

TRADING BITCOINS SUBJECT TO TAXATION IN POLAND

On 6 March 2018, the Administrative Supreme Court (NSA) issued the first ruling concerning taxation of income made from trading bitcoins by individuals (case II FSK 488/16). According to this ruling, income made by individuals from trading bitcoins is subject to taxation in Poland as it involves trading property rights subject to the progressive tax rate. According to that ruling, bitcoins should not be considered as a means of payment under Polish law.

Even though the ruling refers to personal income tax, the approach of the NSA should be considered as precedent for Polish tax resident companies, as well.

Background

The case was initiated by an individual who applied for a tax ruling from the tax office. This individual was trading bitcoins world wide, including Poland.

Any income this individual made was not reported to the tax office. According to his statement, Polish PIT Act regulations should not cover income made by trading bitcoins. He noted that bitcoins were not even invented at the time the Polish PIT Act was enacted.

The tax authorities stated that this individual obtained income from trading property rights which are subject to the income tax scale (18% and 32% tax rates). Including expenses for the purchase of bitcoins in the deducted costs is allowed.

One of the individual's argument was that according to the Opinion of the Advocate General of the EU Court of Justice (case C-264/14), bitcoins should be considered as means of payment. However, according to Polish tax authorities, under Polish law bitcoins cannot be treated as a means of payment, only Polish zloty can be treated as such. Moreover, even if trading bitcoins were to be treated as trading a means of payment (regular currencies), such income would also be subject to the income tax and progressive tax rates.

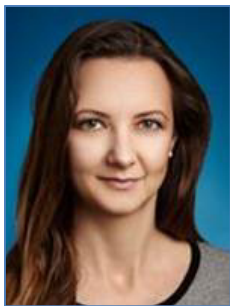
According to the tax authorities, the 19% flat tax rate relevant for individuals running a business activity does not apply to income made from trading bitcoins. Only the 18% and 32% rates are applicable.

The taxpayer lost in both courts of first and second instance.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. Our team brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about this topic or our services, please contact any of our lawyers with whom you regularly engage or the following members of our tax team



Anna Sękowska
Senior Associate
anna.sekowska@wolftheiss.com
T: +48 22 378 89 00



Kamil Grzywka
Associate
kamil.grzywka@wolftheiss.com
T: +48 22 378 89 00

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice. If you would like to know more about the topic(s) covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

| | |
|---------------------------|---|
| Banking/Finance: | Przemysław Kozdój, przemyslaw.kozdoj@wolftheiss.com |
| Corporate: | Jacek Michalski, jacek.michalski@wolftheiss.com |
| Disputes: | Marcin Aslanowicz, marcin.aslanowicz@wolftheiss.com |
| Real Estate/Construction: | Tomasz Stasiak, tomasz.stasiak@wolftheiss.com |
| Managing Partners: | Peter Daszkowski, peter.daszkowski@wolftheiss.com Ron Given, ronald.given@wolftheiss.com |
| Office/Marketing Manager: | Marta Albrecht-Niedzialek, marta.albrecht-niedzialek@wolftheiss.com |