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Germany

Bitcoin, Blockchain Gain in Germany, But Lack Stability

By Jabeen Bhatti

Countries around the globe are adjusting their taxation and regulation schemes in line with the growing prominence of cryptocurrencies like Bitcoin in personal and business transactions.

But despite steps to partially legitimize and regulate the buying, selling, and exchange of virtual currencies in Germany, Austria, Italy, and elsewhere, the technology is still fraught with issues that facilitate fraud and make it difficult to track down non-payment, attorneys told Bloomberg BNA.

Snapshot

- Authorities hesitate to move to full-scale legitimacy before technology matured
- Technology still fraught with issues that facilitate fraud
- Difficult to track non-payment

Still, authorities are excited about the prospect of Bitcoin and its blockchain technology even as they hesitate to make leaps and bounds toward full-scale legitimacy before the technology has matured, Andreas Fillmann, a partner with Squire Patton Boggs in Frankfurt, told Bloomberg BNA Oct. 4.

“It's definitely a great pioneer for future technology, and it goes along with many changes in the financial industry,” he said. “Everybody's really euphoric about using it.”

However, “it needs to be more efficient in terms of market regulation, and the risk of non-payment by counterparties also has to be reduced,” he added.

New Currency, New Classifications

Bitcoin, introduced in 2009, was the first international application of a cryptocurrency, or a form of money that harnesses digital cryptography to control creation and taxation—rather than a centralized, national financial authority.

Individual Bitcoin users join a public ledger called the blockchain, which tracks encrypted transactions via a user's specific virtual signature. As of April 2017, the total value of all existing Bitcoins exceeded $20 billion, with millions of dollars in the currency being exchanged daily, according to Bitcoin's official webpage.

As the virtual tender grows in prominence, countries have been working toward defining the scope to which they want to legitimize the currency.

In Austria, the Federal Ministry of Finance issued a set of guidelines July 25 for the taxation of Bitcoin and all other virtual currencies. While not considered a legal tender, cryptocurrencies are treated as specialty assets, meaning they're taxed as an intangible asset, like a patent or trademark.

In Germany, the same rules apply, according to a Dec. 19, 2013, regulatory classification issued by the country's Federal Financial Supervisory Authority (BaFin).

Such a classification means that profits generated are subject to income tax or corporate tax, depending on the class of the company registered, or the amount of the transaction afforded to a private individual, Thomas Busching, a tax adviser and partner with Squire Patton Boggs in Frankfurt, told Bloomberg BNA Sept. 29.

“If you look on the tax side, it depends on whether this is a personal or a business asset,” Busching said. “The big consideration is whether this is a business asset, and thus subject to taxation, or a personal asset, where most likely it would not be subject to income tax.”

VAT Question

The value-added tax treatment of Bitcoin also “seems to be settled,” Hans-Martin Grambeck, a partner specializing in digital VAT with Nesemann & Grambeck tax advisers in Norderstedt near Hamburg, told Bloomberg BNA in an Oct. 2 email.

That's because the European Court of Justice decided Oct. 22, 2015, that Bitcoin and other virtual currencies are acknowledged as legal tender specifically for VAT purposes in money exchanges. As such, the exchange of currencies for units of Bitcoin is exempt from VAT in the European Union, according to the court. Nations like Austria and Italy have already embraced the decision with national resolutions.

Such a designation on the European level could lead to more legitimacy for cryptocurrencies in Germany and elsewhere, Oliver von Schweinitz, a partner with Hamburg-based GGV law firm, told Bloomberg BNA Oct. 2.

“Before, you wouldn't stand any chance for Bitcoin currency converters to be established in Germany,” he said, referencing the fact that Bitcoin wasn't treated as an official currency for such purposes in Germany before the court's decision. “But now you stand some chance.”

Problems, Despite Hype

While such steps could be viewed as Bitcoin's transcendence to full-scale legitimacy, Von Schweinitz told Bloomberg BNA that governments’ piecemeal regulations on Bitcoin and other virtual currencies are purely reactionary. The currency still lacks prevalence and stability in the marketplace.

“Bitcoin has been moving up and down, the vaults are unsafe and future acceptance isn't safe—it doesn't have stability,” he said. “To me, it's a purely speculative form of investment.”

Of greater significance to specific markets is the blockchain technology that serves as a framework for Bitcoin transactions, which could be used in a variety of sectors like financial security and real estate, Fillmann told Bloomberg BNA.

Still, discrepancies across regulatory systems in different countries make the full-scale implementation of the technology difficult, especially considering that tracking down fraudulent transactions is like finding a needle in a haystack, he added.

“There's always liability risk based on the blockchain technology if it is provided by an unregulated, non-supervised provider, and the same applies to Bitcoin,” Fillmann said. “What happens later on if the provider goes insolvent and you try to get your money back from the insolvent company in a totally unknown jurisdiction?”

If such security issues were altered to make the system more transparent, “that would change the whole atmosphere,” Von Schweinitz said.

“Still, I wouldn't recommend financial institutions to actively engage in vault facilities, given that there's so much potential opaqueness and financial crime risk at hand,” he said.

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