

## BULGARIA

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1. How are crypto assets defined in your jurisdiction?

The Bulgarian legislation does not provide for a specific definition of “crypto assets”, but the Bulgarian Anti-Money Laundering Law (“AML Law”) defines “virtual currencies”. The latter term reflects the definition of cryptocurrencies given by the European Banking Authority and means “a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily pegged to a fiat currency, and does not possess a legal status of currency or money, but is accepted by individuals or legal entities as a means of exchange and which can be transferred, stored and traded electronically”.

When responding to the below questions we assumed that the crypto assets are not structured in a way that would give them characteristics typical to, and ultimately qualify them, as financial instruments under the applicable Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments / MIFID II regulatory framework.

2. What is the legal status of crypto assets in your jurisdiction?

Crypto assets are legal to hold and trade in Bulgaria.

3. Are crypto assets regulated in your jurisdiction?

Currently, Bulgarian law does not provide for specific regulation of crypto assets.

4. If crypto assets are regulated in your jurisdiction, which key regulatory authorities are responsible for the regulations and their enforcement in your

Not applicable.

jurisdiction? How are they regulated?

5. Have specific anti-money laundering measures been introduced in relation to crypto asset activities in your jurisdiction?

Yes. Pursuant to Bulgarian AML Law the local operators of crypto-to-fiat exchanges and providers of custodian wallet services shall apply for registration with the Bulgarian National Revenues Agency (“NRA”) before they commence the operations/provision of their respective services. Other than that, such entities have been expressly included as obliged persons under the EU AML regime and as such shall observe and apply the general AML measures provided in the Bulgarian legislation – for the performance of client due diligence, the establishment of the source of funds and source of wealth of prospective clients, for the performance of UBO identification, transaction monitoring, preparation and filing of suspicious transaction reports with the Bulgarian State Agency for National Security and record keeping.

6. How is the use of blockchain in the financial services sector regulated in your jurisdiction?

The use of blockchain in the financial services sector is not specifically regulated under Bulgarian law. Therefore, providers of financial services are generally free to implement blockchain in their operations (e.g., for record-keeping or otherwise), provided that this does not contradict the respective regulatory regimes applicable to their activities.

7. How are crypto assets taxed in your jurisdiction?

Bulgarian tax legislation does not currently provide for express regulation of the tax treatment of cryptocurrencies, other crypto assets, and transactions with such cryptocurrencies and crypto assets. The main source of information on the position of the Bulgarian tax authorities on the tax treatment of cryptocurrencies, other crypto assets, and transactions with such cryptocurrencies and crypto assets is a few circular letters issued by the NRA on the topic.

At present, Bulgarian tax authorities are making an analogy with financial assets and are taking the position that the tax treatment of cryptocurrencies and transactions with such cryptocurrencies should be subject to the same treatment as financial assets and transactions with such assets.

*Bulgarian withholding tax*

Bulgarian withholding tax is not applied on income realized by Bulgarian tax resident persons. The tax treatment of income realized by Bulgarian tax residents should be considered in the light of Bulgarian personal income tax (for Bulgarian tax resident individuals) and Bulgarian corporate income tax (for Bulgarian tax resident legal entities).

Unless a relevant cryptocurrency is “issued” by a Bulgarian tax resident person, any income realized by a foreign tax resident and arising out of such cryptocurrency would not be considered Bulgaria-sourced and it will not be subject to Bulgarian withholding tax. In other words, to the extent that a cryptocurrency is not “issued” by a Bulgarian tax resident person, Bulgarian withholding tax will not apply to any income realized by a foreign tax resident as a result of the acquisition, holding, exchange, or sale of cryptocurrencies.

#### *Bulgarian personal income tax*

The main legal framework of the taxation of individuals in Bulgaria is provided by the Law on Personal Income Taxation.

While foreign tax resident individuals are subject to taxation with Bulgarian withholding tax only for certain types of Bulgaria-sourced income listed by law (unless a relief is available under an effective double taxation treaty), Bulgarian tax resident individuals are subject to taxation with Bulgarian tax for their worldwide income.

As a general rule, the acquisition and holding of cryptocurrencies do not constitute a stand-alone taxation trigger under Bulgarian law and no personal income tax is levied upon the occurrence of such events.

However, this is not the case with the sale/exchange of cryptocurrencies which may give rise to tax liabilities in Bulgaria (for the purposes of comprehensiveness, other crypto-related activities, such as “mining” may also have Bulgarian tax implications).

According to the case law (circular letters) of the Bulgarian National Revenue Agency, there are two options for treatment of the income realized by Bulgarian tax resident individuals as a result of transactions (sale/exchange) with cryptocurrencies. Which one of these two options will apply would depend on the exact circumstances and in particular – on whether the relevant individual performs such transactions sporadically and as an exception, or often and by way of occupation with a commercial purpose. In case

a Bulgarian tax resident individual carries out transactions with cryptocurrencies sporadically, the income realized as a result of such transactions is treated as income from the disposal of rights over financial assets (due to the fact that – as indicated above – the Bulgarian tax authorities treat cryptocurrencies as financial assets for Bulgarian tax purposes). In such case, Bulgarian personal income tax is levied at a flat rate of 10%. Alternatively, in case a Bulgarian tax resident individual carries out transactions with cryptocurrencies often and by occupation with commercial intent, it is the position of Bulgarian tax administration that for Bulgarian tax purposes such transactions should be treated as commercial activity and the individual – as a sole proprietor. Under Bulgarian law, in respect of transactions with cryptocurrencies an individual who is a Bulgarian tax resident is acting as sole proprietor within the meaning of the Bulgarian Law on Commerce, whether formally registered as such or not, is subject to taxation with a Bulgarian income tax levied at a flat rate of 15%.

#### *Bulgarian corporate income tax*

The main legal framework of the taxation of legal entities in Bulgaria is provided by the Law on Corporate Income Tax, whereas Bulgaria, being a Member State of the European Union, has fully transposed the European tax legislation.

Bulgarian tax resident entities are liable for Bulgarian corporate tax determined for the fiscal year and they are subject to unlimited corporate income tax liability, which provides for taxation of the income on a worldwide basis. Conversely, entities which are not resident for tax purposes in Bulgaria (and which do not carry out business in Bulgaria through a permanent establishment) are subject to taxation with Bulgarian withholding tax only for their Bulgaria-sourced income.

As a rule, capital gains realized by a Bulgarian legal entity as a result of the sale of financial assets are reflected in the selling entity's overall financial result for the respective year. If the financial result for a given year is positive (i.e., profit), such a positive result (profit) will be subject to Bulgarian corporate tax levied at a flat rate of 10%.

#### *Bulgarian value added tax*

Pursuant to the practice of the Bulgarian tax authorities (which is based on the case law of the ECJ), transactions with cryptocurrencies constitute VAT-exempt supplies (qualified under the VAT exemption for financial services).

8. Are crypto assets recognized as a type of property in your jurisdiction?

No, crypto assets are currently not recognized as a type of traditional property (neither tangible, nor intangible) under Bulgarian laws, nor have they been equated to such by way of court authority of Bulgarian courts. Under Bulgarian laws, non-traditional types of objects (such as energy for example) are recognized as a type of property through specific provisions in the property legislation. To date, such provisions have not been introduced with respect to crypto assets and therefore they remain outside the scope of traditional property laws.

9. How does your jurisdiction deal with the application of property laws to intangible assets and conflicts of laws with other jurisdictions (for example, a crypto asset created by a company in jurisdiction A, one a server in jurisdiction B that is sold to a person in jurisdiction C)?

Crypto assets are currently not recognized as a type of traditional property under Bulgarian law and as such property laws (regarding tangible or intangible assets) do not apply to them.

Other than that, the contractual aspects of the case (in the example above – the sale of the assets) will be governed by Rome I Regulation (Regulation 593/2008, of June 17, on the law applicable to the contractual obligations), whereas the proprietary aspects of the case shall be resolved pursuant to the Bulgarian Code of International Private Law (“CIPL”), according to which a conflict of laws scenario that involves rights over traditional property shall be resolved in favor of the law of the country where the property is located. In addition, the CIPL provides that the assessment as to whether an asset constitutes traditional property and what type thereof shall also be made in accordance with the laws of the country where the property is located.

Potentially, practical issues and further conflicts can arise from the fact that in the absence of crypto assets regulation and relevant authority of the Bulgarian courts, currently there are no instructions for courts or authorities containing guidance in carrying out the assessment where a crypto asset shall be considered located, which allows for different ad hoc solutions and could lead to difficulties in determining the substantive law of which particular country shall regulate the status of the respective crypto assets and the rights of their holders.

10. can smart contracts transferring ownership on a crypto asset be treated as

A smart contract has the essential features of a contract under Bulgarian law and therefore, will be capable of transferring crypto assets. Those features are: (i) expression of will - one may consider

legally binding in your jurisdiction?

the statement under a smart contract to be a statement in electronic form under Art.2 of the Bulgarian Law on the Electronic Document and the Electronic Certification Services; and (ii) agreement - the parties to the smart contract can freely determine the terms of the agreement, so that until their will coincide there is no contract, but when they reach an agreement, the system considers the agreement to be concluded. As long as there is no contradiction with or circumvention of the law, good morals, or an impossible object, the contract is not apparent and there is no requirement for the form for its validity, the smart contract will be legally binding between the parties.

11. Is it possible to take security over a crypto asset in your jurisdiction? If so, please provide a brief overview.

No, for the time being, Bulgarian law does not allow for crypto assets to be taken as a type of debt security recognized by law. Securities available under the domestic law are numerous clauses and may only have as a subject matter particular types of assets specified by law – e.g., mortgage for real estate properties, ordinary pledge for movables, or registration pledge for receivables, commercial going concern, shares, defined or non-defined pools of assets, etc. Given that crypto assets are currently not recognized by Bulgarian law as traditional assets, they may not be legally provided as a recognized form of security in this country.

Based on the principle of contractual freedom, under Bulgarian law, a contract may be constructed in a way that resembles a classical security incorporation agreement and achieves a similar effect – by providing for example, that the incorporating party shall give the beneficiary / receiving party full access to the respective wallet where the crypto assets are being stored until the proper performance of a monetary or another type of obligation by the incorporating party. Such construction, though, may not provide that upon default the creditor will become the owner of the crypto assets – such clause will be null and void under Bulgarian law. In addition, that construction will not qualify as security over an asset under Bulgarian law, will be a purely contractual undertaking, and will lack legislative guarantees that are essential to any type of traditional security (i.e., claim ranking privileges over the security object, valid security rights vis-à-vis third parties, etc.).

Lastly, Bulgarian law does recognize claim receivables as one of the typical valid subjects of security rights. Therefore, if a crypto asset is structured in a way that confers its respective holder rights

to certain payments (periodic, such as interest payments or a lump sum), the holder can validly incorporate security over the claims for such payments.

12. Does inheritance tax relief exist in your jurisdiction for situations where fluctuations in the market result in a beneficiary paying disproportionate tax?

No. Bulgarian tax legislation does not provide for any relief or special treatment (neither in general for any type of assets nor for crypto assets in particular) related to market volatility or fluctuations for the purposes of taxation of inherited assets with inheritance tax. The general rule under Bulgarian law stipulates that, save for certain expressly regulated types of assets (e.g., real estate, motor vehicles, etc.), Bulgarian inheritance tax is calculated at the date of the inheritance event on the basis of the relevant asset's market value at the time. No deviations from this general rule are provided in relation to fluctuations in the relevant asset(s) market.

13. Is there any forthcoming or proposed legislation in your jurisdiction relating to crypto assets?

To the best of our knowledge, no specific Bulgarian legislation regarding crypto assets is in the pipeline as of the date hereof.

14. Is there a supranational view on crypto assets in your region and if so, what is it?

There is a significant development towards the regulation of crypto assets at the level of the European Union, which Bulgaria is part of. The EU is currently in the process of adopting a draft regulation (Markets in Crypto Assets Regulation or MiCA), which will form part of the EU's Digital Finance Strategy and will significantly impact the operation of the digital assets/crypto market in the EU, including Bulgaria.

MiCA will not apply to the blockchain or distributed ledger technologies underlying cryptocurrencies, nor to digital currencies issued by states and regulated by central banks. All other cryptocurrencies that do not qualify as financial instruments, including utility tokens and payment tokens, will be regulated.

MiCA attempts to address some of the risks inherent to the decentralization of crypto (such as fraud, cyber-attacks, or accidental loss of funds and the practical inability to refer them to the competent authorities) by providing consumer protection, transparency, and governance standards for cryptocurrency exchanges.



MiCA also provides for extensive regulation of stablecoins and subjects them to strict regulatory standards of transparency, operation, and governance. MiCA envisages that stablecoins need to be authorized by regulatory institutions to be traded within the EU and the authorization requirement will also apply to stablecoins already in circulation. As a result, when the regulation comes into force, existing stablecoins will have to seek authorization from the regulatory authorities to be traded in the EU.

The EU institutions are still working on achieving a politically agreed text of MiCA, which is expected to arrive later this year, while implementation should kick off around 2024.

15. Is there anything else that you think is unusual or different about how your jurisdiction treats crypto assets or dealings in crypto assets?

Bulgaria follows the overall trend across the EU to wait out the introduction of crypto assets regulation at the EU level and reveals nothing different or unusual in this regard.

DISCLAIMER:

*This guide contains summaries of general principles of law. It is not a substitute for specific legal advice and should not be relied upon in relation to the application of the law or subject matter covered.*