

FEDERAL LAW GAZETTE OF THE REPUBLIC OF AUSTRIA

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Part II

455. Ordinance: Cryptocurrency Ordinance (*Kryptowährungsverordnung – KryptowährungsVO*)

455. Ordinance of the Federal Minister of Finance for determining the tax data of cryptocurrencies (Cryptocurrency Ordinance - *KryptowährungsVO*)

Based on § 27a para. 4 and § 93 para. 4a no. 1 of the Income Tax Act 1988 – EStG 1988, Federal Law Gazette No. 400/1988, last amended by the Federal Law Gazette I No. 194/2022, the following is decreed:

Form of transmission of tax data

§ 1. (1) If the withholding agent (*Abzugsverpflichteter*) in case of income pursuant to § 27 para. 4a EStG 1988 does not know the actual time of acquisition or the actual acquisition costs, the taxpayer can disclose this tax data in accordance with the following provisions.

(2) The following tax data are to be disclosed to the person liable to deduct:

1. the date of acquisition of the cryptocurrency or, if acquired sequentially, the period of acquisition;
2. the acquisition costs of the relevant cryptocurrency applying § 2;
3. the information as to whether a tax-neutral exchange within the meaning of § 27b para. 3 no. 2 second sentence EStG 1988 has taken place since the cryptocurrency in question was acquired.

(3) The withholding agent (*Abzugsverpflichteter*) can specify the content and structure of the tax data to be transmitted. The party liable to deduct can permit transmission by external service providers. This does not apply if the party obliged to deduct has information in advance that leads to justified doubts about the information from the external service providers mentioned.

(4) The withholding agent (*Abzugsverpflichteter*) must check the plausibility of the information provided by the taxpayer, whereby a standardized, automated check can be carried out. The withholding agent (*Abzugsverpflichteter*) may request further proof of the tax data from the taxpayer if a standardized check has not been carried out or has not been carried out successfully.

Moving Average Price (*Gleitender Durchschnittspreis*)

§ 2. (1) For all units of the same cryptocurrency located at a cryptocurrency address (*Kryptowährungsadresse*), the moving average price in euros is to be used as the acquisition cost both for the purposes of capital gains tax deduction and as part of the assessment for acquisitions in chronological succession. If the cryptocurrencies are kept on a cryptocurrency wallet (*Kryptowährungswallet*), the moving average price for all units of the same cryptocurrency on a cryptocurrency wallet (*Kryptowährungswallet*) must be used; the reference value (cryptocurrency address [*Kryptowährungsadresse*] or cryptocurrency wallet [*Kryptowährungswallet*]) selected by the withholding agent (*Abzugsverpflichteter*) is always decisive for the assessment.

(2) Acquisition costs recognized in accordance with § 93 para 4a no. 2 EStG 1988 are not included in the moving average price.

(3) When selling cryptocurrencies located on the same cryptocurrency address (*Kryptowährungsadresse*) or cryptocurrency wallet (*Kryptowährungswallet*), in case of doubt, cryptocurrencies pursuant to § 2 shall be deemed to have been sold first.

Grandfathered Assets (*Altbestand*)

§ 3. If there are units of the same cryptocurrency on a cryptocurrency address (*Kryptowährungsadresse*) or cryptocurrency wallet (*Kryptowährungswallet*), not all of which were purchased after February 28, 2021 (old stock), the following applies:

1. The taxpayer can elect which units of cryptocurrency to sell or transfer first or authorize the withholding agent (*Abzugsverpflichteter*) to do so.
2. In case of doubt, the previously acquired unit of cryptocurrency is deemed to have been sold or transferred first.
3. A ranking made as part of the capital gains tax deduction is always also decisive for the assessment.

Assessment of current income from cryptocurrencies

§ 4. (1) In the case of current income from cryptocurrencies (§ 27b para. 2 EStG 1988), the value of the cryptocurrencies obtained at the time of receipt is to be recognized as income and at the same time as their acquisition costs. The value is an existing market value of a cryptocurrency exchange (*Kryptowährungsbörse*). If no cryptocurrency exchange price is available, the market value of a cryptocurrency broker (*Kryptowährungshändler*) should be used. If such a rate is not available either, the rate of a generally recognized web-based list that is independent of the taxpayer and that shows current purchase prices for cryptocurrencies is to be used; the principle of consistency in valuation must be observed. An assessment made as part of the capital gains tax deduction is always also decisive for the assessment.

(2) If, as part of a process, there are inflows of consideration from current income from cryptocurrencies that occur more than three times a month, the value of the cryptocurrency should be the end-of-day price on the first of the month in which the actual inflow occurs, unless the withholding agent (*Abzugsverpflichteter*) carries out a valuation at the actual time of receipt. The valuation made as part of the capital gains tax deduction is always also decisive for the assessment.

Classification as a cryptocurrency

§ 5. In case of doubt, the withholding agent (*Abzugsverpflichteter*) must assume for the purposes of the capital gains tax deduction that it is a cryptocurrency within the meaning of § 27b (4) EStG 1988.

Definitions

§ 6. For the purposes of this Regulation, the term means:

1. “cryptocurrency address (*Kryptowährungsadresse*) “: a unique identifier that represents a possible destination for a cryptocurrency transaction.
2. “Cryptocurrency wallet (*Kryptowährungswallet*)”: a service or an application that manages one or more cryptocurrency addresses (*Kryptowährungsadressen*) as a unit, with no standardized option for exporting the individual cryptocurrency addresses (*Kryptowährungsadressen*).
3. “Cryptocurrency Exchange (*Kryptowährungsbörse*)”: a service provider that offers the exchange of cryptocurrencies into legal tender and vice versa or into other cryptocurrencies, whereby buyers and sellers of cryptocurrencies deal directly with each other under the principles of supply and demand.
4. “Cryptocurrency Broker (*Kryptowährungshändler*)”: a service provider that offers the exchange of cryptocurrencies into legal tender and vice versa, or into other cryptocurrencies, whereby buyers and sellers of cryptocurrencies deal directly with the cryptocurrency broker (*Kryptowährungshändler*).

Effective Date

§ 7. This ordinance goes into effect on January 1, 2023, whereby § 2 applies to all income from realized increases in value of cryptocurrencies received after December 31, 2022. § 4 (2) can already be applied to income received before January 1, 2023.

Bruner