to a regulated market or a similar foreign regulated market, as in the case of securities. Even if MiCA was to be adopted, crypto-asset service providers<sup>66</sup> (exchanges, bureaux de change, etc.) would have to obtain the necessary licence within a certain period of time; ergo, it is a regulated market. Even if this condition is applied, its fulfilment should not be a problem for crypto-assets that will be listed on licensed platforms or can be traded on such platforms.

In view of the above, **we propose the introduction into the ITA of an exemption from tax on income from the sale of crypto-assets after three years from the date of their acquisition, if the period between their admission to a regulated market or a similar foreign regulated market and their sale exceeds three years.** We also propose the introduction of an exemption for entrepreneurs, as it is not uncommon for companies to add bitcoins to their balance sheets in order to take advantage of all the assets that the current market offers<sup>67</sup>. Long-term wealth building is undoubtedly welcome and desirable for companies as well.

In the case of **tax rates**, we see room for inspiration from the Czech Republic and Hungary, or a hybrid model with the application of current models. To make the sector more attractive to entrepreneurs and investors and to increase the incentive to declare income, we propose **the reduction of the basic tax rate to 15% for both entrepreneurs and non-entrepreneurs** in the case of income from the sale of crypto-assets. As an alternative to this solution, the tax rate could be reduced to 15% for all taxpayers if the tax base does not exceed EUR 49,790.00, and if this amount is exceeded, the same model would apply as at present – a combined tax rate of 19% and 25% for taxpayers – natural persons and 21% for legal persons. At the same time, it is important to reconsider the application of a health insurance levy to income from the sale of crypto-assets. In contrast to the proposal to apply a time test, a value test and a lower tax rate, the application of a health insurance levy which would bring the taxpayer's burden back to around one third of the appreciation seems counterproductive and undermines the overall concept proposed. As the proposed tax policy aims to make the crypto-asset business more attractive and to encourage long-term wealth building, we propose the **abolition of the health insurance levy** for taxpayers – natural persons in the case of income from the sale of crypto-assets.

In conclusion, we would like to point out **that the concept of crypto-assets taxation is not intended to be a simple first-pass solution<sup>68</sup>, but a sensitively designed whole which, by combining appropriate tax instruments, will ensure a generally beneficial legal framework.** By using correct and simple terminology and setting a rational scope of taxable transactions, taxation will only cover the relevant part of the transactions when they move from the digital to the real world. The introduction of a value test will consequently ensure that wasteful taxation of micro-transactions is eliminated, while the simultaneous introduction of a three-year time test will ensure that only solid business is supported. The slightly reduced tax

<sup>66</sup> Crypto-asset service provider means any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis. See Title I, Article 3(1) of MiCA..

<sup>67</sup> WOLF, K. *Microstrategy se toho nebojí. Bitcoin ve sleeve nakoupila za 414 milionů dolarů.* [online]. 2021. [cit. 25. 3. 2022]. Available at: <https://forbes.cz/microstrategy-se-toho-neboji-bitcoin-ve-sleve-nakoupila-za-414-milionu-dolaru/>.

<sup>68</sup> HRABČÁK, L., POPOVIČ, A. *On certain issues of digital services taxes.* In: *Financial Law Review.* vol. 17, y. 2020, i. 1, 52-69, p. 62, DOI: <https://doi.org/10.4467/22996834FLR.20.004.12045>.

rate and the abolition of the health insurance levy is consequently a kind of icing on the cake, which may help to encourage spending crypto-assets in Slovakia and thus boost the economy. On the basis of the above data, it is evident that the negative impact on the state budget as a result of the adoption of such a concept would be marginal. On the contrary, it can be assumed that such a tax policy could contribute to the development of business in Slovakia and ultimately have positive effects on the state budget. We believe that the hypothesis set out in the introduction can be answered by saying **that income from the sale of crypto-assets can be exempted from tax to the extent and under the conditions we have set out in this concept.**

#### IV. CONCLUSION

The concept of crypto-assets taxation as a whole has not yet been frequently addressed in professional circles. Our aim was to grasp this topic comprehensively, to identify the shortcomings of the *de lege lata* legislation and to propose their solution.

In line with our aim, in the second chapter we have described the attitude of regulatory institutions towards crypto-assets, represented by the MiCA Regulation proposal and related regulations. By analysing the changes that this regulation may bring about, we have come to the conclusion that it will mainly be about harmonisation of legislation at EU level, a clear categorisation of crypto-assets and regulatory rules for participants in the crypto-assets market. Then we have characterised the *status quo* of taxation of crypto-assets in the Slovak Republic (the “SR”) and identified the most pressing problems of this legislation as such, but also in the context of the MiCA Regulation proposal.

In the third chapter, we have presented the new concept of crypto-assets taxation, describing the aspects that the new concept of taxation should take into account (also in the context of the legislation of some states) and proposing the adjustment of terminology reflecting European and accepted definitions, as well as a change in the scope of taxable transactions so as to eliminate disproportionate administrative burden on the taxpayer as well as the cost-effectiveness of the tax administration. Furthermore, we have proposed the application of a combination of time and value tests so that the stated objectives of the concept are achieved and that this legislation does not encourage speculative and fraudulent behaviour in the market. Finally, we have touched on the slight adjustment of tax rates in line with current rules and proposed the abolition of the health insurance levy.

In our view, the concept presented is rationally constructed and reflects the nature of crypto-assets, the forthcoming EU regulation and the needs of the market, while at the same time eliminating the identified shortcomings of the current legislation. We believe that the approach presented can be beneficial not only for users and entrepreneurs, but also for the state and its budget. In line with the above, we consider that the goal of this work has been met.

#### KLÚČOVÉ SLOVÁ

kryptoaktíva, zdaňovanie, daň z príjmu, MiCA

#### KEY WORDS

crypto-assets, taxation, income tax, MiCA

#### BIBLIOGRAPHY

1. AMBRA, T. *Analýza opatrení na podporu kapitálového trhu*. [online]. 2015. [cit. 10. 3. 2022]. Dostupné na: [https://www.nbs.sk/\\_img/Documents/\\_PUBLIK\\_NBS\\_FSR/Biatec/Rok2015/06-2015/03\\_biatec\\_15-6\\_Ambra.pdf](https://www.nbs.sk/_img/Documents/_PUBLIK_NBS_FSR/Biatec/Rok2015/06-2015/03_biatec_15-6_Ambra.pdf)
2. APOLEN, P. *Finančná správa zneistila investorov: Budú sa zdaňovať aj výnosy z ETF fondov?* [online]. 2021. [cit. 10. 3. 2022]. Dostupné na: <https://www.forbes.sk/novy-vyklad-zakona-zacnu-sa-z-etf-platit-dane/>

3. BABČÁK, V. *Daňové právo na Slovensku a v EÚ*. Bratislava: Ing. Miroslav Mračko – EPOS, 2019. 912 s. ISBN 978-80-5620-247-0, str. 446,
4. BABČÁK, V. a kolektív. *Finančné právo na Slovensku a v Európskej únii*. 1. vydanie. Bratislava: EUROKÓDEX, s. r. o., 2012. 832 s. ISBN 978-80-89447-86-2. str. 534.
5. BABČÁK, V. a kol. *Daňové úniky, ich vznik a eliminácia*. Košice: ŠafárikPress, 2020. 302 s. str. 67, 68, ISBN 978-80-8152-876-7
6. *Bitcoin (BTC)*. [online]. 2022. [cit. 13. 4. 2022]. Dostupné na: <https://coinmarketcap.com/currencies/bitcoin/>
7. BOČÁNEK, M. *First draft of crypto-asset regulation (MICA) with the European Union and potential implementation*. In: *Financial Law Review*. vol. 22, y. 2021, i. 2, 37-53, p. 41, DOI: <https://doi.org/10.4467/22996834FLR.21.011.13979>
8. DAUDRIKH, Y. V. *AML smernica – aplikačné problémy súvisiace s reguláciou virtuálnych mien*. In: *Časopis pro právní vědu a praxi*. vol. 30, y. 2022, i. 1, 191-214, p. 198 DOI: <https://doi.org/10.5817/CPVP2022-1-8>
9. *Die steuerliche Behandlung von Kryptowährungen in Deutschland*. [online]. 2022. [cit. 25. 3. 2022]. Dostupné na: <https://www.winheller.com/bankrecht-finanzrecht/bitcointrading/bitcoinundsteuer/besteuerung-kryptowaehrungen.html>
10. Dôvodová správa k návrhu Nariadenia EP a Rady o trhoch s kryptoaktívami a o zmene smernice (EÚ) 2019/1937
11. Dôvodová správa k zákonu č. 253/2015 Z. z. ktorým sa mení a dopĺňa zákon č. 595/2003 Z. z. o dani z príjmov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony
12. FINEX.CZ. *Zdanění kryptoměn – Kompletní návod pro rok 2022*. [online]. 2022. [cit. 25. 3. 2022]. Dostupné na: <https://finex.cz/zdaneni-kryptomen-kompletni-navod/>
13. FS SR. *Informovanie o dani z príjmov právnických osôb*. [online]. 2022. [cit. 21. 3. 2022]. Dostupné na: <https://www.financnasprava.sk/sk/podnikatelia/dane/dan-z-prijmov/pravnicke-osoby/informovanie-dan-prijem-po#SadzbaDane>
14. FS SR. *Sadzba dane za rok 2021*. [online]. 2022. [cit. 21. 3. 2022]. Dostupné na: <https://podpora.financnasprava.sk/424014-Sadzba-dane-za-rok-2021>
15. FS SR. *Zdanenie príjmov z forexových obchodov*. [online]. 2022. [cit. 21. 3. 2022]. Dostupné na: <https://podpora.financnasprava.sk/945574-Zdanenie-prijmov-z-forexovych-obchodov>
16. GECÍKOVÁ, S. *Virtuálne platidlá (Bitcoin, Ethereum a pod.) a ich zdaňovanie v SR a vo svete*. In: POPOVIČ, A., SÁBO, J., eds.: *Aktuálne výzvy daňového práva*. Košice: Univerzita P. J. Šafárika v Košiciach, 2021, s. 20-31, str. 25, 26. ISBN 978-80-574-0070-7
17. HRABČÁK, L., POPOVIČ, A. *On certain issues of digital services taxes*. In: *Financial Law Review*. vol. 17, y. 2020, i. 1, 52-69, p. 62, DOI: <https://doi.org/10.4467/22996834FLR.20.004.12045>
18. KUDLÁŠEK, P. *Časový test u investic: Co to znamená a jak může ovlivnit návratnost vašich investic?* [online]. 2021. [cit. 10. 3. 2022]. Dostupné na: <https://finex.cz/casovy-test-u-investic/>
19. LINS, B., PRAICHEUX, S. *Digital and Blockchain – based Legal Regimes: An Eea Case Study Based on Innovative Legislations – Comparison of French and Lichtenstein Domestic Regulations*. In: *Financial Law Review*. vol. 22, y. 2021, i. 2, 1-17, p. 6, DOI: <https://doi.org/10.4467/22996834FLR.21.009.13977>



20. MAUME, P., FROMBERGER, M. *Regulation of Initial Coin Offerings: Reconciling U.S. and E.U. Securities Laws*. In: Chicago Journal of International Law, vol. 19, y. 2019, i. 2, 548-585, p. 558, DOI: <https://dx.doi.org/10.2139/ssrn.3200037>
21. NBS. *Návrh právnych predpisov EÚ v oblasti regulácie kryptoaktív*. [online]. 2022. [cit. 18. 3. 2022]. Dostupné na: [https://www.nbs.sk/\\_img/Documents/\\_Dohlad/Fintech/kryptoaktiva/Navrh\\_pravnych\\_predpisov\\_EU\\_v\\_oblasti\\_regulacie\\_kryptoaktiv.pdf](https://www.nbs.sk/_img/Documents/_Dohlad/Fintech/kryptoaktiva/Navrh_pravnych_predpisov_EU_v_oblasti_regulacie_kryptoaktiv.pdf)
22. NBS. *Prehľad trhu s kryptoaktívami v Slovenskej republike*. [online]. 2020. [cit. 21. 3. 2022]. Dostupné na: [https://www.nbs.sk/\\_img/Documents/\\_Dohlad/Fintech/kryptoaktiva/SK-kryptoaktiva-prehľad.pdf](https://www.nbs.sk/_img/Documents/_Dohlad/Fintech/kryptoaktiva/SK-kryptoaktiva-prehľad.pdf)
23. PIROHANIČOVÁ, L. *Virtuálne platidlá (Bitcoin, Ethereum a pod.) a ich zdaňovanie v SR a vo svete*. In: POPOVIČ, A., SÁBO, J., eds.: *Aktuálne výzvy daňového práva*. Košice: Univerzita P. J. Šafárika v Košiciach, 2021, s. 32-42, str. 36. ISBN 978-80-574-0070-7
24. PUKALOVIČ, D. *Zdaňovanie kryptomien (virtuálnych mien)*. [online]. 2021. [cit. 21. 3. 2022]. Dostupné na: <https://www.podnikajte.sk/dan-z-prijmov/zdanovanie-kryptomien-virtualnych-mien>
25. PUTERA, M. *Kryptomeny a ich využitie pri zdaňovaní*. Diplomová práca. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta. 2020. 69 s. str. 46.
26. Rozsudok Nejvyššího správního soudu České republiky z 16. 5. 2008, sp. zn. 2 Afs 70/2007 – 55
27. SKDP. *Zárobky z obchodovania s kryptomenami musíte zdaňovať*. [online]. 2018. [cit. 25. 3. 2022]. Dostupné na: <https://www.danovecentrum.sk/aktuality/zarobky-z-obchodovania-s-kryptomenami-musite-zdanit-aktualita-dc-3-2018.htm>
28. STROUKAL, D. *Dark Web: Sex, drogy a bitcoiny*. Praha: Grada Publishing, a. s., 2020. 208 s. ISBN 978-80-271-2934-8, str. 25, 40
29. TALDOVÁ, S. *Nezdaniteľné časti základu dane v roku 2022*. [online]. 2021. [cit. 25. 3. 2022]. Dostupné na: <https://www.podnikajte.sk/dan-z-prijmov/nezdanitelne-casti-zakladu-dane-2022>
30. TĚTEK, J. *Bitcoin: Odluka peněz od státu*. 1. vydanie. Praha: Braiins Systems, 2021. 120 s. str. 29, ISBN 978-80-907975-5-0
31. XU, Ch., JIN, B. *Digital currency in China: pilot implementations legal challenges and prospects*. In: Juridical Tribune. vol. 12, y. 2022, i. 2, 177-194, p. 179, Available at: <http://www.tribunajuridica.eu/arhiva/An12v2/2.%20Xu,%20Jin.pdf>, ISSN 2247-7195
32. WOLF, K. *Microstrategy se toho nebojí. Bitcoin ve slevě nakoupila za 414 milionů dolarů*. [online]. 2021. [cit. 25. 3. 2022]. Dostupné na: <https://forbes.cz/microstrategy-se-toho-neboji-bitcoin-ve-sleve-nakoupila-za-414-milionu-dolaru/>
33. WOLF, K. *Mojmír Hampl (ČNB): Náš postoj ke kryptoměnám? Nepomáhat, nechránit, neškodit, nevodit za ruku*. [online]. 2017. [cit. 18. 3. 2022]. Dostupné na: <https://www.lupa.cz/clanky/mojmir-hampl-cnb-nas-postoj-ke-kryptomenam-nepomahat-nechranit-neskodit-nevodit-za-ruku/>

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