



New update on the taxation of crypto projects from the SFTA – Taxation of DAOs remains hidden topic

30 October 2023

Table of Contents

| | |
|---|----|
| Long awaited: Guidance on tax treatment of NFTs | 1 |
| Airdrops and the still burning question about the valuation of token | 4 |
| Tokens issued to employees – clear statement: only equity tokens qualify as employee participations | 7 |
| Staking – thesis on qualification of rewards on the level of layer-1 corporates | 7 |
| Glance into the future: Taxation of DAOs | 10 |
| After the publication is before the publication | 11 |

On 19 October 2023 the Swiss Federal Tax Administration ("SFTA") provided new guidance on the taxation of blockchain related projects in the updated version of the "Dossier Tax Information: Cryptocurrency". Further details on the tax treatment of non fungible Tokens, airdrops, staking and the token issuance to employees are presented. Unfortunately, the SFTA remains mostly silent on the taxation of DAOs.

"Present opportunities are not to be neglected they rarely visit us twice." Voltaire's words may sound like a credo of the fast evolving and dynamic DLT sector. However, at hand they summarize the aim of the following sentences to take a step back and reflect upon the taxation of core aspects of projects involving cryptocurrencies and tokens.

Last week, the SFTA presented in further detail its approach to the taxation of airdrops, non fungible tokens (NFTs), staking, and employee token plans in its freshly updated 39 pages "Dossier Tax Information: Cryptocurrency"¹ ("Dossier"). Based on this and the well-known working paper of the SFTA on the taxation of cryptocurrencies and token projects² ("Working Paper"), we take the opportunity to analyze the approach of the SFTA and to evaluate the impact on taxpayers, companies, investors and other involved parties. Also, as in the two papers of the SFTA, the focus shall be on direct taxes, stamp duty and withholding tax ("WHT"), excluding the Value Added Tax sphere.

As further chord and glance into the future also some words shall be spent on the taxation of Decentral Autonomous Organizations ("DAOs"), an organizational form that has been spreading at enormous speed but still has not attracted any major attention in the publications of the SFTA.

Long awaited: Guidance on tax treatment of NFTs

Tokens form the basis of many blockchain projects and are generally qualified according to the underlying functions and values they represent. They can represent various economic values such as e.g. those of shares or contracts but also more abstract rights such as e.g. the provision of access to a trading platform or voting rights. NFTs, in contrast to other tokens, represent unique, non-interchangeable, indivisible and irreplaceable values such as e.g. art, music or media. Thereby, a NFT can be thought of as an irrevocable digital certificate of ownership and authenticity for a given value asset, regardless of the latter being digital or physical.

¹ In the section dossier tax information, the SFTA provides for further information on certain key topics addressed to a wide public comprising tax professionals as well as public administrations, schools, media and individuals. With these publications further orientation shall be provided and required factual background be presented breaking down the complexity of the different topics into the key aspects relevant for the respective tax assessment. All the dossiers tax information incl. the one on cryptocurrencies can be retrieved under the following [link](#).

² The Working Paper on "Cryptocurrencies and Initial Coin/Token Offerings (ICOs/ITOs) as subject to wealth, income and profit tax, withholding tax and stamp duties" ("Working Paper") has been first published on 27 August 2019 and last updated on 3 August 2022. The presented guidelines are well established on the level of the Swiss federal and cantonal/communal tax authorities as well as on the level of tax professionals providing guidelines on the taxations of some key aspects of cryptocurrency and token projects. The working paper can be retrieved under the following [link](#).

For Swiss tax purposes tokens are typically classified into the following three categories³:

- Payment token:
 - Sole purpose is the use as a means of payment for the purchase of supplies and/or services from one or more service providers.
 - Holders are not entitled to any specific services.
- Utility token:
 - Entitle the holders to specific services and/or give the holders access rights to a platform, application or similar (license or license-like right).
- Asset backed token:
 - Liability token: Entitle the holder to the full or partial repayment of the amount originally paid in and to interest payments, as the case may be.
 - Tokens with contractual basis: Based on a contractual legal relationship. Do not establish a corporate ownership relationship and do not entitle the holder to repayment of the amount originally paid in (i.e., no equity or debt). Entitle holders to participate in earnings, turnover, profit, a certain part of earnings or turnover, derivative rights or the like.
 - Tokens with participation rights (equity token): Such tokens represent participation rights such as e.g. shares.

NFTs do not typically fall within one of these categories. As such further guidance on the treatment of this form is necessary. In general, the SFTA considers the acquisition and sale of NFTs as being equal to transactions involving assets of the kind represented by the tokens. Based on this the following taxation applies to Swiss resident parties:

| | <i>Dossier, chapter 10</i> | <i>No guidance included in the Working Paper</i> |
|---|---|--|
| Personal income tax (individuals resident in Switzerland) | <ul style="list-style-type: none"> • Acquisition of NFT: Considered as event not relevant for income tax purposes. Any transactional costs are not tax deductible. • Sale of NFT: Any potential gain or loss realized is not relevant for income tax purposes. • Exceptions: <ul style="list-style-type: none"> • In case of individuals qualifying as self-employed, any gain realized from the sale of NFTS would be subject to income tax and losses deductible. • Any licence income derived by a Swiss resident creator of a NFT is subject to income tax. • In general, given the possibility that virtually anything can potentially be | |

³ Dossier in current version in chapter 2.4, 5.1, 5.2, 5.3 and 5.4 and 6.1 and in the Working Paper in chapters 2.1, 3.1 and 4.1.

| | | |
|--|--|--|
| | represented by tokens and NFTs, NFTs are still evaluated on a case-by-case-basis. | |
| Profit tax (corporations and self-employed individuals resident in Switzerland) | <ul style="list-style-type: none"> Acquisition or development: Acquired or developed NFTs should be capitalized at their acquisition or development costs. Sale: Any difference between the sales price and the book value of the NFTs is considered tax relevant income or loss. Income from licensing is considered taxable. | |
| Wealth tax | <ul style="list-style-type: none"> Although not specifically mentioned, reference can be made to the other chapters of the Dossier in which the wealth tax treatment of different tokens is explained. In general, NFTs as other tokens can be expected to be subject to wealth tax on the level of the Swiss resident NFT holder at their fair market value. The valuation would thereby raise the questions as explained in the following chapter. | |
| WHT | <ul style="list-style-type: none"> Acquisition and sale of NFTs are not subject to Swiss WHT as long as the value represented by NFTs does not result in events subject to WHT (e.g. interest, dividend). | |
| Stamp duty | <ul style="list-style-type: none"> No comments on the treatment of NFTs for stamp duty purposes included in the guidelines SFTA. However, given the nature of NFTs, no issuance stamp duty or securities transfer tax should arise on their issuance or transfer. | |

Overall, the tax assessment of NFTs may not come as a complete surprise. Based on a detailed definition and overall assessment, the guidelines provide a coherent tax treatment of the NFTs. However, in the light of the ongoing development of NFTs, an evaluation of their tax treatment on a case-by-case-basis with the respective tax authorities still seems necessary, including their valuation for wealth tax purposes.

Also, the individual trading behavior will need to be monitored, considering a possible qualification as professional trading activity. As is the case with other transactions, usually the criteria as listed in the circular 36 published by the SFTA on 27 July 2012 on "professional trading in securities" can be taken as a guidance for the qualification of the individual trading behavior.

Airdrops and the still burning question about the valuation of token

Considering the growing number of crypto projects the launch of marketing campaigns gained in importance. One established form of such endeavors is the so called airdrop. In an airdrop, tokens are often issued at a value of or close to zero to different stakeholders. The SFTA generally differentiates between four forms of airdrops:

- **Bounty airdrop:** Receipt of tokens depends on the finalization of different tasks, e.g. registration for a newsletter or certain activities on the Social Media Platform Instagram promoting the respective project.
- **Holder airdrop:** Free tokens are only granted to existing token holders who already have a certain amount of token in their wallet.
- **Exclusive airdrop:** Only specifically chosen stakeholders may receive further tokens for free. Usually airdrops of this kind aim at rewarding these parties with further tokens which have an established relationship with a certain project or showed special support at one time during the project.
- **Hardfork⁴:** a hardfork is a software update of an existing blockchain or cryptocurrency protocol causing a split into two separate networks. It results in a permanent change in the rules of a blockchain protocol and therefore causing the new version to be non-backward-compatible with prior blocks of the protocol. Hardforks can either take place in a contentious or a non-contentious manner. In the latter option, all nodes of a blockchain participate in the change of the protocol whereby the old version is being dropped and only the updated version will continue. In a contentious hardfork, not all nodes participate in the update of the protocol resulting in a second branch of a blockchain and in a new coin.

For the above mentioned airdrop scenarios, the SFTA provides the following guidance regarding their tax treatment:

| | <i>Working Paper, chapter 2</i> | <i>Dossier, chapter 11</i> |
|--|---|---|
| Income tax (Swiss resident individuals) | <ul style="list-style-type: none"> • All income derived from airdrops is considered as taxable investment return. Costs in connection with the generation of the income may be tax deductible to a certain degree. | <ul style="list-style-type: none"> • General: <ul style="list-style-type: none"> • Tokens received in an airdrop generally qualify as taxable investment return. Depending on the underlying relationship it would qualify as general income, income from movable assets or as employment income. In the latter case also a social security liability would arise. |

⁴ Further information illustrating that mechanics behind hard forks can be retrieved from the publication of the established organisation Bitcoin Suisse: Airdrops and Forks – Free Money? 10 November 2020. Accessed on 22 October 2023 under: <https://www.bitcoinsuisse.com/research/decrypt/season-2020/airdrops-and-forks-free-money>.

| | | |
|--|------------------------|--|
| | | <ul style="list-style-type: none"> • Donation: <ul style="list-style-type: none"> • Airdrops are generally based on economic reasons, which excludes a qualification as a donation. • Lottery <ul style="list-style-type: none"> • Income derived from lotteries or skill-based games for promotion purposes are subject to income tax above a threshold of CHF 1'000. • The SFTA does not exclude that in certain cases tokens received in an airdrop may qualify as money game for promotion purposes resulting in the application of the threshold of CHF 1'000 up to which income would be tax free. This would be the case if the following 4 criteria are met: <ul style="list-style-type: none"> • Number of "winners" resp. in this case token recipients is limited from the beginning; • Winners are chosen in a random manner; • Participation depends on the provision of a monetary deposition and • Legal seat of the organiser is in Switzerland. |
| Profit tax (Swiss resident corporations and professionals) | No assessment included | <ul style="list-style-type: none"> • Receipt of tokens: Regarding the determination of the taxable profit the SFTA just refers to the respective articles in the Swiss code of obligation. In effect this means that based on the valuation of the respective token the corresponding value would determine the asset value and the income generated. • On the level of the promoter of the airdrop resp. the token issuing party the delivery of the tokens would qualify as business-founded and tax deductible cost. |
| Withholding Tax | No assessment included | <ul style="list-style-type: none"> • In general, Airdrops should not result in any Swiss WHT obligations. However, airdrops organized by Swiss resident token issuing parties may result in WHT in case they would qualify as hidden profit |

| | | |
|--|--|--|
| | | <p>distribution or in case of an issuance of equity or liability based tokens.</p> <ul style="list-style-type: none"> Also, in case the airdrop would be qualified as monetary game for promotion purposes, the resulting gain from the receipt of tokens which is higher than CHF 1'000 is subject to WHT. |
|--|--|--|

In comparison to the Working Paper, the Dossier does present some further details on the tax treatment of airdrops. However, it remains to be seen whether these guidelines provide for more clearance or add further complexity to the tax treatment of airdrops. Special attention would need to be given to the argument that an airdrop may qualify as a monetary game resp. if the mentioned criteria would actually apply in certain cases.

Also, neither paper comments on the question of the basis on which the fair market value of the respective token issued in an airdrop should be determined. Likewise, they leave it open whether this fair market value should be considered correspondingly by the issuing company. Determining the fair market value of tokens issued in an airdrop presents some difficulties in practice and can in principle be based on the following factors:

- Either market value (value as per platforms) or, if not available,
- Separate valuation, or
- Last price paid by investors, or
- In case no price available yet: historical development or acquisitions cost.

In our experience, the opinions of the Swiss tax authorities on the determination of the fair market value still vary to some extent. Unfortunately, the habitus seems to have been established that, upon availability of a trading value of a token from different platforms, such a value is considered as fair market value without any further consideration. The Dossier appears to suggest that in the case of airdrops, too, values as e.g. those available on Coinmarketcap⁵ would be considered as fair market value⁶.

At first glance, such a value may seem appropriate. However, one would need to consider that the prices traded on a platform may only be understood as reliable indication of a possible market value if they are based on a large number of transactions involving numerous market participants. With airdrops this is rarely the case, as the issued tokens are scarce and no active and functioning market can be observed before the event of an airdrop. Such an active market would not typically exist until an airdrop has materialized and broadly accessible trading platforms list the respective tokens resulting in an increased trading volume involving numerous investors on a broad scale.⁷

⁵ Link to the platform accessed on 22 October 2023 under: <https://coinmarketcap.com/>

⁶ As per the explanations in chapter 6.2 in the Dossier this approach would be suggested for the valuation of crypto assets

⁷ For further input on this matter reference can be made to: Nazareno, Dominic/Fuchs, Stéphanie. Dezentrale autonome Organisationen. Neue Realität für die Steuerwelt. ExpertFocus special, March 2022, p. 21.

In our experience, tax authorities tend to take a differentiated view on the valuation of a token depending on the respective recipient. For tokens issued to e.g. shareholders and members of an association they usually rely on a fair market value as per a trading platform whereas for other stakeholders, such as employees and third parties, other valuation methods are accepted. In effect, this can lead to a bifurcation of the definition of an "arm's length" price by different tax authorities.

Tokens issued to employees – clear statement: only equity tokens qualify as employee participations

In chapter 9, the Dossier provides further guidance regarding the taxation of tokens issued to employees. In this regard, the already established guidelines remain unchanged and can be summarized as follows:

- In general, all income deriving from an employment is subject to Swiss income tax and social security contributions. Therefore, tokens granted to employees as a remuneration will generally qualify as taxable income. The relevant point in time when such income materialized for tax purposes is the moment where the employee acquires a firm legal entitlement to the tokens. This is also the relevant point in time for the valuation.
- For all tokens not providing for any participation rights, i.e. so called equity tokens, a taxation of any gain realized upon receipt of the irrevocable legal right in tokens (time of exercise/issuance) would be subject to income tax and Social Security.
- Where tokens are associated with participation rights (equity tokens), the tax rules concerning employee participations plans may apply. Accordingly, all equity tokens distributed to employees should potentially fall within the realm of the legal basis applied for employee participations.

Compared to the Working Paper, the Dossier provides more details on the taxation of tokens issued to employees and on the reasoning behind it. However, the questions that remain open are around the valuation of tokens as mentioned in the preceding chapters. In this regard, a typical scenario where the valuation of the tokens and the applicable time of valuation would be uncertain is the case where employees are granted a defined amount of tokens but the tokens are not technologically available until a later stage.

Staking – thesis on qualification of rewards on the level of layer-1 corporates

Staking as a process to validate transactions has been established as an alternative to the "traditional" mining. It pursues the same purpose of validating blocks in a blockchain and thus ensuring its function. Staking involves locking crypto assets in a proof-of-stake blockchain for a specified period of time. These locked assets are then used to build the consensus needed to secure the network and ensure the validity of each new transaction to be enrolled in the blockchain. Participants who stake their coins are called "validators". Validators are usually awarded compensation through so-called "staking rewards" in the form of tokens, whereas "bad behavior", i.e. if the network validation requirements are not fulfilled, is sanctioned with the slashing of the assets.

Staking may be carried out by the respective user or by third parties. However, most users would not be active stakers but rather combine their staking resources to participate in the staking process as

part of a staking pool. Staking rewards would then be divided among the participating parties.⁸ In other blockchain systems such as Tezos, it is possible for every party involved but not interested in becoming a validator to delegate the respective tokens to another validator within the network. In this case the validator would be responsible for performing the staking tasks while the rewards would then be shared with the delegating parties ("delegators"). The guidelines also define the role of so called crypto custodians. In general, a crypto custodian offers a secure solution to store and manage cryptocurrencies. For this service custodians usually charge a fee to the respective users.

Regarding the tax treatment of mining and staking activities, the main discussion arises around a possible qualification as professional or self-employed activity respectively. In this case, a capital gain realized upon a sale of a token would not be considered as tax free. However, losses are then tax deductible and can be carried forward for 7 years. In general, established rules still apply, as the Dossier refers to circular 36 published by the SFTA on 27 July 2012 regarding "professional trading in securities" and to the criteria mentioned therein.

Moreover, the explanations in the Dossier suggest that the process of staking is not qualified as lending of capital but rather represents the use of an asset as collateral. The corresponding "staking rewards" would therefore not qualify as interest income but as compensation for contributing to securing and maintaining the blockchain system.

Furthermore, additional granularity is provided by the Dossier on the tax treatment of the different participants in typical staking processes as follows (as regards the wealth tax treatment of tokens, reference is made to the details in the chapter about the taxation of NFTs):

| | <i>Dossier, chapter 4.2</i> |
|--------------------------------|--|
| Delegators | <ul style="list-style-type: none"> • Staking activities are generally considered as private asset management activity. • Income deriving from staking is subject to income tax. • Any transaction fees levied by validators or custodians for the administration of the stakes are considered as tax deductible asset management costs. • Costs for the creation of the depot or the staking contracts as well as transaction fees would "probably" (sic) not be tax-deductible. |
| Validators (private investors) | <ul style="list-style-type: none"> • Income deriving from staking activities is taxable • Capital gains from the sale of the tokens are tax free as long as validators do not qualify as following a professional trade as per circular 36 |

⁸ Further information on staking can be retrieved from the publication of Bitcoin Suisse. What is Staking? 9 August 2020. Accessed on 22 October 2023 under: <https://www.bitcoinsuisse.com/news/what-is-staking>. Schärli, Kilian/Meisser, Luzius/Luthiger, Reto. Finanzmarktrechtliche Einordnung des Stakings von Kryptowährungen. In: Jusletter IT 30. September 2021. Accessed on 22 October 2023 under: https://mll-legal.com/wp-content/uploads/2021/10/Luthiger_Staking-Regulatorische_Beurteilung_Final_new.pdf

| | |
|--|---|
| Validators (professional investors qualifying as self-employed or corporations) | <ul style="list-style-type: none"> • All income resulting from staking activities is taxable • Income derived from the sale of tokens is taxable |
| Custodian | <ul style="list-style-type: none"> • Income realized from custody of digital assets is taxable |
| Withholding tax | <ul style="list-style-type: none"> • In general staking rewards should not be subject to WHT as the underlying tax object should typically not qualify as a transaction triggering WHT. • In case of equity or liability tokens this may, however, have to be analyzed more carefully and a requalification into income subject to WHT namely in the form of interest on bonds or (hidden) dividends and alike may be considered. |

The above has to be considered as a general guidance to "pure" forms of staking. As further variations of the staking procedures in the form of structured products are evolving, such as the so called miner extractable value⁹, the tax treatment of the different participating parties will still need to be analysed on a case-by-case basis.

As far as the tax treatment of staking rewards at the level of layer-1 corporations, which realize staking rewards on their own tokens, the Dossier does not provide clear guidance. However, it could be argued that on the level of such corporations, token rewards would in a first step be booked at the same value as the already existing token inventory and in line with the prudence principle as per the Swiss Code of Obligations. Only in a second step, any hidden reserves built on the token inventory would be realized upon sale of the tokens. This would be an approach that would reflect an ecosystem-friendly and sustainable treatment of such rewards.

⁹ With the so called MEV boost validators would not build blocks themselves but rather receive «pre-assembled» blocks by «builders». Builders maximize their income by optimizing transactions in the block by selecting an order of transactions in a block. Such additional income would then be shared with the validator. Often the validator would not have seen neither the block nor the transactions in the block before the release. The validation, therefore, has effectively been delegated to the builder. Block rewards and transactions fees, however, still flow to the owner of the underlying crypto value. More information on the MEV boost can be retrieved under the following article by Bitcoin Suisse. Ethereum Merge Definition. Accessed on 22 October 2023 under: <https://www.bitcoinsuisse.com/learn/ethereum-merge-definitions> And: The Shanghai upgrade and what it means for investors. Accessed on 22 October 2023 under: <https://www.bitcoinsuisse.com/research/decrypt/season-2023/shanghai-upgrade-for-investors>.

Glance into the future: Taxation of DAOs

Having its roots in the movement around Decentral Finance, DAOs have gradually or rather exponentially evolved as a wide-spread form of organization. Starting as a "thought experiment" by two entrepreneurs¹⁰ and a publication by the Ethereum co-founder Vitalik Buterin¹¹, DAOs are nowadays used in different industries reaching from the financial services sector to the fields of science, or philanthropy to name only a few¹². The New York Times qualified DAOs as "one of the fastest-growing areas of the crypto-ecosystem"¹³ and, according to current studies, DAO treasuries may be worth as much as USD 10 billion¹⁴.

DAOs are organizations that are not governed by an elected body but rather by a computer protocol, which is subject to further development and management by its members without a central controlling body. DAOs are established on smart contracts which interact in a decentralized system and create a virtual organizational structure. Transactions are recorded using blockchain technology. The code of the DAO is made open source for all participants in the organization, allowing each member to participate in the further development of the DAO. In order to participate in a DAO, special access rights are granted to members, typically (but not exclusively) structured as tokens.

Although DAOs have become an important element of many organizational business set-ups, for tax and legal purposes they still seem to remain in a place of silent neglect. Tax authorities sometimes struggle to get a grip on the legal nature of DAOs and the attribution of profits to participants in the system. In practice, sponsors of DAOs have chosen various forms of traditional legal bodies to act as a carrier or wrapper of a DAO, e.g. a foundation or an association. However, sometimes DAOs choose no legal form outside the digital world. In this case they would typically be considered as simple partnerships.¹⁵

The tax assessment of DAOs choosing the corporate form of a foundation or an association as their carrier would then generally be based on the qualification of the risks and functions to be allocated based on the envisaged projects. Typically, such projects are performed on a non-commercial basis, meaning that all

¹⁰ Larimer, S. Bitcoin and the Three Laws of Robotics. The Let's Talk About Bitcoin! Network, blog post published Sept. 7, 2013. Retrieved on 22 October 2023 under: <https://letstalkbitcoin.com/bitcoin-and-the-three-laws-of-robotics>. AND: Larimer, D. Overpaying For Security. The Hidden Costs of Bitcoin. The Let's Talk About Bitcoin! Network, blog post published September 14, 2013. Retrieved on 22 October 2023 under: <https://letstalkbitcoin.com/is-bitcoin-overpaying-for-false-security>.

¹¹ Buterin, Vitalik. three blog posts on the Decentralized Autonomous Corporation published in December 2013 retrieved on 22 October 2023 under: <https://bitcoinmagazine.com/technical/bootstrapping-a-decentralized-autonomous-corporation-part-i-1379644274>, <https://bitcoinmagazine.com/technical/bootstrapping-an-autonomous-decentralized-corporation-part-2-interacting-with-the-world-1379808279> and Identity Corp: <https://bitcoinmagazine.com/technical/bootstrapping-a-decentralized-autonomous-corporation-part-3-identity-corp-1380073003> and Ethereum Whitepaper, pp. 23-24.

¹² In the following only a few examples of DAOs. All the links have been accessed on 22 October 2023: Examples of DAO in financial sector: Uniswap – large decentralised exchange on Ethereum (<https://uniswap.org/>), Examples of Grant DAOs, DAOs designed for the funding and fostering of new projects: Coffee Shop Support DAO (<https://coffeeshopdao.com/>) or Gitcoin DAO: <https://delegate.gitcoin.co/>

Examples of social DAOs – providing members with entry to certain social circles: The famous Bored Ape Yacht Club (<https://boredapeyachtclub.com/#/>) or Bright moments DAO (<https://www.brightmoments.io/>)

Examples of philanthropic DAOs: Big Green DAO, launched by Kimbal Musk (<https://dao.biggreen.org/home>)

¹³ Woo, Erin/Roose, Kevin. This Social Club Runs on Crypto Tokens and Vibes. The New York times, 2 March 2022. Accessed on 22 October 2023 under: <https://www.nytimes.com/2022/03/02/technology/friends-with-benefits-crypto-dao.html>.

¹⁴ European Central Bank. Eurosystem. Ellen Naudts. Occasional Paper Series No 331, 223. The future of DAOs in finance. In need of legal status. Accessed on 22 October 2023 on: <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op331~a03e416045.en.pdf> Redman, Jamie. "Decentralized Autonomous Organization Statistics Show \$10 Billion Is Held by DAO Treasuries". In: Bitcoin.com, 10 June 2023. Accessed on 22 October 2023 on: <https://news.bitcoin.com/decentralized-autonomous-organization-statistics-show-10-billion-is-held-by-dao-treasuries/>

¹⁵ For further background on the reasoning behind the taxation of DAOs the following publication can be visited: Nazareno, Dominic/Fuchs, Stéphanie. Dezentrale autonome Organisationen. Neue Realität für die Steuerwelt. ExpertFocus special, March 2022, p. 18-28.

revenues generated by such foundations or associations have to be further invested in the development of certain projects. Based on this, Swiss tax practice often applies the cost plus 5% methodology based on the Transfer Pricing guidelines of the OECD¹⁶ to determine an adequate taxable profit. This qualification can also be derived from the papers of the SFTA although it is very well hidden:

| | <i>Working Paper, chapter 4</i> | <i>Dossier, chapter 5</i> |
|------------|---|---|
| Profit tax | <ul style="list-style-type: none"> Means received with the purpose of further usage to develop a certain project would qualify as income whereby a provision in the same amount may be booked. Overall, the taxation will rely on a cost-plus approach | <ul style="list-style-type: none"> Same reasoning as in the Working Paper. |

Hence, only minimal guidance is provided on the tax treatment of DAOs, leaving much room of interpretation. For example, the criteria applied to analyze which functions and risks can be performed by a DAO to still qualify as "non-commercial" differ between the different Swiss tax authorities. In the light of the growing importance of DAO structures, we expect that the SFT will publish further guidance on the tax treatment of DAOs in future versions of their guidelines.

After the publication is before the publication

Overall, the Dossier in its current form and structure provides welcome guidance on certain important aspects concerning cryptocurrency and DLT projects. However, in such a dynamic area as the one of the DLT industry, the publication of guidelines always raises the need for further clarifications. In particular with regard to the treatment of DAOs, the hope remains that in a follow-up version the SFTA deals with the complex task of defining rules for the taxation of this new and already wide-spread type of structure.

¹⁶ For further information: Jauch, Oliver. Praktische Erfahrungen bei der Besteuerung von Blockchain-Projekten. In: ZSIS, 29.06.2023, S. 74f.

Contact



Stéphanie Fuchs
Crypto Tax Specialist, Zurich

stephanie.fuchs@mll-legal.com

T +41 58 552 06 16

MLL Meyerlustenberger Lachenal Froriep Ltd
Schiffbaustrasse 2 | PO Box | 8031 Zurich | Switzerland
www.mll-legal.com | www.mll-news.com



Thomas Nabholz
Tax Partner, Zurich

thomas.nabholz@mll-legal.com

T +41 58 552 06 40

MLL Meyerlustenberger Lachenal Froriep Ltd
Schiffbaustrasse 2 | PO Box | 8031 Zurich | Switzerland
www.mll-legal.com | www.mll-news.com

Lead Regulatory / FinTech / DLT team



Dr. Kilian Schärli
Partner/Notary Public, Zug/Zurich

kilian.schaerli@mll-legal.com
T +41 58 552 03 50

MLL Meyerlustenberger Lachenal Froriep Ltd
Grabenstrasse 2 | PO Box | 6340 Baar | Switzerland
www.mll-legal.com | www.mll-news.com



Dr. Reto Luthiger
Partner, Zurich

reto.luthiger@mll-legal.com
T +41 58 552 01 92

MLL Meyerlustenberger Lachenal Froriep Ltd
Schiffbaustrasse 2 | PO Box | 8031 Zurich | Switzerland
www.mll-legal.com | www.mll-news.com