1 News

Davos

During the Economic Summit held in Davos last week cryptocurrencies were one of the hottest topics. An official session devoted to the matter was held, follow by CNBC panels in The Sanctuary. Throughout the Summit a special designated space, called Crypto HQ, centred on matters relevant for the market.

Government leaders and experts praised blockchain technology but simultaneously mostly criticized Bitcoin. Politicians and economists expressed concerns related to the highly speculative nature of current cryptocurrency market and risks associated with growing presence of small, often reckless investors.

Leaders also agreed for a necessity of market regulation, especially in the context of AML. Concern was expressed as to the possible illicit use of cryptocurrencies, for which Bitcoin is still being blamed.

On the other hand, live discussions were held as to potential future applications of blockchain technology in financial sector and others. Banks and corporations already express an utmost interest in solutions involving blockchain. Rapid development within this sphere is expected.

*The fact that the anonymity, the lack of transparency and the way in which it conceals and protects money laundering and financing of terrorism and all sorts of dark trades **is just not acceptable**.*

Christine Lagarde,
Managing Director, IMF

Did you know?

First ever Bitcoin payment occurred on 22 May 2010 and was a transaction to buy … a pizza.

Two Papa John's pizzas were bought in Jacksonville for 10.000 BTC, which is now worth over … 110 million USD !

2 Regulation

Poland moving forward with AML amendments

On 18 January 2018 Polish Government formally presented with the Parliament a draft bill aimed at supplementing current AML regulations with crypto-implications. The proposal implements changes to the legal framework adopted at the EU level by the AMLD IV Directive.

Main aspects of the draft are:

- ✓ Introducing of a definition of a "virtual currency" – open and broad scope definition, covering any "digital representation of value" which is tradable and is not any kind of representations of value already regulated by the State (fiat, electronic money, checks etc.);
- ✓ Institutions falling within the scope of regulation – gatekeepers, i.e. entities providing services with regard to trading between fiat and crypto currencies or between cryptocurrencies as well as intermediaries and wallet holders;
- ✓ Scope of obligations – identification of users and real beneficiaries (if applicable), monitoring, analysis and registration of transactions;

We will either regulate cryptocurrencies or ban them in our country.

Mateusz Morawiecki

Polish Prime Minister

Consequences of the amendments:

- ✓ Unification of regulation on EU level;
- ✓ Users of most of the exchanges and wallets are already identifiable;
- ✓ Probable threat to currencies ensuring anonymity inside blockchain (Monero);
- ✓ Significant rise of level of obligations for the gatekeepers (especially with regard to analysis of transactions);
- ✓ Anonymity will not be full – some users don't use the gatekeepers to trade;

3 Tax

Taxation of “crypto→crypto” exchanges

Until recently Polish Tax Authorities held that only profits from crypto → fiat exchanges were regarded as a taxable income. This was due to the fact that cryptocurrencies were not perceived as a source of value that could constitute an income. This in turn allowed for a simple tax avoidance by engaging only into crypto → crypto exchanges or holding investment gains in relatively stable currencies like USDT.

This policy is now about to change. One of the latest interpretations issued by the Tax Authority indicates that income from each crypto → crypto transactions should be taxed just as the crypto → fiat transactions. Tax Authorities stated that an exchange between virtual currencies may result in a taxable income and refused to treat crypto → crypto transactions as currency trades (taxable only in certain circumstances).

The interpretation is unclear and leads to numerous questions – especially given the fact that the value of cryptocurrencies (hence the level of “income”) is remote and changes every second. Therefore the level of “income” is virtually impossible to determine in a fair and justifiable way. On one hand, transactions of sale or purchase of a non-existent asset of a rapidly changing value in return for another asset of the same character result in a “real” income that is to be taxed. On the other, subsequent loss of value will normally not result in a possible tax relief.

The interpretation is particularly significant since it has been issued by the Director of the National Tax Information who has the potential of overturning previous interpretations issued by regional Tax Authorities. Please note, that the interpretation can (and probably will) be appealed by the petitioner.

Also, further state actions towards taxing profits from trade of cryptocurrencies are to be expected this year.

For more information on recent developments with regard to taxation of cryptocurrencies-related income please contact us directly.

4 Trends

Crypto-related legal services

Never before technological development was so rapid. Regulators stopped keeping up with it years ago and hence lawyers are no longer required to only analyse regulations in place but also to try to foresee the future developments of regulatory framework. This way the Clients may feel as safe as possible even on "uncharted territory".

"GESSEL Tech Law" was created exactly for that. We answer our Client's need for legal services in the most sophisticated areas of innovative technologies, including in particular the world around cryptocurrencies. Although the future of cryptocurrencies is yet to be unfold, currently they cause a series of legal challenges we are keen to address.

GESSEL Tech Law | Cryptocurrencies

Focus points:

- ✓ Taxation;
- ✓ Regulations;
- ✓ Currency development;
- ✓ Initial Coin Offerings in Poland;
- ✓ Smart Contracts;
- ✓ Blockchain inclusion in "traditional" transactions;
- ✓ Crypto-wills and status within marriage;
- ✓ Out-of-exchanges transactions regarding cryptocurrencies;

Blockchain has the potential of becoming one of the most revolutionary technologies in the history of the modern trading world. It's potential applications for finance, contracting or M&A is unbelievable.

Piotr Schramm

Partner, Head of GESSEL Tech Law

5 Threats

Safety concerns on the rise

Biggest crypto-hacking in history | Japan-based cryptocurrency exchange Coincheck informed that hackers had stolen from it tokens worth **over 400 million USD**. The exact method of operation of the hackers was not revealed. Coincheck is one of the biggest cryptocurrency exchanges in the world. Its' representatives said that its' customers will be refunded with full amount of stolen tokens. The incident has been the biggest hack in the history of cryptocurrencies trading.

(**Remember**: inside the exchange your coins are usually not protected by blockchain technology. The ledger does not register transactions within the exchange but only those outside it).

ICO and safety of funds | A recent report made by Ernst & Young analyses effectiveness of ICO funding. The firm examined 372 ICO's and found that nearly 400 million USD (10%) of all funds collected this way by blockchain-technology companies vanished into thin air, mostly due to phishing attacks.

ICO is a very popular alternative to issuing shares or bonds by the company to gather funds. However, since neither regulated nor supervised, most often ICO-tokens buyers are not given any security. Companies running ICOs have no product to offer beyond a whitepaper – a few pages of text that paint the broad strokes of how the thing people just invested loads of money in should theoretically work.

Although Ernst & Young also reports a drop in percentage of ICOs reaching full estimated funding it is worth noting that to date ICOs generated around 3.9 billion USD for companies.

GESSEL Tech Law key Contacts

Piotr Schramm	Marcin Robenek	Paweł Kwiatkowski	Maciej Trąbski
Partner	Managing Associate	Senior Associate	Senior Associate
p.schramm@gessel.pl	m.robenek@gessel.pl	p.kwiatkowski@gessel.pl	m.trabski@gessel.pl