**Tax treatment of activities with virtual currencies as per ZDoh-2, ZDDPO-2, ZDDV-1 and ZDFS**

**Detailed description**

**Contents**

[1.0 Introduction 3](#_Toc526931914)

[2.0 Tax treatment of income from activities with virtual currencies 3](#_Toc526931915)

[2.1 Tax treatment as per the Personal Income Tax Act – ZDoh-2 4](#_Toc526931916)

[2.1.1 Income is generated by a natural person outside the scope of performing a business activity 4](#_Toc526931917)

[General 4](#_Toc526931918)

[Exemption of personal income tax on gains from trading in virtual currencies 5](#_Toc526931919)

[Tax treatment of income generated by virtual currency mining 5](#_Toc526931920)

[Tax implications of the free acquisition of crypto tokens within the scope of the issue of new crypto tokens 6](#_Toc526931921)

[Determination of income amount 7](#_Toc526931922)

[Time of income receipt 7](#_Toc526931923)

[Type of natural person's income 7](#_Toc526931924)

[Additional explanations 9](#_Toc526931925)

[2.1.2 Income is generated by a natural person from business activity 9](#_Toc526931926)

[2.1.3 Examples 11](#_Toc526931927)

[2.2 Tax treatment as per the Corporate Income Tax Act – ZDDPO-2 15](#_Toc526931928)

[3.0 Tax treatment from the aspect of the Value Added Tax Act – ZDDV-1 15](#_Toc526931929)

[3.1 Commission or payment for exchanging traditional currencies for units of any virtual currency considered as a means of payment 15](#_Toc526931930)

[3.2 Virtual currency mining 16](#_Toc526931931)

[3.3 VAT deduction for the purchase of software and hardware used for virtual currency mining 18](#_Toc526931932)

[3.4 Services related to the brokerage services provided by exchange platforms 19](#_Toc526931933)

[3.5 Electronic wallets services 19](#_Toc526931934)

[3.6 VAT treatment of crypto tokens 19](#_Toc526931935)

[4.0 Treatment of crypto tokens as per the Fiscal Verification of Invoices Act – ZDavPR 20](#_Toc526931936)

[5.0 Tax treatment from the aspect of the Financial Services Tax Act – ZDFS 21](#_Toc526931937)

1.0 Introduction

This detailed description explains the tax treatment of the income of natural persons generated by activities with virtual currencies subject to taxation in accordance with the [Personal Income Tax Act – ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697). It is explained in which cases personal income tax is not paid on gains generated by trading in virtual currencies, or in which cases it is considered that income from trading or virtual currency mining is generated while carrying out business activities and in which cases income generated by virtual currency mining is considered as other income as per the ZDoh-2. A section comprising individual examples is added to further explain to taxable persons who trade in virtual currencies in order to make it easier for them to recognise which types of income are generated and to help them fulfil their taxation obligations. The examples show in which cases the tax authority would determine income from activities with virtual currencies as income exempt from the payment of personal income tax, as income from business activity or as other income as per the ZDoh-2.

The explanation referring to the tax treatment of the free acquisition of crypto tokens which are obtained by natural persons under the initial coin offering for free is a part of this detailed description.

The tax treatment of activities with virtual currencies as per the [Corporate Income Tax Act – ZDDPO-2](http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687) is also explained. As far as the recent development of the expert field enables, the accounting consideration of virtual currencies that has an impact on the calculation of corporate income tax base is also explained.

The detailed description also includes an explanation with regard to tax treatment from the aspect of the [Value Added Tax Act – ZDDV-1](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4701), i.e. from the aspect of the obligation to pay the VAT on commission or payment for the exchange of traditional currencies for units of any virtual currency representing means of payment, virtual currency mining, electronic wallet services, crypto tokens, wherein the treatment of crypto tokens from the aspect of the [Fiscal Verification of Invoices Act – ZDavPR](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7195) is separately explained, and other.

The document at the end also explains the tax implications from the aspect of the Financial Services Tax Act – ZDFS.

2.0 Tax treatment of income from activities with virtual currencies

Virtual currencies under this section comprise crypto tokens if the explanation does not stipulate otherwise.

Virtual currencies are not considered as money as per point 5 of Article 4 of the [Payment Services, Services of Issuing Electronic Money and Payment Systems Act.](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7574)

The tax treatment of income from activities with virtual currencies depends on the circumstances of an individual case. It must be established who generates income (legal entity, natural person, natural person who independently performs a business activity) and what type of income is involved in each case (income from mining virtual currencies, from buying and selling virtual currencies, received payment of other income in virtual currency, payment for a service performed etc.). Some examples that may occur in practice are explained in the continuation.

2.1 Tax treatment as per the Personal Income Tax Act – [ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697)

In accordance with the [Personal Income Tax Act – ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697) all various incomes of a natural person are taxed, regardless of the type, and excluding income that is separately determined as income exempt from taxation or which is not considered as income as per the aforementioned act.

A resident of the Republic of Slovenia (hereinafter referred to as "the RS") is taxed according to worldwide income, meaning that this person is obliged to pay income tax on all income types that originate from the RS and on all income types that originate from outside the RS. A non-resident is obliged to pay income tax only on income from sources in Slovenia.

As per point 1 of Article 32 of the ZDoh-2, personal income tax is not paid on capital gains from the disposal of movable property, except for movable property as per points 2 and 3 of Article 93 of the ZDoh-2, and on the disposal of derivatives, excluding the gain on the capital of an employee who disposes of the right to purchase shares or the right to acquire other property. The aforementioned provision does not affect the tax obligation of a natural person that carries out a business activity as per Section III.3 of the ZDoh-2. Movable property as per points 2 and 3 of Article 93 of the ZDOh-2 are securities and shareholdings in enterprises, cooperatives and other organisational forms, and investment coupons.

Personal income tax is not paid on capital gains from the disposal of virtual currencies that:

* are not considered as capital as per points 2 and 3 of Article 93 of the ZDoh-2[[1]](#footnote-2), or
* are considered as derivative financial instruments (except in the case as per point 1 of Article 32 of the ZDoh-2 of the aforementioned gain of an employee),

under the condition that the natural person does not generate such income in connection with a business activity as per Section III.3 of the ZDoh-2. More is explained in the continuation under 2.1.2.

As has been explained, gains generated from the disposal of derivatives are not taxed as per the ZDoh-2, but the mentioned gains are subject to taxation as per the [Law on tax on profit from disposal of derivatives – ZDDOIF](http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5400)I.

Therefore, as per the ZDoh-2, two situations must be distinguished, depending on whether the income from trading/mining in virtual currencies is generated by a natural person or natural person who independently performs business activities, as explained in the continuation.

2.1.1 Income is generated by a natural person outside the scope of performing a business activity

General

As per Article 15 of the ZDoh-2, the income of a natural person that was acquired or generated in the tax year equalling the calendar year is taxed. Income comprises all income and gains, regardless of the type, if the law does not stipulate otherwise. Income is any payment or receipt of income, regardless of the form in which it was paid or received. Income received in kind is determined on the basis of a comparable market price if the law does not stipulate otherwise. Income is acquired or generated in the tax year when it is received if the law does not stipulate otherwise. It is considered that income is received when it is paid to a natural person or provided to the natural person in another way.

Thus, any income taxable as per the ZDoh-2 (e.g. payment for consulting services) and generated by a natural person in virtual currency is taxed as this type of income in kind. The income amount in euros is determined by considering the value of the virtual currency in euros at the time of the receipt of income.

Exemption of personal income tax on gains from trading in virtual currencies

Point 1 of Article 32 of the ZDoh-2 determines that personal income tax is not paid on profit from capital gains from the disposal of movable property, except securities and shareholdings in enterprises, cooperatives and other organisational forms, and investment coupons (points 2 and 3 of Article 93 of the ZDoh-2) or from the disposal of derivatives, except profit on capital gains of employees who dispose of the right to purchase shares or the right to acquire other property; the mentioned provision does not affect the tax obligation of a natural person who carries out a business activity as per Section III.3 of this Act.

Personal income tax is not paid on capital gains from the disposal of virtual currencies that:

* + are not considered as capital as per points 2 and 3 of Article 93 of the ZDoh-2, or
	+ are considered as derivatives (except in the case as per point 1 of Article 32 of the ZDoh-2 of the aforementioned profit of an employee),

under the condition that the natural person does not generate such income in connection with carrying out a business activity as per Section III.3 of the ZDoh-2. More about natural person generating income from a business activity is explained in the continuation under 2.1.2.

Gains, generated by the disposal of derivatives are not taxed as per the ZDoh-2, but such gains are taxed as per the ZDDOIFI.

Tax treatment of income generated by virtual currency mining

Virtual currency mining as per this section comprises any form of transaction confirmation.

Income generated by a natural person by virtual currency mining is taxed in accordance with the [ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697). The generated income is taxed as:

* + other income as per Article 105 of the ZDoh-2 under the condition that the natural person does not generate it from business activity. The tax treatment of such income is explained in this section or
	+ income from business activity as per Section III.3 of the ZDoh-2, which is explained in the continuation under 2.1.2.

When income generated by a natural person by virtual currency mining is taxed as other income as per Article 105 of the ZDoh-2, the amount of income in euros is determined by considering the value of the virtual currency in euros at the time of the receipt of income.

As per Article 108 of the ZDoh-2, the tax base for other income is the generated income, for which an income tax prepayment is calculated and paid as per 25% rate.

Considering the aforementioned facts, the tax base of other income generated by virtual currency mining is not reduced by the amount of costs connected with acquiring such income, such as the purchase of equipment, electricity costs, education costs etc. This means that the taxable person must pay personal income tax prepayment on all income generated by mining.

The tax prepayment for other income is determined by the tax authority on the basis of the taxable person's tax return. [The tax return form for assessing personal income tax prepayment for other income](https://www.uradni-list.si/files/2015/RS_-2015-102-00007-OB~P003-0000.PDF) must be submitted by the taxable person to the tax authority within fifteen days of the date of receiving income. If income is paid by the payer of tax, the personal income tax prepayment is assessed, deducted and paid by the payer of tax[[2]](#footnote-3) upon the payment of income.

Other income is included in the annual tax base for the assessment of personal income tax on the annual level if the income is generated by a resident of the RS.

There are business models connected to mining activity on the basis of which individuals rent their computer power for mining to miners. This involves direct renting or renting via mediators, which are provided to end users in the mining process (miners). From the point of view of individuals renting their computer power, this is not income generated by mining. Such income is regarded as income from renting property in accordance with ZDoh-2 or as income from business activity if it is generated by a natural person in an organised company or within the scope of business activity. More about the tax treatment of rental income as per Section III.5.1 of the ZDoh-2 is explained in the detailed description entitled [Rental income.](http://www.fu.gov.si/fileadmin/Internet/Davki_in_druge_dajatve/Podrocja/Dohodnina/Dohodek_iz_oddajanja_premozenja_in_iz_premozenjske_pravice/Opis/Podrobnejsi_opis_2_izdaja_Dohodek_iz_oddajanja_premozenja_v_najem.pdf)

Tax implications of the free acquisition of crypto tokens within the scope of the issue of new crypto tokens

This part of the explanation refers to the tax treatment of the free acquisition of crypto tokens (hereinafter referred to as "tokens”), which are obtained by natural persons within the scope of initial coin offering for free.

Under a new project, an issuer releases a new token on blockchain and offers it to investors in exchange for one of the template virtual currencies (such as the bitcoin, ethereum, etc., which can be exchanged for fiat money, e.g. euros, via digital asset exchanges). In practice, some of the newly released tokens can be distributed free of charge by the issuer to individuals, e.g. founders, project designers, project team members, employees, project advisers, future partners etc.

In the taxation of a natural person who receives such tokens for free upon the issue of new tokens, the general bases for income taxation as per the [Personal Income Tax Act – ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697) are considered, i.e. with regard to the nature of income that was paid as a token and with regard to the relationship between payer and recipient resulting in the provision of income.[[3]](#footnote-4)

The following general rules on personal income taxation as determined in the ZDoh-2 are especially considered:

* income is any income that is not explicitly exempt from income in the ZDoh-2 or is not determined as income exempt from personal income tax payment,
* income is any payment or receipt of income, regardless of the form in which it was paid or received,
* income received in kind is determined on the basis of a comparable market price (unless the law stipulates otherwise),
* income is received in the tax year when it was received/paid to the natural person or provided for disposal in another way.

Determination of income amount

The income amount of a natural person received as a free token is equal to the market price of such token. In the phase prior to the start of token trading, the nominal value determined in the white paper is the market price; when trading starts, the market price is formed in the market.

The value of tokens is primarily determined in the white paper. The issuer evaluates tokens with various methods and on the basis of different circumstances or business operation predictions. Such nominal value is considered as the market value of tokens up until the moment when the free trading of tokens starts. As of that moment, the market price is formed on the basis of supply and demand. When the value in the white paper is determined in any of the virtual currencies, the exchange rate between the virtual currency and the determined fiat money is indicated. Tokens are offered at this value in the pre-sale process and in the process of initial coin offering. If investors buy tokens in the pre-sale phase, they are rewarded with bonus tokens, which are given to them for free. The issuer may also decide to give some tokens for free to individuals who are not investors or buyers of tokens.

The discount in the form of free tokens given to investors does not affect the market price of such tokens. The discount actually motivates (by giving rewards) investors to decide to buy tokens as early as possible, when the purchasing conditions are more favourable with regard to the nominal value of the token determined in the white paper. By receiving free tokens, early investors assume greater risks compared to the risks assumed by subsequent investors, who, on the other hand, receive lower discounts or no discounts at all. The issuer, on the other hand, renounces a part of income that could be received by selling at the regular or market price, for the purpose of promoting sales and acquiring funds as soon as possible.

Time of income receipt

If a token is acquired for free, the time when the income is received is the moment when the income is given to an individual for disposal, i.e. in his/her digital wallet. Thus, the individual becomes the owner of such tokens. There are possible limitations on the disposal of free acquired tokens within a certain period. The issuer may determine special conditions in the smart contract, on the basis of which ownership of tokens is subject to temporary limitations regarding the disposal of such tokens. These agreements do not affect the time of the acquisition of a property right, but merely the ability of the owner to dispose of tokens.

Type of natural person's income

The nature of such income and the relationship between the payer and recipient must be considered for the appropriate tax treatment of such income.

1. **Income from an employment relationship**

Tokens that are distributed for free to individuals who are employed by the issuer are considered as income from an employment relationship as per Article 37 of the ZDoh-2. According to the aforementioned provision, income from employment comprises salary, salary compensation and any other payment for work, including commission. Income from employment also comprises bonuses given by the employer to employees or their family members. Income from employment also comprises free tokens given to individuals who, on the basis of a business relationship, manage or manage and supervise the issuer's business entity.

1. **Income from an employment on the basis of other contractual relationships**

Free tokens given to individuals who are not employed by the company or which are given as a reward or payment for their work, services, activities in connection with project development (e.g. project designers, advisers etc.) are considered as income from another contractual relationship as per Article 38 of the ZDoh-2. According to this provision, each separate income for work or service is included in income, and in accordance with paragraph four of Article 41 of the ZDoh-2, each separate income reduced by the amount of obligatory social security contributions and flat-rate expenses in the amount of 10% (actual costs of transport and accommodation may be considered on the basis of evidence and under the conditions determined by the government as per Article 44 of the ZDoh-2) is considered in the tax base. Personal income tax prepayment is paid at the 25% rate; income is calculated in the annual tax base for personal income tax when the recipient is a tax resident of the RS.

In such a case, social security contributions which are paid on income from other legal relations are calculated with regard to the income amount, i.e.:

* health insurance contribution at a 6.36% rate (income recipient) and contribution for injuries at work at a 0.53% rate (only if the payer of the contribution is the payer of tax), i.e. in accordance with the Health Care and Health Insurance Act – [ZZVZZ](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213);
* contribution for special cases as per the Pension and Disability Insurance Act – [ZPIZ-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6280), at an 8.85% rate (by a payer who pays tax, or by an income recipient, if crypto tokens are received from a foreign payer who does not pay tax);
* pension and disability insurance contributions at a 15.5% and 8.85% rate, respectively (only when the income recipient is not fully insured by another entity and is an insured person as per Article 18 of the ZPIZ-2; if the payer is a payer of tax, contributions are paid as follows: 15.5% by the income recipient, 8.85% by the payer; if the payer of income is a foreign entity, both contributions, 15.5% and 8.85%, are paid by the income recipient).
1. **Dividend or other income based on ownership in the issuer's company**

Free tokens acquired by individuals/founders of the issuer's company are taxed as dividend or other income on the basis of ownership shares in the issuer's company; a token is considered as a bonus in kind which is given to the company partner (natural person) on the basis of his/her ownership share in the company, i.e.:

* in the case of a majority owner (more than 25% stake in the issuer's company), as income that is considered as hidden profit distribution and taxed as a dividend as per the ZDoh-2 with personal income tax (final tax at 27,5 % (by the end of 2019 at rate of 25%) rate on income amount);
* when the recipients are not majority owners (individuals with less than a 25% ownership share), income is taxed with personal income tax as per point 10 of paragraph three of Article 105 of the ZDoh-2: 25% personal income tax prepayment and the calculation in the annual income tax assessment, when the income recipient is a tax resident of the RS.
1. **Other income as per the ZDoh-2**

When a token is given for free to an individual/a specific third natural person under the condition that it is not given in connection with any work, services or the activity of such person in the issuer's company (conditioned by the fact that this does not involve income from employment, activity or on the basis of an ownership share), this is considered as other income as per the ZDoh-2 (e.g. token that is given for free to an individual as a future business partner). The value of tokens in this case is considered as other income as per Article 105 of the ZDoh-2; income is taxed with personal income tax: 25% personal income tax prepayment and the calculation of income in the annual income tax assessment, when the income recipient is a tax resident of the RS.

Additional explanations

This explanation refers to the free acquisitions of tokens, but all the aforementioned with regard to the market price and the assessment of the amount of received income also applies when discounts cannot be considered in accordance with the provisions under point 7 of Article 19 of the ZDoh-2 or when such benefits are considered as income. This involves situations when a bonus received by a natural person when purchasing goods or services, including the occasional receipt of additional goods or services, is not accessible to all under the same conditions and/or is in connection with the employment or a business activity of the natural person.

The token's features and conditions of issue must be considered in relation to the implementation of the provision under point 7 of Article 19 of the ZDoh-2 and the assessment of whether an individual token is connected with the purchase of goods or services. This means that when the features and the issue conditions of a token show that no purchase of goods or services is involved, discounts may be determined and taxed as income under the ZDoh-2 (e.g. in the case of a token determined as a financial instrument or as financial debt relationship, as income from such instrument or financial debt relationship).

2.1.2 Income is generated by a natural person from business activity

Income from business activity as per Section III.3 of the ZDoh-2 is in accordance with Article 46 of this Act considered as income from independently performing an activity, regardless of the purpose or result of performing the activity. The performance of a business activity involves performing any entrepreneurial, agricultural or forestry activity, vocational or other independent activity, including the exploitation of property and property rights.

Entrepreneurial activity is in general determined in paragraph two of Article 3 of the [Companies Act – ZGD-1](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4291). The key qualifying factor of an entrepreneurial activity is that it is performed constantly (not occasionally), that it is performed in the market or for the market, and that the individual operates as an entrepreneur, i.e. that they organise the activity which is then independently performed by the individual, and that the individual uses the same methods, means and procedures as an entrepreneur would use. The method of performing an activity is important.

An individual's income that originates from virtual currency trading or mining is considered as income from business activity when it is achieved by the permanent, independent and autonomous performance of an activity. Independence and autonomy are shown in the performance of activity for one's own account, own benefit, with full responsibility and at the individual’s own risk. As far as permanence is concerned, the business may not involve single or occasional, unconnected activities, but a continuing activity.

Relevant objective circumstances and the facts of each individual case are considered when establishing whether each specific case involves trading in virtual currencies or virtual currency mining. Please, find below the scope of the general criteria that will help taxable persons and the tax authority to assess whether the activities with virtual currencies involve performing a business activity in accordance with the ZDoh-2. There are also other circumstances and criteria in each specific case, on the basis of which the tax authority assesses the existence of a business activity.

The general criteria that indicate the performance of business activities with virtual currencies (trading and mining) are:

1. a large number of realised orders[[4]](#footnote-5) in one year,
2. trading for the purpose of generating gain on the basis of exploitation of short-term fluctuations in the prices of virtual currencies in the market (not with for purpose of long-term investment), which is shown in a substantial number of trading days (days when orders are implemented) in one year,
3. a significant value of realised orders within one year;
4. a high average value of a virtual currencies portfolio in one year[[5]](#footnote-6);
5. investments or the use of dedicated equipment and other means for performing an activity, information, knowledge and technologies;
6. existence of an organisational structure and division of work among several people for the purpose of achieving a common goal.

If one or more criteria are fulfilled, it does not necessarily mean that an individual case involves the performance of a business activity. Criteria need to be considered as a whole and interconnected. It is not necessary for the performance of a business activity to be involved, despite the use of dedicated equipment, or if the value of realised orders is small and regular trading is not involved. Trading is not necessarily considered as the performance of a business activity only on the basis of a number of realised orders or only on the basis of a number of trading days if other relevant circumstances showing the performance of a business activity do not coexist.

If an individual generates a certain scope, uses a certain method of operation and fulfils the aforementioned criteria, an appropriate activity must be registered. The fulfilment of such conditions is assessed by content and for each individual case.

We should emphasise that trading in virtual currencies involves specific property which has not been uniformly determined on the global scale, i.e. what type of property it is, or among what types of property it may be included. Virtual currencies markets exist on the World Wide Web and are considered as global markets. They are extremely volatile due to high risks and lack of regulation. Individual virtual currencies differ by origin, entitlements, functionalities etc. Trading in them differs significantly from trading in real property, antiquities, cars etc. Therefore, it is not possible to use the same criteria for determining when trading in virtual currencies is considered the performance of a business activity as in the cases of trading in other types of property.

The tax base on profit from a business activity is profit (paragraph one of Article 48 of the ZDoh-2) which is assessed as the difference between revenue and expenses generated in relation to performing an activity if the law does not stipulate otherwise. According to paragraph two, the regulations on the taxation of legal entities are used to assess revenue and expenses if this is not stipulated otherwise by law. More about the taxation of legal entities is explained in the continuation under 2.2.

The tax base for income from business activity is established on one of the following methods:

– by considering actual revenue and expenses, or

– by considering lump-sum expenses.

More about income taxation is available on the FURS website: <http://www.fu.gov.si/fileadmin/Internet/Davki_in_druge_dajatve/Podrocja/Dohodnina/Dohodek_iz_dejavnosti/Opis/Podrobnejsi_opis_1_izdaja_Brosura_o_dohodku_iz_dejavnosti.pdf>.

A natural person performing a business activity is obliged to pay personal income tax on income from business activity, and to calculate and pay social security contributions. Details can be found on the FURS website for a [self-employed person](http://www.fu.gov.si/fileadmin/Internet/Davki_in_druge_dajatve/Podrocja/Prispevki_za_socialno_varnost/Opis/Podrobnejsi_opis_3_izdaja_Placevanje_prispevkov_za_socialno_varnost_za_zavarovance_-_samozaposlene_osebe.pdf) and for [a person performing a business activity as a supplementary job.](http://www.fu.gov.si/fileadmin/Internet/Davki_in_druge_dajatve/Podrocja/Prispevki_za_socialno_varnost/Opis/Podrobnejsi_opis_7_izdaja_Prispevki_za_osebe_ki_opravljajo_dejavnost_kot_postranski_poklic.pdf)

2.1.3 Examples

1. A natural person invested part of his/her savings in the purchase of virtual currencies. The person traded in virtual currencies actively on a daily and weekly basis, or for a total of 107 trading days, and made 1,020 orders for purchase and sale in one year. The value of transactions carried out on virtual currencies markets in current prices exceeded EUR 1 million; the average portfolio value [(final + start value)/2] in that period amounts to EUR 200,000.

*The number of days when the taxable person engaged in trading in one year, the number of realised orders carried out by the taxable person in one year, the value of realised transactions in that period, and the average value of the virtual currencies portfolio show that the generated income can be considered as income from the performance of a business activity. The person generated this income by regular and permanent trading (permanent, active, independent and autonomous operation, focused on acquiring profit or income).*

1. A natural person actively trades in virtual currencies markets. In one year, the person traded on 103 trading days in those markets. The average portfolio value [(final + start value)/2] in that period amounted to EUR 210,000. At the same time, the natural person is (informally) a part of an organised group of people who willingly distributed individual work tasks (e.g. monitoring individual segments of the virtual currencies market). They exchange knowledge, data and information they acquired or are cooperating in another way (in business) for the purpose of generating profits from trading.

*The number of days when the taxable person engaged in trading in one year, the average value of virtual currencies portfolio and the existence of organisational structure intended for achieving high success rates in trading show that the generated income can be considered as income from the performance of a business activity. The person generated this income by regular and permanent trading (permanent, active, independent and autonomous operation, focused on acquiring profit or income).*

1. A natural person traded on the stock exchange. He placed 1,080 orders for transactions on the virtual currencies stock exchange in one year. The total value of all transactions of the natural person on virtual currencies markets exceeded EUR 1 million. The person invested in specialised software and other equipment and/or in the acquisition of information, knowledge and business connections for trading in virtual currencies.

*The number of realised orders carried out by the taxable person in one year, the value of realised transactions in one year, investments in equipment and/or in the acquisition of information for trading purposes show that the generated income can be considered as income from the performance of a business activity. The person generated this income by regular and permanent trading (permanent, active, independent and autonomous operation, focused on acquiring profit or income).*

*In examples 1 to 3, the generated income can be considered as income from the performance of a business activity. The person must register an appropriate activity, document its business events, and keep proper accounting books in accordance with the standards of accounting at the latest when the circumstances of permanent and regular trading are evident.*

1. A natural person bought virtual currencies in 2015. The value of purchases in 2015 totalled EUR 50,000. The person made more than 950 orders for purchases of virtual currencies. The total number of days when the orders were carried out exceeded one third of the year. The natural person did not trade with virtual currencies in his portfolio in the following two years. The currencies were kept as an investment. In 2018, the natural person sold the virtual currencies, and the total value of sales amounted to EUR 250,000, whereby the person made 985 orders for the sale of virtual currencies. The total number of days when the orders were carried out was greater than 100.

*The natural person in this case did not carry out a business activity by virtual currencies trading, although in 2015 this person made a large number of orders for purchases of virtual currencies (950) in the period of one third of the year, and in 2018 the person made 985 orders for sales in the period of one third of the year. In 2015, the natural person purchased virtual currencies, after two years, i.e. in 2018, the person sold them, meaning that the natural person did not trade actively (did not make any sales or purchases in 2016 and 2017) which would indicate the performance of a business activity. The purchases of virtual currencies were not made for the purpose of generating profits by exploiting short-term fluctuations in virtual currencies prices, but for long-term investment purposes. The value of realised orders of virtual currencies in 2018 amounted to EUR 250,000, which, along with other circumstances, is not considered performing business activity by trading in virtual currencies.*

1. A natural person invested EUR 500,000 in crypto tokens in 2017. She/he made 20 orders in ten trading days. After a few months, the natural person sold the purchased crypto tokens and obtained EUR 1,500,000. Sales were made in 10 trading days with 20 orders. This natural person did not make any other purchases and sales of virtual currencies. The person did not invest any funds for acquiring information or knowledge for realising the mentioned transactions.

*In this case, the natural person did not perform business activity by trading with crypto tokens, although the value of trades made in trading in crypto tokens in a one year period was considerable (EUR 2,000,000), and the average value of virtual currencies portfolio in a year amounted to EUR 1,000,000. The natural person did not achieve this with a larger number of realised orders, since they carried out the latter only via 40 orders in 20 trading days, meaning that trading was not implemented continuously, but was a single venture. The natural person did not invest funds for acquiring information and knowledge for the realisation of this trade, and implemented purchases and sales independently.*

1. A natural person generated income from virtual currency mining over the entire year in the amount of EUR 3,000, e.g. EUR 250 per month. This person purchased a computer that is also capable enough for mining, and it is also used for personal needs. The natural person did not invest in dedicated equipment or other means to perform an activity, and did not invest in the acquisition of information, knowledge and technologies. The person performed mining activities alone, not in an organisation in which several persons would distribute tasks between themselves.

*In this case, income which is generated by the natural person in the form of a virtual currency or "mining" is taxed as other income as per Article 105 of the ZDoh-2, and does not involve the performance of a business activity. The natural person did not invest in the purchase of dedicated mining activity, and they did not invest in acquiring knowledge or in education in the field of virtual currency mining.*

1. A natural person generates income from virtual currency mining over the entire year in the amount of EUR 24,000. The natural person mines continuously and independently throughout the entire calendar year. They dedicate most of their time to monitoring the situation in the market and to the profitability of mining an individual virtual currency. For mining needs, the person invested in the purchase of dedicated equipment, i.e. a computer with sufficient power for mining. The natural person also invested in the acquisition of information and education and used the latter for mining activities.

*In this case, it can be determined on the basis of described facts and circumstances that the natural person performs business activities by mining virtual currency, because it mines continuously, independently and autonomously during the entire year, where the amount of mined virtual currencies is substantial. For efficiency purposes, the natural person invested in the purchase of dedicated equipment and in acquiring information which was used for mining and generating income in the form of virtual currencies.*

We would like to emphasise in connection with mining or transaction confirmation cases (hereinafter referred to as "mining") and in the case of virtual currency trading that the age of the individual is not relevant for determining the nature of income, because the income is treated by content and not by the features of the economic carrier for the purposes of taxation. Also irrelevant are the manner in which an individual becomes an owner of a computer and the purpose of purchasing a computer used for mining. The purpose for which the computer is used is important.

1. A natural person mined the virtual currency, which was at time of mining worth EUR 1,000. After six months, the natural person sold the virtual currency for EUR 1,300.
2. *If the virtual currency was generated by mining by a natural person who does not carry out mining within the scope of an activity, the generated income upon the creation or mining of virtual currencies is taxed in accordance with the* [*ZDoh-2*](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697) *as other income as per Article 105 of the ZDoh-2. On the basis of point 1 of Article 32 of the ZDoh-2, personal income tax is not paid on the disposal of such virtual currency.*
3. *If a natural person who mines within the scope of a business activity generated the virtual currency, the latter is considered entirely as income from a business activity. Until disposal, and upon the disposal of, a virtual currency, potential revenue or expenses are included in the tax base according to the general regulations on the taxation of activities, i.e. depending on the accounting treatment of business events.*
4. A natural person, agent or manager trades in virtual currencies for the account of other persons – clients or investors. They charge for such services in the form of a commission for transactions or in other ways.

*When a natural person trades in virtual currencies for payment (in any form) and/or carries out other similar services for the account of third persons, this is considered the performance of intermediation activities. The agent's income is the payment for the service performed, not gain generated by virtual currency trading.*

1. A parent who is not skilled in virtual currencies trading asks a son, who is able to trade, to buy virtual currencies for her/him on the stock exchange in the amount of EUR 1,000 as an investment. The son purchases the latter in his own name and for the third person's account. The son also occasionally (80 days in a year) invests in the purchase of virtual currencies for the purpose of generating gain by exploiting short-term fluctuations in virtual currencies prices. He makes 700 orders for purchases and sales in a year; the average value of his portfolio is EUR 30,000.

*This case does not involve intermediation activities, since the son does not carry out purchases and sales for third persons continuously and for payment. He is also not offering his services on the market. The son does also not carry out the activity of virtual currency trading, regardless of the fact that he makes a large number of purchases and sales of virtual currencies in his own name and for his own account, but does not actively trade in them, and he does also not carry out this activity continuously, which is reflected in the smaller number of trading days.*

*While assessing if the case involves agent activity performance, primary focus is put on general assumptions of an activity, whereby, besides general trading circumstances, special circumstances are important, such as the management of a third party's assets and e.g. advertising of trading activities.*

1. How are airdrops taxed when a certain quantity of a virtual currency is received in exchange for keeping certain virtual currencies? How are Bitcoin Cash, Bitcoin Gold etc. which the owners received treated from the aspect of tax at Bitcoin split?

*Income generated by a natural person on the basis of so-called airdrops, whereby a certain quantity of another virtual currency is received in exchange for ownership or keeping of a certain virtual currency, or where a Bitcoin owner receives Bitcoin Cash, Bitcoin Gold at Bitcoin split, is according to Article 105 of the ZDoh-2 considered as other income from which personal income tax is calculated and paid at a 25% rate, if the natural person does not generate such income within the scope of performing an activity. The income amount in euros is determined by considering the value of the airdrop or the virtual currency in euros at the time of the receipt of the income.*

*As per Article 15 of the ZDoh-2, the income of a natural person that was acquired or generated in the tax year equalling the calendar year is taxed. Income comprises all income types and profits, regardless of the type, if the law does not stipulate otherwise. Income is any payment or receipt of income, regardless of the form in which it was paid or received. Income received in kind is determined on the basis of a comparable market price, if the law does not stipulate otherwise. Income is acquired or generated in the tax year when it is received if the law does not stipulate otherwise. It is considered that income is received when it is paid to a natural person or provided to the natural person in another way.*

*If a taxable person receives one virtual currency unit via an airdrop and within the scope of carrying out a business activity, the value of such virtual currency increases the tax base of personal income tax (prepayment) on income from business activity or corporate income tax. Personal income tax is increased in accordance with the accounting treatment regulations.*

2.2 Tax treatment as per the Corporate Income Tax Act – ZDDPO-2

As per the [Corporate Income Tax Act (ZDDPO-2)](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687), profit established in accordance with the provisions of the ZDDPO-2 (paragraph one of Article 12) is the tax base for a resident and non-resident in respect of business performed either in or through a business unit in Slovenia. Article 12 of the ZDDPO-2 further determines that the profit is a surplus of revenue over expenses as per this Act. When establishing the profit, the revenue and expenses determined in the profit and loss statement or the annual report corresponding to the profit and loss statement, are taken into account subject to the law and the accounting standards established on the basis thereof, unless provided otherwise in the ZDDPO-2.

According to the aforementioned facts, the general provision of Article 12 of the ZDDPO-2 relating to the rules of accounting applies to establishing the tax base.

The Slovenian Institute of Auditors, competent for interpreting Slovenian Accounting Standards, defined in its publication SIR\*IUS 2015, that the possession of Bitcoins and other virtual currencies in business ledgers must be reported as financial investments valued at fair value through the profit and loss statement. Therefore, they must be assessed on the balance sheet cut-off date according to the published exchange rate, and the difference from their book value must be reported among financial revenue or financial expenses.

If the published virtual currency rates differ significantly between the stock exchanges where they are mainly traded, the weighted average must be calculated, whereby data reflecting the importance or depth of an individual market is used as the weighting coefficient, e.g. the volume of trades made with the individual virtual currency on an individual stock market in the past 12 months.

The accounting treatment of assets collected due to ICO projects has not been explained by competent institutions, especially not from the aspect of time-related deferral of revenue. The Financial Administration of the Republic of Slovenia acts according to the current provisions of the [Slovenian Accounting Standards](http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG4192)  SRS 11 and SRS 15.

3.0 Tax treatment from the aspect of the Value Added Tax Act – ZDDV-1

3.1 Commission or payment for exchanging traditional currencies for units of any virtual currency considered as a means of payment

The commission or payment for exchanging a traditional currency for a virtual currency or vice versa is exempt from VAT in accordance with point 4d) of Article 44 of the [Value Added Tax Act – ZDDV-1](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4701).

Detailed information:

The Court of Justice of the European Union in case [C-264/14](http://curia.europa.eu/juris/liste.jsf?language=sl&jur=C,T,F&num=C-264/14&td=ALL) stated that the purpose of exempting financial transactions laid down in Article 135(1)(e) of the VAT Directive is especially to eliminate problems connected with determining the tax base and the VAT amount that may be deducted, and which occur within the taxation of financial transactions. These problems can be the same in a special case of transactions such as exchange transactions, regardless of whether a transaction involves an exchange of traditional currencies that are usually exempt from VAT on the basis of Article 135(1)(e) of the VAT Directive, or an exchange of these (traditional) currencies into virtual currencies, which, although they are not a legal means of payment, are a means of payment accepted by the parties in a certain transaction. Arising from the aforementioned judgement, the commission that is charged for purchasing virtual currencies in exchange for euros must be exempt from VAT payment in accordance with point 4d) of Article 44 of the ZDDV-1.

3.2 Virtual currency mining

Virtual currency mining is a transaction not subject to VAT. Virtual currency mining does not have specific clients and new virtual currencies are automatically created by the network.

The confirmation of transactions carried out by miners during virtual currency mining for a reward in the form of a commission is not a service subject to VAT if the commission is given voluntarily by the person who carries out a transaction with a virtual currency (the transaction would be confirmed even without commission), and if the service from the miner’s point of view involves confirmation of the virtual currency that does not give the miner any rights to receive payment for the service.

If, each time a transaction is confirmed, the miner receives new virtual currencies or commission (obligatory), the service would be provided for payment and as such would be subject to VAT. This case involves the service of transaction confirmation which is exempt from VAT in accordance with point 4c) of Article 44 of the ZDDV-1 as a transaction in connection with payments and orders.

Detailed information:

It is determined in Article 3 of the ZDDV-1 that the supplies of goods or performing of services carried out by a taxable person in the course of its economic activity on the territory of the Republic of Slovenia for payment, is subject to VAT.

According to Article 6 of the ZDDV-1 the supply of goods is determined as the transfer of the right to dispose of tangible property as the owner. The supply of goods also comprises the transfer of ownership of property against payment of compensation, in pursuance of the law or in pursuance of a decision of a state authority; the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment; transfer of goods pursuant to a contract under which commission is payable on purchase or sale.

In accordance with Article 14 of the ZDDV-1, the supply of services is any transaction which does not constitute a supply of goods. The supply of services may consist, inter alia, of the assignment of property rights, the obligation to refrain from an act, or to tolerate an act or situation, the performance of services in pursuance of the law or in pursuance of an order made by a public authority.

Virtual currency mining [[6]](#footnote-7) requires hardware and software. This is a procedure whereby computers carry out calculation procedures to process orders, protect the network and provide for the agreement and harmonisation of all system participants.

Blockchain is based on the division of validating transactions. Someone must verify and then validate all transactions. This work is done by many computers connected into the network that enable virtual currencies to be reallocated from one wallet to another.

New transactions are validated by way of miners including them in a new block with mathematical evidence of the work done. The evidence of work is difficult to create because the only way is to test billions of calculations per second. This ensures that miners carry out such calculations before the network accepts their blocks and before they pay out rewards to themselves. As the number of miners increases, the network automatically increases the required complexity of work required to create new blocks; in this way, the average time for a block search is always 10 minutes. Consequently this also means that mining is quite a competitive business in which no individual miner can decide by himself what to include in the blockchain.

Transactions are recorded in a block when one of the active computers in the network resolves a cryptographic riddle and thus fulfils the requirements of the network to ensure the blockchain is highly secure. Therefore, the transaction is validated and recorded in a blockchain that cannot be modified later. Thus the system is transparent and the possibility of corrupt actions is expected to be minimal.

Since the validation of a blockchain is a very complex computing operation, most virtual currencies use graphic cards or dedicated hardware that needs a lot of electric power. Therefore, miners or transaction validators must be rewarded in some way. Most transactions demand a commission for inclusion in a block; the collected commissions usually belong to miners. Virtual currencies are designed in such a way that a certain quantity of new virtual currency units is created by each validated block.

The mining itself is a competitive lottery and each individual miner has difficulties adding consecutive blocks to the blockchain. Such a network remains neutral due to the fact that no individual participant has the possibility to block individual transactions or modify previous blocks in the chain with the intention to delete the transactions and consequently to deceive their recipients. Due to the legality of the blockchain technology, the complexity of deleting past transactions is increasing exponentially with the creation of new blocks, as the same quantity of blocks that follow a block with a certain transaction has to be created.

The financial motivation for mining is the commission that users pay when they send orders for mining and new virtual currencies that are generated according to a predetermined formula.

According to the transaction description, we could assume that mining is actually a supply of services. Some other conditions further specified by the Court of Justice of the European Union must also be fulfilled in order for a service or a transaction to be subject to VAT. One of the conditions is that there shall be a legal relationship between the provider and the recipient of the service wherein the performance is reciprocal and the remuneration received by the provider of the service represents the value given in return for the service received (see mainly the judgement of the Court of Justice of the European Union in case no. C-16/93 (R. J. Tolsma)). The consumption or use of a service is required for a service or payment to be the subject of VAT.

According to the description of virtual currency mining, no situation can arise whereby a legal relationship would be formed between the provider of the service and the recipient, and there is no reciprocal performance such as is mentioned in the previous paragraph. Virtual currency mining does not have specific clients, because new virtual currencies are automatically created by the network.

If there is no legal relationship and no reciprocal performance, the supply is not subject to VAT.

A client who submits an order for the payment or reallocation of a virtual currency does not know which miner will validate the transaction, and has no option to complain against that miner if something goes wrong. There is no contractual commitment for the payment of commission for the transaction and miners are not entitled to receive such commission. The commission for validating a transaction may be compared to a "tip" for the miner which does not constitute payment for a service and as such is not subject to VAT.

If a miner were to receive new **virtual currencies** that are automatically generated in the system or a commission each time a transaction is validated, the service of validating transactions would be provided against payment, as the miner would not validate any transaction without receiving a certain type of payment. In accordance with Article 36 of the ZDDV-1, the taxable amount includes everything that constitutes the payment obtained, or to be obtained, by the supplier or by the provider from the buyer, the client or a third party for these supplies. This may indicate that the new **virtual currencies** received by the miner via the system are deemed to be the payment for the miner's validation service performed.

In the latter case the service of transaction validation is exempt from VAT payment in accordance with point 4c) of Article 44 of the ZDDV-1 as a transaction connected with payments and orders. In case no. C-2/95 (SDC), the Court of Justice of the European Union judged that payment services must have the effect of a transfer of funds and must cause a change in the legal and financial positions of the parties involved. According to the description of mining it should be understood that by validating transactions miners perform a transaction connected with payments or transfers.

3.3 VAT deduction for the purchase of software and hardware used for virtual currency mining

The purchase of software and hardware used for virtual currency mining usually does not entail the right to VAT deduction. The right to VAT deduction is provided only in cases when the validation of transactions with virtual currencies could be exempt from VAT on the basis of point 4c) of Article 44 of the ZDDV-1, and if transaction validation is provided to clients established outside the Union.

Detailed information:

Article 63 of the ZDDV-1 stipulates that in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person and for listed transactions that are exempt from VAT, the taxable person is entitled to deduct VAT from the VAT which she/he is liable to pay or has paid in respect of goods and services supplied to her/him. On the basis of point c) of the paragraph two of Article 63 of the ZDDV-1 the taxable person has the right to deduct VAT also from transactions exempt from VAT in accordance with points 4a) to e) of Article 44 of the ZDDV-1 if the client is established outside the Union.

In relation to the tax treatment of **virtual currency** mining transactions that are not subject to VAT, the taxable person has no right to deduct VAT from mining; the right to a deduction would exist only in cases of performing exempt transactions of **virtual currency** validation to clients established outside the Union.

3.4 Services related to the brokerage services provided by exchange platforms

Services provided by bitcoin exchange platforms or exchange platforms of other virtual currencies for buyers and sellers of virtual currencies are connected to brokerage services. Exchange platforms enable direct trading among **virtual currency** users by offering a virtual "market", whereby the platform may charge for the use of a programme. The services of exchange platforms which operate as brokers are subject to VAT.

Detailed information:

Virtual currency exchange platforms which operate as brokers do not provide exchange services, although their infrastructure enables exchange. It seems that the use of such exchange platforms does not comprise any rights or obligations of the platform in connection to the transfer of virtual currencies itself. Therefore, the provision of services by online platforms that enable peer-to-peer trading in virtual currencies is not sufficiently related to the provision of payment services for them to be considered as transactions involving a currency or a financial service.

Consequently, performance of this type of services for payment is subject to VAT.

3.5 Electronic wallets services

Electronic (digital) wallets are programme platforms that are usually provided by third parties and can be kept on the user's computer without an e-connection, although they can be kept or accessed via an internet connection. Digital wallets enable users to mutually send or receive virtual currencies. Digital wallet services performed for payment are exempt from VAT payment on the basis of point 4d) of Article 44 of the ZDDV-1.

Detailed information:

Currency-related transactions must be closely connected with the currency supply "per se" in order to be exempt from VAT. It seems that digital wallet services are directly connected with means of payment as per point 4d) of Article 44 of the ZDDV-1 – more specifically, with providing virtual currencies for disposal to users and with the generation of rights and obligations in connection with means of payment. Therefore, digital wallets services are exempt from VAT payment.

3.6 VAT treatment of crypto tokens

If a start-up company only issues a crypto token when it is still not known for which products and services the token could be exchanged in the future, the condition of direct connection between the performed service and received counter-value is not fulfilled yet and the transaction of token issuance is not subject to VAT. When the crypto token is used to pay for individual products and services, these transactions will be subject to VAT (considering the nature of the supply of goods or services, transactions will be taxed at the prescribed tax rate or exempt from VAT payment).

If a certain functionality is already installed in issued tokens – meaning that by purchasing the tokens, supporters acquire the option to use a product or service (in the initial phase, supporters receive them at a lower price than users who buy them later) or they can be considered as a security that generates some kind of yield for investors (payment of dividends or distribution of profit from operations), or they can even have a hybrid character (the functionality and character of a security) – and in such a context, a direct connection between the performed service and received payment can be determined, then the token transaction is subject to VAT, whereby the taxation depends on the character of an individual token and is assessed on a case-by-case basis.

Detailed information:

A crowdfunding model based on an initial coin offering (ICO) is implemented via the issuing of the crypto token in such way that a start-up company issues its own crypto token and offers it to its supporters. They transfer the generally accepted virtual currencies (such as Bitcoin or Ethereum, which can be exchanged for fiat money via the digital asset exchange) to the e-wallet of a start-up company and in exchange they receive a crypto token issued by the start-up company. Supporters can trade in the issued crypto token also on the secondary market (i.e. they can be traded on a digital asset exchange and exchange with Bitcoin, Ethereum and other existing virtual currencies). The basic function of a token in the continuation is the payment for services of the present start-up company.

When a crypto token is exchanged for Bitcoin or Ethereum, the token does not function as a means of payment. When supporters trade in crypto tokens also on the secondary market, tokens are used as a means of payment. If commission is charged for exchanging a token for another virtual currency, this commission may be exempt from VAT payment in accordance with point 4d) of Article 44 of the ZDDV-1.

4.0 Treatment of crypto tokens as per the Fiscal Verification of Invoices Act – ZDavPR

The Fiscal Verification of Invoices Act – ZDavPR determines the obligation of fiscal verification of invoices issued by taxable persons in accordance with the regulations governing value added tax, and for which they receive payment in one of the cash forms as determined in the ZDavPR. In accordance with point 4 of the ZDavPR, payment in cash is any payment that is not directly transferred from the buyer's bank account to the seller's bank account, i.e. this involves also payment with crypto tokens or other virtual currencies.

Detailed information:

The obligation to issue an invoice for VAT purposes is determined in paragraph one of Article 81 of the ZDDV-1, i.e. for all supplies of goods or services and for received prepayment for goods or services. The exceptions from this obligation are regulated in paragraphs four and five of Article 81 of the ZDDV-1 and in Article 143 of the Rules on the implementation of the Value Added Tax Act – PZDDV, including also for the performance of financial transaction services.

In specific cases when a crypto token has various functions, various obligations of taxable persons arise in connection with the issue and, consequently, fiscal verification of invoices, which are described in the continuation.

* When a start-up company merely issues a crypto token and it is not known yet for which products and services such a token will be exchanged in the future (the token does not function as a means of payment), there is no obligation to issue an invoice in accordance with the ZDDV-1 and consequently there is no requirement for the fiscal verification of invoices.

* If a crypto token is exchanged for another virtual currency, and commission is charged for this exchange, such an exchange is deemed as the performance of financial transaction services that are exempt from VAT payment (in accordance with point 4d) of Article 44 of the ZDDV-1), which does not mean that there is no obligation to issue an invoice in connection with such transactions. When a taxable person (wallet custodian) charges a commission for exchange services, an exception from the obligation to issue an invoice for exempt financial services may be claimed (and consequently there is no requirement for the fiscal verification of invoices) under the prescribed conditions in the following cases:
* on the basis of paragraph four of Article 81 of the ZDDV-1, the taxable person may claim an exception to the obligation to issue an invoice for financial transaction services performed to a taxable person in another Member State in which these services are exempt from VAT payment;
* on the basis of paragraph five of Article 81 of the ZDDV-1, this person may claim the exception to the obligation to issue invoices for exempt financial services when the conditions as per paragraphs four and five of Article 143 of the PZDDV are met, i.e.: if another document is massively issued for these services (e.g. calculation of interest and commissions) if the services are performed on the territory of the Republic of Slovenia or outside the Union, and if the data about the transactions are provided in appropriate analytical records.

When the taxable person does not fulfil the prescribed conditions for an exemption from issuing invoices, the person is obliged to issue an invoice and make a fiscal verification in accordance with the ZDavPR.

When a crypto token is used to pay for individual products and services (the token is used as a means of payment), the taxable person is obliged to issue an invoice in accordance with paragraph one of Article 81 of the ZDDV-1 and verify this invoice paid in one of the cash forms fiscally in accordance with the ZDavPR.

5.0 Tax treatment from the aspect of the Financial Services Tax Act – ZDFS

Financial services exempt from VAT payment are taxed with financial services tax (FST) in accordance with the Financial Services Tax Act or the ZDFS. On the basis of point c) of Article 3 of the ZDFS transactions including negotiation concerning deposits and current or transaction accounts, payments, transfers, debts, cheques and other payment instruments are subject to FS taxation. As per point d) of Article 3 of the ZDFS, transactions, including negotiation concerning currency, bank notes and coins used as legal tender are also subject to FST. In accordance with Article 6 of the ZDFS, the tax base is the fee (commission) received by a taxable person as payment for the performed financial service.

Provision of point d) of Article 3 of the ZDFS refers to a legal means of payment, but this provision must be interpreted with consideration of the provision of point 4d) of Article 44 of the ZDDV-1, as explained in Article 135(1)(e) of the VAT Directive in the case C-264/14 (David Hedquist). Namely the ZDFS determines the obligation of FST payment for financial services which are exempt from VAT payment under the act governing the VAT system.

1. As capital per Points 2 and 3 of Article 93 of the ZDoh-2 are considered debt securities and shares in companies, cooperative societies or other types of organisations and investment coupons. [↑](#footnote-ref-2)
2. http://www.fu.gov.si/fileadmin/Internet/Davki\_in\_druge\_dajatve/Poslovanje\_z\_nami/Davcni\_postopek/Opis/Podrobnejsi\_opis\_1\_izdaja\_Placnik\_davka.pdf [↑](#footnote-ref-3)
3. When a legal entity or a natural person receives free tokens in connection with the performance of an activity, such income is considered in accordance with the rules on taxation of income from business activity or on taxation of income of legal entities. [↑](#footnote-ref-4)
4. Orders for the purchase or sale of an individual virtual currency is often realised in the form of major transactions in the market. An order is also considered as realised if it is only partly implemented. [↑](#footnote-ref-5)
5. The average value of virtual currencies portfolio in one year = (value of the virtual currencies portfolio at the beginning of the year + the value of the virtual currencies portfolio at the end of the year)/2; [↑](#footnote-ref-6)
6. Mining is further described and summarised on the basis of articles published on the following websites: <https://bitcoin.org/sl/vprasanja-in-odgovori>, <https://cointelegraph.si/news/rudarjenje-kriptovalut> [↑](#footnote-ref-7)