GENERAL PROVISIONS

The STI under the MoF, considering new payment measures emerging in practice, new business development models and new methods to attract funds, has developed the clarification on application of the provisions of tax laws to the activities related to virtual currencies and tokens.

Usually, when it comes to 'a virtual currency', this relates mainly to such measures as Bitcoin, Ethereum, Ripple, Litecoin and etc. For tax purposes, 'a virtual currency' will always be considered as such an instrument which by its characteristcs is analogical to specified measures (i.e. Bitcoin, Ethereum, Ripple, Litecoin). However, for purposes of some taxes, also other type of instrument may be recognised as 'a virtual currency', e.g. certain types of tokens.

It should be noted that in terms of the Law on Corporate Income Tax and the Law on Personal Income Tax, according to the substance and economic sense of transactions carried out, 'a virtual currency' is recognised as current assets which may be used as payment means for goods and services or stored for sale, while for VAT purposes, 'a virtual currency' is considered as the same currency as euros, dollars and etc.

The activities related to virtual currencies, taxation aspects of which are described in this clarification, cover mining, purchase, sale of virtual currencies, payment by such currencies for purchased/sold goods or services.

The concept 'a token' as well as the concept 'a virtual currency' do not have a uniform definition, however, usually, when it comes to a token, this relates to an instrument issued through initial coin offering (ICO) using the distributed ledger technology, blockchain. Despite the fact that tokens are mainly issued by using blockchain technology, it doesn't mean that all issued tokens are the same or are treated equally with regard to different taxes. In practice, usually, the following 2 types of tokens are excluded: security tokens and utility tokens. In addition to these two tokens, the third type of tokens may be excluded which, usually, contains the tokens which are not considered neither security tokens nor utility tokens.

The type of a token is established based on characteristics of a token which are defined in the token distribution documentation (in practice often called 'white papers'). Usually, a security token is a token which has the characteristics of the securitisation and grants such rights to its holder, as e.g. the right to company management, right to receive a share of profits and etc. A utility token, usually, grants the right to its holder in the future for the token to receive some specified goods or services. It should be noted that in dealing with the issue whether a certain token is to be considered as a security token, the opinion presented by the Bank of Lithuania concerning the recognition/non-recognition of such a token as securities does not necessarily mean that for tax purposes this token will be treated the same way. In other words, in cases when the Bank of Lithuania will recognise that a token is considered to be securities, then for tax purposes, such a token will always be considered to be securities. However, in cases when the Bank of Lithuania does not recognise a token to be securities, such a token may be: still considered to be securities in terms of all taxes, is considered to be securities only in terms of some taxes.

The activities related to tokens, the taxation aspects of which are described in this clarification, cover the ICO of such tokens, secondary sale, intermediary services by transferring tokens, provision of support.

Whereas tax issues of the activity related to virtual currencies and tokens are inseparable from the accounting documents, it should be noted that in Lithaunia accounting is handled and accounting documents drawn up in euro (Article 5(1) of AL), therefore, all transactions in virtual currency are registered in euro.

The exchange rate of a virtual currency (or tokens) against euro is not regulated by legislation, therefore, in setting the exchange rate of a virtual currency (or tokens) against euro, all available information and comparable data on the market may be used. However, basically, accounting rules of a virtual currency (or tokens), the source of the published rate of euro against a virtual currency (or tokens) used in accounting to record transactions and events should be set by the economic entity in its own accounting policy. Considering the fact that the exchange rate of virtual currency (or a token) may fluctuate significantly over a short period of time, the entity in its accounting policy should set not only a source, but also a point in time when the fixed exchange rate will be used for accounting, tax compliance.

VIRTUAL CURRENCY, INITIAL COIN OFFERING (ICO) AND DIRECT TAXES (CORPORATE INCOME TAX AND PERSONAL INCOME TAX)

I. Production and Sales Activities of a Virtual Currency.

Application of the provisions of the Republic of Lithuania Law on Corporate Income Tax (hereinafter – CIT).

Recognition of taxable income. When an entity produces a virtual currency, in terms of the corporate income tax, no tax base occurs. When an entity sells the produced virtual currency, then in calculating taxable profits, it should recognise the amount calculated by deducting the production cost from the virtual currency sale price as taxable income.

This clarification is based on the provisions of Article 2(24) of CIT, Article 14(1) of CIT and Article 17(1) of CIT. According to the provisions of Article 2(24) of CIT, the tax base of a Lithuanian entity is all income earned in the Republic of Lithuania and foreign countries. Article 7 of CIT establishes that income and costs are recognised on an accrual basis and in accordance with other accounting principles laid down in the legal acts. According to the provisions of Article 14(1) of CIT, when the assets are produced, then their acquisition price consists of all factually incurred costs in producing these assets (e.g. depreciation of equipment, software amortisation, communication, electricity costs, costs of acquired services, direct labour and indirect (unallocated) production overheads incurred in producing these assets). Article 17(1) of CIT establish that allowable deductions include all usual costs that an entity actually incurs for the purpose of earning income or receiving economic benefit. Costs that a company actually incurs are considered as usual costs, if they are in line with the nature of activities pursued and if they are usual costs of activities of the companies performing relevant activities in Lithuania or abroad.

Documents supporting income and costs.

According to Article 11(4) of CIT, expenses on the basis of which costs are recognised may be supported by legally valid documents containing all mandatory requisites of accounting documents provided for by the legal acts that regulate accounting.

The requirements of Article 11(4) do not apply to the documents of economic transactions executed by foreign entities or natural persons. According to Article 11(6) of CIT, costs are recognised on the basis of documents executed by foreign entities or natural persons where such documents allow identifying the content of the economic transaction and a vendor of a virtual currency.

Economic transactions which cannot be supported by accounting documents are supported by accounting documents of related economic transcations and economic events and/or by drawing up an accounting statement (Article 12(2) of LA). In any case, following the provisions of legal acts, the aggregate accounting documents and their mandatory requisites has to support that the economic transaction has occured, and that it occurred under the very circimstances reflected in the documents.

Application of the provisions of the Republic of Lithuania Law on Personal Income Tax (hereinafter - PIT)

Recognition of taxable income.

Please note that according to Article 2(14) of PIT, personal income is a reward for the work or services performed, rights transferred or granted, assets or funds sold or otherwise transferred or invested and/or any other benefit in cash and/or in kind, except for the benefits specified in paragraphs 1-8 of this Article which is not considered as income.

According to Article 2(28) of PIT, a virtual currency is considered as property; therefore, when incidental income from sales of a virtual currency is received, it is taxable the same as other income from sales of assets or other transfer into ownership. In this case, the difference between sales and the acquisition price is taxed.

It should be noted that a virtual currency or an instrument of the same nature is not considered as personal income. When a resident sells the produced virtual currency, it is considered that income is received from sales which is taxed the same as income from sales of other assets.

It should be noted that according to Article 17(1) subparagraph 27 of PIT, the difference between income from sales of not registerd property used for not individual activities (a virtual currency) and the acquisition price of this property and other expenses incurred by the sale and/or production of this property specified in Article 19 of PIT, which during the calendar year does not exceed EUR 2, 500, is not subject to income tax.

Income of residents from purchase-sale of virtual currencies or from sales of produced virtual currency may be taxed as income from individual activities, if such activities are performed with the aim to

receive individual economic profits, i.e. a resident is engaged in such activities for continuous period and his performed activities satisfy the aggregate criteria (continuity, autonomy and pursuit of economic benefits) of individual activities. Continuity is attributable to performance of activities of such nature for continuous period, which is not limited by tax period. Such operational circumstances as recurring, continuous transactions, their number, continuous period (recurrence) are releted to the nature of continuity of such activities.

It should be stressed that residents may provide virtual currency mining, cloud mining and etc. services to other persons by using own available hardware (e.g. by renting it and etc.) and/or by using hardware of the end-user and etc. In cases, when residents provide virtual currency mining services, for application of PIT purposes, it is considered that residents perform individual activities.

Furthermore, virtual currency mining services may be provided also to natutal persons who may acquire hardware or to rent it from the end-user. In cases, when a natural person who acquired virtual currency mining and other services and satisfy the aggregate criteria for individual activities specified in Article 2(7) of PIT, for application of PIT purposes, such a natural person is considered as performing individual activities.

In calculating taxable income from individual activities, the allowable deductions related to receipt of income from individual activities specified in Article 18 of PIT may be deducted from income. Therefore, in calculating taxable income from individual activities, costs of virtual currency mining or purchase costs, commission fees (paid when purchase-sale contracts are concluded) and other costs incurred by generating income from individual activities may be attributed by a resident to allowable deductions. It is possible to select the alternative method of costs deduction from income of individual activities performed, as it is indicated in Article 18(12) of PIT, and to select 30 % of the annual income from individual activities considered as allowable deductions, i.e. not only factual costs related to income from individual activities, but also their size not supported by documents may be considered as allowable deductions of individual activities (i.e. 30 % of total income from individual activities).

It should be noted that income from individual activities of sale-purchase of virtual currencies generated by 31 December 2017 is taxed by applying the personal income tax rate of 5 % specified in Article 6(3) of PIT. Following the changes in taxation of individual activities and in the method of calculation of payable income tax, starting from 1 January 2018 income from individual activities of sale-purchase of virtual currencies will be taxed by applying the personal income tax rate of 15 % specified in Article 6(1) of PIT and the tax payable will be calculated following the procedure set out in Article 18^2 of PIT.

The object of income tax of a non-resident of Lithuania is considered the income from individual activities carried out through a fixed base. According to Article 2(13) of PIT, a non-resident of Lithuania is deemed to be operating in Lithuania through a fixed base, if he in Lithuania: exercises his activities on a regular basis or carries out his permanent activities in Lithuania through a dependent representative (agent). Individual activities carried out by a non-resident of Lithuania are considered to be permanent, if from the start of his activities in Lithuania such activities make a complete cycle of commercial operations (i.e. cover the following statges of operations: marketing and advertising, order placement and conclusion of contracts, supply of services, payment acceptance). For instance, a non-resident of Lithuania mines a virtual currency through servers placed in Lithuania which he has rented from the Lithuanian companies, however he controls servers (mining of a virtual currency) physically present in other state, and sells the mined virtual currency through electronic means of communication. In such case, a non-resident of Lithuania has no obligation to register individual activities carried out through a fixed base in Lithuania, and the income generated, according to Article 5(4) of PIT, would not be condidered as the object of income tax in Lithuania.

Activities in which natural and legal persons may be engaged are classified according to statistical classification of economic activities NACE Revision 2 (hereinafter – NACE Revision 2) approved by Director General of Statistics Lithuania under the Government of the Republic of Lithuania Order No. DĮ-226 on Approval of Statistical Classification of Economic Activities of 31 October 2007, where individual purchase-sale and mining activities of virtual currencies are attributed to class 82.99 “Other business support service activities n.e.c.” of NACE Revision 2.

Documents supporting income and expenditure

According to PIT provisions, only amounts are deducted which are supported by documents containing all mandatory requisites of accounting documents provided for by the Republic of Lithuania Law on Accounting and other legal acts, and / or valid transactions, and/or documents drawn up by foreign entities and residents, if from these documents it is possible to set the content of the economic transaction.

A resident engaged in individual activities has in handling the accounting to follow not only the provisions of the Republic of Lithuania Law on Accounting, but also the Accounting Rules of Residents Engaged in Individual Activities (With the Exception of Residents Holding Business Licenses) approved by Minister of Finance Order No. 1K-040 of 17 February 2003. Therefore, expenditure attributable to allowable deductions should be supported by legally valid documents (invoices, VAT invoices, cash register receipts and etc.), while in case, when goods/services are purchased from foreign entities or residents, it is obligatory to have a document from which it is possible to set the content of the economic transaction.

Income of persons who acquired a virtual currency and accordingly expenditure incurred may be recognised based on the documents which prove that the virtual currency has been paid for and this document evidences the content of the economic transaction or economic event and date, result of the economic transaction or economic event, name of goods and a price.

If the economic transaction cannot be supported by accounting documents, in such case, the economic transaction may be supported by accounting documents of related economic transactions and economic events and/or by drawing up an accounting statement. However, following the provisions of legal acts, the aggregate accounting documents and their mandatory requisites have to prove that the economic transaction has taken place, and that it took place under such circumstances which are reflected in the documents.

II. Payment for Goods or Services in a Virtual Currency

In terms of taxes, there is no any difference whether the payment to the company and a resident engaged in individual activities is made in a virtual currency or in cash, or by the bank transfer – nevertheless it is binding to include it in accounting.

Tax liabilities of a vendor (service provider). Income from sales of goods or services is recognised as earned when goods are sold. Income from services is considered as earned when services or works are provided or done.

Moreover, if goods sold and/or services provided are paid for in a virtual currency, then in terms of the corporate income tax, it is considered that the entity acquired assets (a virtual currency) for the amount included into the income of the entity received for goods and services.

Tax liabilities of a purchaser (end-user). If the entity pays for assets acquired or services provided in a virtual currency, then the price of acquisition of these assets or services is the amount corresponding to the selling price of a virtual currency included by it into its income.

Thus, in this case, the entity making payments in a virtual currency recognises income of a virtual currency (difference between the price of sale and purchase) and at the same time registers the acquisition of goods or services.

Tax liabilities of a resident engaged in individual activities. In terms of the corporate income tax, when goods sold and/or services provided are paid for in a virtual currency, the amount corresponding to the market price of sold goods or services provided would be considered as income from individual activities. When a resident (also a resident engaged in individual activities) pays for goods and services in a virtual currency, it is considered that he sells the aforementioned currency, the selling price of which is the market price of goods or services.

Wages (incentives) in a virtual currency. It should be noted that according to Article 139(3) of the Labour Code of the Republic of Lithuania, wages must be paid in cash. Transferred items or services provided by the employer or other persons are not considered as a part of wages. Therefore, the incentives transferred in a virtual currency by the right of ownership to the employee and, for PIT puroses, it is considered that a resident received income in kind. Such income is attributed to work-related income, from which the employer must calculate, pay and declare the income tax.

III. Transactions in Virtual Currencies

A virtual currency may be purchased not only through ICO, but also through direct transactions or at virtual currency exchange office, other organized trading venues for traditional currency or other virtual currency. In this case, taxable income occurs to the entity which transfers a virtual currency.

In terms of the corporate income tax, the difference between the selling price and acquisition price of a virtual currency is considered as income from purchase-sale of a virtual currency.

According to the provisions of Article 14(1) of CIT, the acquisition price of assets consists of costs incurred in acquisition of assets, including paid (also payable) commission charges and fees (levies) related to the acquisition of these assets. Thus, in purchase of a virtual currency, its acquisition price includes also all direct costs of such transactions (including payments to intermediaries).

In terms of the personal income tax, the difference between the selling price and acquisition price of a virtual currency is recognised as income from purchase-sale of a virtual currency, and the difference between the amount of sale of a virtual currency and the amount of allowable deductions specified in Article 18 of PIT is recognised as income of a resident engaged in individual activities. If a resident exchanges one virtual currency to another, it is considered that a resident sold one virtual currency and acquired the other one.

IV.Taxation of Tokens Designated for Company Founders through ICO and Tokens Paid Out to Project Participants for Services Provided

Taxation of tokens designated for founders. Companies, in order to promote the founders of the company and to to keep them as long as possible, designate to them some part of tokens issued through ICO without payment. This share distributed to founders is not activated (i.e. a share of tokens belonging to founders till not activated does not grant any rights, the tokens cannot be exchanged, sold and etc.) and may be used only after the deadline set. Considering the fact that tokens are transferred through ICO without payment and these transferred tokens are not activated/locked, in terms of PIT, not activated/locked tokens received without payment will not be considered as subject to the income tax and will not be taxed by the personal income tax, however after the sale of these tokens (e.g. sale, exchange or otherwise transfer of tokens) it will be considered that a resident received income subject to the personal income tax. It should be noted that if during the unlocking the tokens grant the rights to receive dividends, other property and etc., such benefits received are considered as the resident's income and are subject to personal income tax.

Taxation of tokens paid out for services provided. In cases when for the implementation of the ICO project other persons are involved (e.g. programmers, consultants and etc.) paid or agreed to be paid in tokens for services provided, the value of received tokens taxed by the income tax is considered as the market price of services provided.

V. Some Models of Issue of Virtual Units (Tokens):

1. Issue of Virtual Units (Tokens) Considered as Securities.

Tax liabilities of the issuer of virtual units (tokens). The funds collected by the entity through ICO are not considered as subject to the corporate income tax in cases, when the tokens issued through ICO have the characteristics of securities defined in Articles 1.101 – 1.108 of the Civil Code of the Republic of Lithuania (i.e. grant the right to ownership, management of a company or grant other shareholders' rights such as the right to get a part of profits of the company in the form of dividends or other form, provide for the payment of interest or redemption of tokens or etc. and the amount collected from investors corresponding the amount of issuer's commitments)

In case when the funds (or part of the funds) received for circulated tokens considered as securities do not corresponding the amount of the commitments, i.e. the issue of the tokens is not obliged to give any commitment or given commitment is less than the amount of funds collected, the amounts collected are attributed to the entity's taxable income.

Tax liabilities of the purchaser (investor) of virtual units (tokens).

The interest earned and income gained from the transfer of such virtual tokens are attributed to taxable income of entities (investors) which acquired virtual tokens considered as securities. According to the provisions of Article 16(1) of CIT, the difference between the price of transfer of assets and acquisition price is considered as gains.

From the perspective of PIT, taking into consideration the fact that tokens may be considered as securities, following the provisions of Article 17(1) subparagraph 30 of PIT, the difference not exceeding EUR 500 calculated by deducting total acquisition price of tokens calculated following the procedure established in Article 19 of CIT from total income generated according to all token sale transactions during the calendar year is not taxable.

2. Circulation of Virtual Units (Tokens) Granting the Right to Receive a Service or Product.

In cases when virtual tokens issued through ICO grant the right to use a product or services by paying in tokens, the funds generated for circulated tokens are considered as advance payment (advance) to be included into future contributions.

Article 6.309(2) of the Civil Code embeds that the payment of cash to the person obliged to sell the item is recognised as a payment of a part of price (advance), if the parties have not agreed otherwise. In practise, the advance is defined as an advance payment with the aim of making a primary payment or a part thereof. It usually performs the function of payment – is included into future contributions. Furthermore, contractual liabilities concerning the conditions for enforcement and dates for the delivery of goods or the supply of services are clearly established.

Tax liabilities of the token promoter. According to the provisions of CIT, the circulation of tokens designated for acquisition of goods or services is considered as only a transfer of cash, however it is not considered that the income is earned, i.e. tokens grant the right to the token holder to acquire goods/services for the amount indicated in these tokens.

The entity, which circulated the aforementioned tokens, recognises the advances received, however it recognises the income when it sells goods or provides services for the real market price, or token utilization time has expired.

Tax liabilities of the purchaser of tokens. The entity (investor), having acquired tokens granting the right to acquire goods/services for the amount indicated in them, in terms of the corporate income tax, recognises advance payments (advance) till the factual acquisition of goods or services. The acquisition price of goods or services is costs actually incurred in acquisition of tokens.

The costs usual for this activity related to actually generated or earned income from individual activities during the tax period are considered as allowable deductions of a resident engaged in individual activities. Therefore, a resident engaged in individual activities the incurred costs of acquisition of tokens (which grant the right to acquire goods/services for the amount indicated in them) will be able to attribute to allowable deductions only this tax period when he will actually acquire goods and services. The acquisition price of goods or services is equal to costs actually incurred in acquisition of tokens.

3. Circulation of Virtual Units (Tokens) Attributable to Assets.

Tax liabilities of the token promoter. In cases when virtual tokens issued through ICO which are not considered as securities or an advance payment for services, but only cirfirms the fact of the payment of funds without granting to their holders any additional rights (i.e. the issuer does not undertake to repay the token holders the funds granted by them, token holders will not have the right to participate in the compny's management process, to require a part of profits, to receive interest or other financial reward), the funds collected from circulated tokens are recognised as the income of the entity issuing them. The icome from such assets is recognised by the entity when the tokens are transferred to the ownership of other persons.

Tax liabilities of the purchaser of tokens. The entity (investor), having acquired tokens which are not considered as securities or advance payments (advances), in terms of the corporate income tax, recognises the acquisition of financial assests. The price of the acquired assets is costs actually incurred in acquisition of tokens (Article 14(1) of CIT).

VI. Liabilities of the Lithuanian Entity Controlling the Offshore Foreign Entity Producing and Selling Virtual Currencies and Engaged in Circulation of Virtual Tokens

If the Lithuanian entity controls the offshore foreign entity[1] producing, selling virtual currencies or being engaged in circulation of virtual tokens, then it must attribute positive income to taxable income.

[1] Positive income is calculated only in case, if this foreign entity is registered or otherwise organised in a particular country or area, or if this foreign entity corresponds to a particular form of organization specified in the List of Foreign States or Areas, Where Registered or Otherwise Organised Entities are not Subject to the Provisions of Article 39 of the Republic of Lithuania Law on Corporate Income Tax, and in the List of Foreign Business Organization Forms Subject to the Provisions of Article 39 of the Republic of Lithuania Law on Corporate Income Tax approved by Minister of Finance Order No. 24 on the Approval of the List of Foreign States or Areas, Where Registered or Otherwise Organised Entities are not Subject to the Provisions of Article 39 of the Republic of Lithuania Law on Corporate Income Tax, and the List of Foreign Business Organization Forms Subject to the Provisions of Article 39 of the Republic of Lithuania Law on Corporate Income Tax of 24 January 2002.

It should be noted that income of a controlled foreign entity from active engagement in activities (sales of virtual currencies, circulation of virtual tokens) is not included into positive income, if the following three conditions are are fulfilled:

- the controlled foreign entity employs as many employees as,usually, necessary for maintenance of activities carried by the controlled foreign entity in this state or area, where this entity is established or otherwise organised. A necessary number of employees is the criterion assessed, and in each particular case, depending on the type of a foreign entity or type of activities, it may differ; and
- income of a controlled foreign entity earned during a given tax period and/or received not from the sources of state or area where this entity is registered arba otherwise organised, makes up not more than 10 % of its total income during a given tax period; and
- income of a controlled foreign entity earned during a given tax period and/or received in concluding transactions with independent parties (i.e. parties not related to this foreign entity) makes up more than 50 % of its total income during a given tax period.

If the aforementioned conditions (or at leat one of them) are not fulfilled, then in identifying positive income, total income of a controlled foreign entity during a given tax period is taken for tax calculation purposes.

If the aforementioned conditions are fulfilled, then in identifying positive income, only positive income of a controlled foreign entity during a given tax period is taken.

It should be noted that Article 13 of PIT establishes that positive income is calculated and included in the income of a resident of Lithuania in accordance with the same procedure as it is calculated and included in the income of the controlling Lithuanian entity under the provisions of the Law on Corporate Income Tax, also the provisions of clarification presented in Section V apply accordingly.

1. **What is considered as virtual currency for VAT purposes?**

Virtual currency is the means of payment issued on distributed or partially distributed basis, the issuance of which, usually, is not regulated by legislation of any state, no entity authorised by relevant state is responsible for its issuance, the mandatory acceptance of which as means of payment is not laid down in any state, the exchange rate of which is set by supply and demand, and the terms and conditions of issuance and/or use of which do not provide for any supplementary commitments to supply other services **(with the exception of the established priority right to pay in such currency)** and/or to supply goods.

Consideration of virtual currency as means of payment for VAT purposes does not depend on the fact how such currency is treated by the Bank of Lithuania. Based on CJEU practice in case C-264/14, if parties of transaction recognise virtual currency (which is understood in accordance with the definition given above) as alternative to legal tender, then such virtual currency for VAT purposes is considered as contractual means of payment, and the transactions related to it – financial transactions. It should be noted that if parties of the transaction pay for supplied goods/services in tokens which do not comply with the aforementioned definition of virtual currency, then such tokens for VAT purposes are not considered as virtual currency.

The basic difference in treatment of virtual currency for VAT purposes from treatment of such currency for purposes of PIT and corporate income tax is that for VAT purposes such virtual currency will never be considered as current assets.

2. **Are the instruments issued through initial coin offering considered as virtual currency for VAT purposes?**

Ussually, instruments issued through initial coin offering for VAT purposes are not considered as virtual currency, as they are not issued as means of payment, but as an instrument, by the help of which the funding for the implementation of a particular project is collected and which normally guarantee to its holder certain rights, i.e. usually, such issued instruments have a particular issuer which for a specific amount paid by the person acquiring the instrument undertakes in the future to grant to it certain rights or services, or to supply goods. Such instruments issued through ICO are considered as tokens. However, the cases may be, when tokens comply with the definition of virtual currency (e.g. tokens granting the right to pay for goods and/or services supplied by the third persons) and, therefore, for VAT purposes, they are considered as virtual currency (see answer to question 8).

3. **Is mining of virtual currency for own purposes subject to VAT?**

Units of virtual currency (otherwise called as a 'cryptocurrency', e.g. Bitcoin, Ethereum and etc.) occur in the course of the process called 'mining'. In mining, hardware with installed special software performs mathematical calculations during which new units of virtual currency are generated (created).

According to the provisions of Article 3 of the Law on Value Added Tax (hereinafter – the Law on VAT) supply of goods and/or services by a taxable person for consideration which according to the Law on VAT is considered to be supplied within the territory of Lithuania is subject to VAT. For the transactions performed by a person to be subject to VAT, first of all taxable person should supply services or goods to other person in Lithuania for consideration, moreover, a direct link should exist between the consideration received by a person and the supplied goods or services, i.e. a person should receive consideration for the specific good or service that was supplied by that person.

In this case it may be stated that when virtual currency is mined for own purposes, no goods/services are supplied, therefore, the mining of virtual currency for own purposes is not considered as considerationfor supplied services or goods and, in the light of the foregoing, it is not subject to VAT.

4. **Is mining of virtual currency to other person subject to VAT?**

A person may supply virtual currency mining services to other person by using the hardware acquired by the the person to whom the services are supplied and transferred to a service provider (mining service), hardware rented by the service provider to the the person to whom the services are supplied (cloud mining service) and etc.

If a person receives a reward (no matter in which (traditional or virtual) currency) for supplied virtual currency mining services to other person and these services for VAT purposes are considered as supplied in the territory of the country (Lithuania), such services are subject to VAT (Article 3 of the Law on VAT).

5. **Are sales of mined virtual currency subject to VAT?**

Based on the case-law of the Court of Justice of the European Union in case C-264/14, sales of virtual currency (exchange to traditional or other type virtual currencies) for VAT purposes are considered as supply of services for a consideration. In other words, exchange of virtual currency to a traditional currency or other type virtual currency is subject to VAT[2].

It should be noted that in exchange of units of virtual currency to traditional or other type virtual currencies, the taxable amount is equal to the margin, i.e. the difference between the price paid by a relative transaction operator in purchase of a currency and the price for which it sells this currency to its clients. The exchange ratio of a virtual currency against euro is not regulated by legislation, therefore, in setting the exchange rate of virtual currency against euro, all available information and comparable data on the market may be used.

6. **Are virtual currency transactions subject to VAT?**

Following the provisions of Article 28 of the Law on VAT, virtual currency transactions are considered as financial services transactions (despite the fact whether the Bank of Lithuania recognises such a currency as means of payment) which are VAT exempt[3].

However, it should be noted that Article 28(7) of the Law on VAT states that a taxable person supplying services specified in paragraphs 1-4 of this Article (among which also virtual currency exchange

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[2] Supply of goods and/or services by a taxable person for consideration which according to the provisions of the Law on VAT is considered to be effected within the territory of Lithuania is subject to VAT. Acquisition of goods and services in Lithuania for the consideration from other Member State may also be subject to VAT.

The concepts '*not subject to VAT' and 'VAT exempt activities'* are not identical. When a transaction is subject to VAT, VAT obligations shall arise, and when a transaction is not considered as subject to VAT – no VAT obligations shall arise.

When a transaction is considered as subject to VAT, it may be VAT taxed or VAT exempt. Cases when the supply of goods and services is subject to VAT, but VAT exempt, are defined in Articles 20 – 33 of the Law on VAT. VAT exempt: goods and services related to health care; social services and connected goods; education and training services; cultural and sports services; activities of non-profit making legal persons; postal services; radio and television; insurance services; financial services (among which also virtual currency sale/exchange transactions); duty stamps; betting, gambling and lotteries; leasing of property immovable by its nature; sale or other transfer of property immovable by its nature.

Therefore, in case when a transaction is subject to VAT, but VAT exempt, no VAT shoud be paid.

Financial transactions (among which also virtual currency sale/exchange transactions), usually, are VAT exempt, however persons performing such transactions have in some cases a right of option to calculate VAT (Article 28(7) of the Law on VAT).

[3] See footnote 2.

to the units of traditional currency or units of other type virtual currency), has a right of option to calculate VAT on these services, if a purchaser (client) is a taxable person registered as VAT payer. However, such option is possible only in case when exchange services of such a virtual currency according to the rules set in the Law on VAT are considered to be supplied in Lithuania.

Thus, virtual currency transactions (depending on circumstances) may be VAT exempt or VAT taxed, i.e. a person carrying out such transactions may perform VAT taxed, VAT exempt or mixed activities.

7. **Do persons engaged in virtual currency exchange to traditional or other type virtual currency have right of deduction?**

If virtual currency exchange to traditional or other type virtual currency services for VAT purposes are considered as effected outside the European Union (hereinafter – the EU), then a person supplying such services may deduct the input VAT on acquired goods/services related to virtual currency exchange services effected outside the European Union (Article 58(1) of the Law on VAT).

If virtual currency exchange to traditional or other type virtual currency services are considered as effected in Lithuania, and a person supplying virtual currency exchange to traditional or other type virtual currency services has selected the option to calculate VAT on these services (Article 28(7) of the Law on VAT), then it may also deduct the input VAT on acquired goods/services related to taxed virtual currency exchange services.

If virtual currency exchange to traditional or other type virtual currency services are considered as effected in Lithuania and r such services are VAT exempt, or if the place of supply of virtual currency exchange to traditional or other type virtual currency services is in other EU Member State, then VAT deduction on input VAT on acquired goods or services related to such activities is not possible.

8. **Is the payment for goods/services in virtual currency subject to VAT?**

In terms of VAT, there is no difference whether it is paid for goods/services in virtual currency, cash or by a bank transfer. The payment in virtual currency itself is not subject to VAT. Here only the supply of goods/services itself may be considered as subject to VAT.

9. **Is the payment for goods/services in own mined virtual currency subject to VAT?**

No, such payment is not subject to VAT, as it is not considered that virtual currency is sold for a consideration. Here only the supply of goods/services may be considered as subject to VAT.

10. **How VAT invoice should be issued for goods or services when the payment is made in virtual currency?**

The issueance of the invoice on supplied goods and services which are paid for in virtual currency , basically, does not differ from cases where the payment is made in traditional currency. In other words, whether the VAT invoice should be issued, whether a simplified VAT invoice may be issued, what details should be specified in the issued VAT invoice does not depend on a type of currency used for payment.

However, in case where virtual currency is used for payment, then the issued VAT invoice should still indicate VAT amounts in euros, i.e. a virtual currency should be converted into euros based on the market exchange rate predominating at the moment of the chargeable event (in setting the exchange rate of virtual currency against euro, a person should mainly abide the method employed in its accounting policy (see more in General Provisions of this clarification).

11. **How sales of virtual currency through the exchange should be documented?**

According to Article 79(1) of the Law on VAT, sales of virtual currency must be documented by VAT payer in VAT invoice in case when such sale is considered as effected in the territory of the country. When VAT payer sells virtual currency through the exchange established in Lithuania by concluding anonymous transactions, for VAT purposes it is considered that virtual currency was sold to the exchange and in such case, the exchange should be indicated as the customer in the issued VAT invoice.

It should be noted that VAT invoices, where VAT exempt financial services (including sales of virtual currency) supplied in the territory of the country are documented, may not specify the details referred to in paragraphs 2, 4, 8, 9 and 11-13 of Article 80(1) of the Law on VAT (paragraph 18^1 of the Rules on Issuance and Recognition of Accounting Documents Used for Calculation of Taxes approved by the Government of Lithuania Resolution No. 780 of 29 May 2002).

In case when virtual currency is sold outside the territory of the country (e.g. through the exchange established in other state), then the sale of such currency in Lithuania is not documented by VAT invoice.

12. **What is a token?**

A token is an instrument used according to the conditions of issuance of this instrument granting the rights to its holder set by the issuer (e.g. the right to receive a share of profits, income of the company, interest on invested funds, the right to receive some goods or services and etc.). A token for VAT purposes is not considered as virtual currency, as it does not comply with the definition of virtual currency, i.e. a particular person issuing it clearly defines the area of use of the instrument, envisages its certain obligations and etc.

However, we would like to note that there are cases, when instruments called tokens do not comply with the aforementioned definition of a token, but comply with the definition of virtual currency. Therefore, such instruments for VAT purposes are considered as virtual currency (despite the fact that they are called as tokens in the public) and, in charging VAT, the VAT taxation rules set for virtual currency are applied (see answers to questions 1- 8).

13. **What types of tokens can be established for VAT purposes?**

Tokens for VAT purposes are divided into: 1) tokens treated as securities, 2) tokens treated as virtual currency and 3) tokens treated as coupons.

In each case, in deciding which type the token is attributable to, it is necessary to establish terms and conditions of issuance of a token as well as the rights granted to token holders.

A token granting the right to its holder (whether or not such a right is measured by a concrete monetary amount during the moment of issue of a token) to get in the future a share of profits (including a share of profits received in tokens issued by the third persons), income, assets and etc. of the person issuing a token, the receipt of which is merely the result of ownership of this token rather than a result obtained by using a token in economic activities, has mainly the characteristics of securities - shares and, therefore, the transfer of such tokens for VAT purposes is considered as transactions in securities. It should be noted that such treatment does not depend on the fact whether the Bank of Lithuania considers such tokens as shares or other securities.

A token being in compliance with the definion of virtual currency (see answer to question 1) is considered as virtual currency.

A token granting the right to its holder to acquire some services, goods or to use the infrastructure developed, for VAT purposes is considered as a coupon. In other words, a token, which sets the token issuer's commitment to accept the token in the future as consideration or a share of consideration for some services or goods, is considered as coupon.

In case if a token issued sets both the right to receive some goods and services and the right to get a share of profits or etc. of the person issuing a token, i.e. if a token issued has characteristics of both securities and a coupon, then for VAT purposes it will be considered as securities.

14. **Is the issue of tokens subject to VAT?**

According to the provisions of Article 3 of the Law on VAT, the supply of goods and/or services effected in Lithuania is subject to VAT.

The issue of tokens is neither the supply of goods nor services, therefore, is not subject to VAT.

15. **Is initial coin offering (ICO) subject to VAT, if yes, how the supply of tokens is taxed?**

At the ICO the investors get a newly issued token in exchange for their available cryptocurrency (e.g. Bitcoin, Ethereum) or a standard currency (e.g. euro or dollar).

When the tokens which for VAT purposes are considered as securities are transfered for payment through ICO, then the transfer of such tokens for VAT purposes is treated as issue of shares which, based on the CJEU practice in case C-465/03, is not considered as the supply of services for consideration and is not subject to VAT. Thus, the transfer of tokens treated as securities for payment through ICO is not subject to VAT.

When the tokens which for VAT purposes are treated as virtual currency are supplied through ICO for payment, then the supply of such tokens in Lithuania is subject to VAT in case if the place of supply of virtual currency according to the provisions of Article 13 of the Law on VAT were in Lithuania, the supply of such tokens, according to the provisions of Article 28(4) of the Law on VAT, is usually VAT exempt[4].

When tokens which for VAT purposes are treated as coupons are supplied through ICO for payment, then the amounts received through such supply for VAT purposes will be considered as an advance which, usually, taking into account the fact that at the time of receipt of an advance the tax regime is not clear (considering the fact that the transfer of tokens to the third persons, usually, is not restricted, therefore, at

[4] See footnote 2

the ICO it is not known where, for instance, will be the service supply point, what VAT rate will be applied in the future for the supplied goods or services), will not be subject to VAT.

16. **Have the persons engaged in initial coin offering the right to deduct VAT?**

When the tokens which for VAT purposes are considered as securities are transfered for payment through ICO, then whether the issuers of such tokens may deduct input VAT on goods/services related to the issue of such tokens depends on the fact to which type of activities (taxed, exempt or mixed type activities) the investments attracted through ICO will be used (CJEU case C-465/03). If the investments attracted through ICO are used only for taxable transactions, then, according to the provisions of Article 58 of the Law on VAT, the input VAT on goods/services related to the issue of tokens may be deducted; if the investments attracted through ICO are used exceptionally for the exempted transactions - the input VAT on goods/services related to the issue of tokens may not deducted; if the investments attracted through ICO are used for mixed type activities (taxable and exempted) - the input VAT on goods/services related to the issue of such tokens may be deducted partially as provided in Article 59 of the Law on VAT.

When tokens which for VAT purposes are treated as virtual currency are supplied for payment through ICO, then the issuers of such tokens can exercise their right of deduction as provided in the answer to question 7.

When the tokens which for VAT purposes are treated as coupons are supplied for payment through ICO, then whether the issuers of such tokens may deduct input VAT on goods/services related to the issue of such tokens depends on the fact to which type of activities the tokens issued are related. If the supplied tokens grant the right to acquire and pay exceptionally for taxable transactions, then the input VAT on goods/services related to the issue of such tokens may be deducted; if the tokens grant the right to acquire and pay exceptionally for exempted transactions, then the input VAT may not be deducted; if the tokens grant the right to acquire and pay both for taxablesand exempted transactions, the input VAT on goods/services related to the issue of such tokens is deducted partially as provided in Article 59 of the Law on VAT.

17. **Is the secondary sale of tokens subject to VAT, if yes, how the sale of such tokens is taxed?**

VAT treatment of the secondary sale of tokens at the virtual currency exchange offices or during direct transactions depends on the fact what type of a token is sold and by whom (taxable or non- taxable person).

If tokes are sold by taxable person, then the secondory sale of tokens is subject to the same VAT rules as in case of the initial coin offering (see answer to question 15). The exchange ratio of virtual currency against euro is not regulated by legislation, therefore, in setting the exchange rate of virtual currency against euro a person should mainly abide the method employed in its accounting policy (for more see the General Provisions of this clarification).

If tokens are sold by non-taxable person, then such sale is not subject to VAT.

18. **Are intermediary services supplied in transferring tokens taxed?**

When intermediary services are provided for tokens treated as securities, then such intermediary services supplied in Lithuania, according to the provisions of Article 28(5) of the Law on VAT, are exempt. When intermediary services are provided for tokens treated as coupons, then such intermediary services supplied in Lithuania are taxed by applying a standard VAT rate.