

# Initial coin offerings and VAT



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**My client Bob lives in the UK. He is not a taxable person for VAT purposes. In September 2017, he bought some bitcoins. He is an investor and does not trade in them. He is now considering investing some of his bitcoins in an (as yet to be identified) initial coin offering (ICO) – a wholly digital means of raising finance – subscribed for in bitcoin (or other cryptocurrencies) rather than fiat currencies. Bob has been looking at ICOs based in Switzerland, Singapore and Hong Kong, and wants to know what (if any) VAT issues would arise if he were to proceed with such an investment.**

As a bitcoin investor (rather than a trader), Bob would, whenever he disposes of his bitcoins, only be exercising his right *qua* owner; therefore, when he invests in the ICO, he himself would not be making any supplies for consideration for VAT purposes (*Wellcome Trust* (Case C-155/94)). The question is whether the issuer will be making any supplies to him, and if so, whether those supplies will be subject to VAT.

An ICO is often described (not entirely accurately) as a digital initial public offering (IPO), where instead of shares, tokens are issued. However, unlike shares, tokens do not generally represent an equity stake in the project that is the subject of the ICO or yield dividends. The characteristics of tokens vary from ICO to ICO. They may themselves be a new cryptocurrency, or they may confer rights such as the right to:

- share in any future profits from the project;
- vote on specified matters affecting the project; or
- purchase goods or services within the environment created under the project.

The answer to Bob's question depends on the precise nature of the tokens he is acquiring.

The issue of shares or securities for the purpose of raising capital falls outside the scope of VAT (*Kretztechnik* (Case C-465/03)). If, therefore, the tokens are in substance comparable to shares or securities, their issue to Bob should also fall outside the scope of VAT (see, by analogy, *MBNA* [2006] EWHC 2326).

Similarly, if the tokens are themselves a new cryptocurrency, their issue to Bob should be treated in the same

way as any sale of cryptocurrencies; i.e. exempt (where there is a supply for consideration for VAT purposes) (*Hedqvist* (Case C-264/14)).

If, in substance, the tokens do not equate to shares, securities or currency, then (assuming the issuer is a taxable person within the meaning of the Principal VAT Directive (PVD) article 9) their issue would not only give rise to a supply for consideration, the supply is also likely to be taxable for VAT purposes; however, where the only right the tokens confer is a right to payment (e.g. a share in future profits), the supply should be exempt within PVD article 135(1)(d), which applies to 'transactions ... concerning ... payments, transfers, debts'.

Where the tokens confer a number of different rights, the question would also arise as to whether there is only one supply or multiple supplies. The issue of the tokens would be a single composite supply where:

- from the holder's perspective, any of the rights constitutes an aim in itself (with the others being merely means of better enjoying it) (*CPP* (Case C-349/96)); or
- all the rights are so closely linked that they form, objectively, a single, indivisible economic whole that is artificial to split (*Levob* (Case C-41/04)).

If a single subscription amount is payable, that may point to a single composite supply, but it is not determinative – it very much depends on the facts.

Because the tokens are immaterial, their issue would be a supply of services (and not goods (PVD articles 14 and 24)), and the supply would be subject to UK VAT if made in the UK.

Because Bob is not a taxable person

for VAT purposes, he is not a 'relevant business person' (within the meaning of VATA 1994 s 7A(4)). Therefore, *prima facie*, the supply would be treated as made in the country where the issuer belongs (VATA 1994 s 7A). In this case, this would be Switzerland, Singapore or Hong Kong. The position would be different where the issue of the tokens amounts to a supply of 'electronically supplied services' (VATA 1994 Sch 4A para 15). In such a case, the supply would be treated as made in the country where the recipient (Bob) belongs; i.e. the UK (VATA 1994 s 9).

What constitutes 'electronically supplied services' is not defined – only examples are set out in VATA 1994 Sch 4A paras 9(3) and (4). HMRC regards them as: 'e-services which are automatically delivered over the internet, or an electronic network, where there's minimal or no human intervention ... where the [transaction] is essentially automatic, and the small amount of manual process involved doesn't change the nature of the supply from an e-service' (see HMRC's guidance *VAT: businesses supplying digital services to private consumers*, available at [bit.ly/1rfBHPf](http://bit.ly/1rfBHPf)).

The issue of the tokens to Bob would more than likely constitute a supply of 'electronically supplied services' made in the UK. Assuming the issuer does not have any establishments in the EU, it may be required, or it may choose, to register for VAT in the UK pursuant to VATA 1994 Sch 1A or 3B.

Where the tokens confer the right to purchase goods or services, they may amount to 'face value vouchers' (VATA 1994 Sch 10A para 1). If they do, the tax point for the supply would be when:

- Bob's bitcoins are received by the issuer (where the tokens constitute 'single purpose vouchers'; i.e. 'face value vouchers' that confer a right to goods or services of one type only that are subject to a single rate of VAT (VATA 1994 Sch 10A para 7A)); or
- the tokens are 'redeemed' (where they are not 'single purpose vouchers').

(HMRC is currently consulting on changes to the VAT treatment of vouchers in light of Council Directive (EU) 2016/1065.)

In addition to the above, Swiss or Singaporean goods and services tax (GST) may arise as well. (There is currently no VAT or GST in Hong Kong.) Also, should any VAT or GST be payable, whether the cost would be borne by the issuer or passed to Bob will need to be considered by reference to applicable law and the relevant documents. ■