

Questions regarding the income tax treatment of specific crypto-assets in Germany

This is a courtesy translation of the Federal Finance Ministry circular “Einzelfragen zur ertragsteuerrechtlichen Behandlung bestimmter Kryptowerte” of 6 March 2025, which is an update of the Federal Finance Ministry circular of 10 May 2022. This translation is not binding. Please refer to the original German version for legal guidance on the income tax treatment of crypto-assets.

I. Explanatory notes.....	3
1. Crypto-assets	3
2. Classification according to function.....	3
3. Blockchain.....	4
4. Obtaining crypto-assets through block creation.....	4
a) Proof of work (mining).....	5
b) Proof of stake (forging)	5
5. (Passive) staking and how it differs from block creation through proof of stake (forging).....	5
6. Master node.....	6
7. Wallets, keys and transactions; decentralised financial markets and exchanges.....	6
8. Determining the balance (UTXO, account-based method).....	8
9. Initial coin offerings (ICOs).....	8
10. Lending	9
11. Fork (hard fork)	9
12. Airdrop	9
13. Transaction overviews.....	10
14. Tax reports.....	10
II. Classification for income tax purposes.....	10
1. Asset nature of crypto-assets.....	10
2. Income in connection with block creation through proof of work (mining) or proof of stake (forging)	11
a) Commercial income (<i>Einkünfte aus Gewerbebetrieb</i>) under section 15 of the Income Tax Act.....	11

COURTESY TRANSLATION

b) Other income from rendering of service (<i>sonstige Einkünfte aus Leistungen</i>) within the meaning of section 22 no 3 of the Income Tax Act.....	13
3. Income from the use of crypto-assets for (passive) staking.....	14
4. Income from operation of a master node.....	14
5. Income from the sale of crypto-assets.....	14
a) Income tax treatment in the case of business assets.....	14
b) Income tax treatment in the case of private assets	15
6. Income from the use of crypto-assets for lending.....	17
a) Income tax treatment in the case of business assets.....	17
b) Income tax treatment in the case of private assets	17
7. Income tax treatment of crypto-assets received from hard forks.....	18
a) Income tax treatment in the case of business assets.....	18
b) Income tax treatment in the case of private assets	18
8. Income tax treatment of crypto-assets received from airdrops.....	18
a) Income tax treatment in the case of business assets.....	18
b) Income tax treatment in the case of private assets	19
9. Initial coin offerings (ICOs).....	20
10. Specific income tax treatment of utility and security tokens.....	20
a) Income tax treatment in the case of business assets.....	20
b) Income tax treatment in the case of private assets	20
III. Tax filing, cooperation and record-keeping obligations.....	22
1. General aspects	22
2. Cooperation, record-keeping and retention obligations in the case of business assets	24
3. Cooperation and retention obligations in the case of private assets.....	26
IV. Scope of application and transition period.....	28

Following discussions with the highest revenue authorities of the *Länder*, the Federal Ministry of Finance circular of 10 May 2022 (Federal Tax Gazette I p. 668) is updated as follows. This Federal Finance Ministry circular does not address income from employment and the withholding of wages tax in connection with the provision of crypto-assets as part of an employment relationship.

I. Explanatory notes

1. Crypto-assets

- 1 A crypto-asset is the digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology (DLT) or similar technology.

2. Classification according to function

- 2 There are significant differences between crypto-assets in terms of their technical structure and technical development. Because taxation is based on the underlying circumstances (sections 1 and 88 of the Fiscal Code (*Abgabenordnung*)), an assessment of the crypto-asset's function needs to be made in order to determine the correct tax treatment.
- 3 Against this background, crypto-assets can be classified as follows:
 - Currency or payment tokens are crypto-assets that are used as a means of exchange, but also held for speculation purposes. They are not issued or guaranteed by a central bank or a public authority and therefore do not possess the legal status of currency, but are accepted as a means of exchange in economic terms. Bitcoin and Ether are some of the best-known currency tokens. A list of other examples can be found on the website <https://www.coinmarketcap.com/de>. They are also referred to as “crypto-currencies” or “virtual currencies”.
 - Utility tokens are crypto-assets that confer specific usage rights (e.g. access to a possibly yet to be created network) or the right to exchange them for a specific, possibly yet to be created, product or service. Utility tokens may also confer the right to vote on changes to the software and thereby the functionality of the product or service.
 - Security tokens are crypto-assets that are comparable with conventional securities in terms of function.
- 4 Crypto-assets can also be a combination of the categories described above (hybrid crypto-assets). With regard to income tax treatment, every crypto-asset needs to be considered in its own right regardless of its classification. For example, a utility token that also functions as a means of exchange should be treated as a currency token for income tax purposes in cases where it is used as a means of exchange.

- 5 This version of the Federal Finance Ministry circular does not address the special characteristics of non-fungible crypto-assets (non-fungible tokens, or NFTs). An NFT is assigned an individualisation characteristic, whereas fungible crypto-assets of the same trade name (e.g. Bitcoin, Ether) form a totality of identical, interchangeable units. This means that an NFT is a unique crypto-asset that is not fungible with other crypto-assets. The current scope of application of NFTs mainly includes, but is not limited to, digital art and collectibles.

3. Blockchain

- 6 A blockchain is a database, usually without a central authority, with multiple participants that uses distributed ledger technology (DLT). A distributed ledger is an information repository that is shared across, and synchronised between, a set of DLT nodes (e.g. computers connected to the internet) using a consensus mechanism. It is designed so that existing entries cannot be manipulated or altered and only new entries can be added. In the context of crypto-assets, a blockchain is a decentralised database based on DLT in which, in particular, all confirmed transactions are recorded. It can be compared to a decentrally managed cash book. The transaction data is stored in blocks that are sequentially linked, like a chain, to which new blocks are constantly added. The block with which the blockchain begins is called a genesis block or block 0. Each block contains a long cryptographic string of characters, known as a hash, which is calculated based on the content of the block that precedes it. The calculation therefore also incorporates the hash of the previous block, which in turn was calculated based on the block that came before it. As a result, if for example a transaction in a block is subsequently changed, the hashes no longer correspond with those of the original blockchain and the manipulation becomes visible to all.

4. Obtaining crypto-assets through block creation

- 7 In many blockchains, aggregating transactions into new blocks and adding these to the blockchain is rewarded with newly released crypto-assets (block reward), which are usually paid out in coinbase transactions. In these cases, the block creator receives a block reward with the first transaction of a block. Block creators also often collect transaction fees for transactions included in the block.
- 8 There are various ways of adding a new block. Currently the two best-known mechanisms are proof of work, referred to as mining (from gold mining), and proof of stake. To distinguish it from mining, proof of stake is also referred to as forging or minting, and sometimes more generally as staking. In proof of stake, block creators are called forgers or validators. This circular uses the term “forging” when referring to proof of stake block creation.

a) Proof of work (mining)

- 9 In proof of work, the first miner to find a random number or “nonce” (number that can only be used once) by trial and error has the right to create a block. The nonce, together with the transactions selected for the block and the hash of the preceding block, results in a hash that begins with a certain number of zeros. The difficulty and hence also the duration of the search can be influenced by defining the number of zeros at the beginning of the hash.
- 10 Due to the computing power needed to find a nonce by trying out different random numbers, block creators (miners) often work together in mining pools. They each contribute to the required computing power by trying to find a hash within the range of possible nonces that have been assigned to them. If crypto-assets are distributed in a mining pool, they are divided among the participating miners. The mining pool operators take on a coordinating role.
- 11 Cloud mining services also operate server farms that specialise in mining. They sell or rent some of their mining capacity to people that then use it to mine.

b) Proof of stake (forging)

- 12 With proof of stake, the next block creator is selected in a weighted random selection process. Depending on the protocol’s design, the chance of being allowed to add a block to the blockchain and of collecting the block reward and transaction fees increases e.g. the longer the participation period or the higher the staked crypto-assets (the stake). A stake refers to a number of crypto-assets that owners lock in for a certain period of time so that, as a rule, they cannot access them. In this way the block creators demonstrate to the network that they are committed to a proper and orderly block creation. If errors are made or there is any manipulation in the block creation, the crypto-assets used as a stake may be confiscated or deleted, depending on the design of the protocol.

5. (Passive) staking and how it differs from block creation through proof of stake (forging)

- 13 With proof of stake, the idea is that block creators (known as forgers or validators) use only their own crypto-assets as a stake. However, it is also common for users to provide crypto-assets for a stake without being involved in the block creation themselves as forgers. This is usually done by participating in a staking pool, which is already provided for in the respective blockchain protocol. The crypto-assets of the stake are locked in but not transferred. A staking pool has a higher chance of being selected as the next forger. The participants receive remuneration from the forgers who collect the block reward

and the transaction fees. Usually participants must actively “claim” the remuneration that is provided in the system. In other cases, the remuneration is directly credited to the participants without any action having to be taken on their part. Some centralised exchanges also offer the option to participate in a staking pool (platform staking). In practice, a distinction is not always made between the activity of forgers and the mere provision of a stake (without being involved in block creation), and the general term “staking” is used to describe both processes, or there is merely a distinction between “active staking” and “passive staking”. This circular uses the term “(passive) staking” for the provision of a stake without being involved in block creation.

6. Master node

- 14 Every blockchain network consists of different nodes (see paragraph 6) which perform the network’s functions, e.g. storing a full copy of a blockchain, or creating blocks. A master node also performs additional tasks such as processing anonymous and confidential transactions or instant transactions. Furthermore, operators of master nodes are often entitled to participate in decision-making processes regarding rules for the structure and operational organisation of blockchains (governance) and to exercise voting rights. The tasks and voting rights of a master node can vary considerably depending on the blockchain and on the protocol.
- 15 Depending on the respective blockchain’s design, operating the master node is also remunerated. In order to operate a master node, it is necessary in most cases to couple a certain number of crypto-assets to the node. If the crypto-assets are uncoupled from the master node, the master node loses its functionality and the operators lose their right to receive remuneration.

7. Wallets, keys and transactions; decentralised financial markets and exchanges

- 16 As a rule, a wallet is needed in order to receive, hold and transfer crypto-assets (however, see paragraph 20 on centralised exchanges).
- 17 Although it is called a wallet, it would be more accurate to describe it as a key ring. The wallet itself does not contain any crypto-assets; these remain in the blockchain at all times. Rather, it is an application for creating, administering and storing private and public keys.
- 18 A public key is used to allocate the crypto-assets in the underlying blockchain. It can be compared with a bank account number (IBAN) or email address and functions in particular as a receiving address for transactions. With a public blockchain, it is usually possible for anybody to view the number of crypto-assets associated with a particular

COURTESY TRANSLATION

public key as well as all transactions made using that key. A private key is known only to the owner. It is used as a password or to generate digital signatures for transactions (see paragraph 21). Every private key can have multiple public keys.

- 19 There is no limit to the number of wallets a person can have. As a rule, every blockchain requires its own wallet, as public keys are dependent on the underlying blockchain. A wallet is installed on a computer as a software application (software wallet) or is available as a hardware wallet in the form of an external hard drive or USB stick. A wallet can also be created by printing it out on paper or as an electronic document (paper wallet). It is also possible to use a browser-based wallet. With this kind of wallet, some providers act as custodians of the public and private keys, and in some cases a common wallet is used for a large number of people.
- 20 It is possible to browse through past transactions using a software wallet or block explorer – a kind of search engine for blockchains. However, it is not necessary for the recorded inflow and outflow of crypto-assets to correspond with the time of acquisition or sale that is relevant for income tax. The reason for this is that crypto-assets are often traded on centralised exchanges (CEX) such as Kraken, Coinbase, Bitpanda or Bison. Crypto-assets are transferred to a personalised account on a centralised exchange and only booked back to the user's own wallet at a point in time after the sale or acquisition via the platform. The time of acquisition or sale is therefore the time when the crypto-assets were traded on the centralised exchange. The same applies if taxpayers do not use their own wallet, but rather hold and trade the crypto-assets exclusively on a centralised exchange.
- 20a Decentralised financial markets (often referred to as decentralised finance or DeFi) allow market participants to interact directly with the blockchain without an intermediary. Financial services based on the programmability of the underlying blockchain are offered on such decentralised financial markets, often implemented by means of smart contracts. Despite their name, smart contracts are not contracts in the legal sense. Rather, they are program codes that are stored on the respective blockchain and automatically execute certain interactions if and when previously defined events occur. For example, crypto-asset A is transferred when a certain amount of crypto-asset B is received. Decentralised exchanges (DEXs) merely provide the infrastructure of the programmed blockchain. Trading takes place via a chain of smart contracts that allow users to provide crypto-assets to be traded (peer-to-peer, peer-to-pool), for example.

- 21 In the course of a blockchain transaction, a data unit is generated which contains the hash of the recipient's public key, a hash based on the data unit of the previous transaction(s) and a signature generated with the private key based on both hashes. The transaction generated in this way is then sent to a (storage) pool. Users operating a node (see paragraph 6) with a block creation function take the transaction data from the pool, check that the transaction is valid based on the signature and then add it to the blockchain with a new block, thereby effectuating the transaction. If the recipient wants to further transfer the crypto-assets, this requires another transaction validated by a private key.
- 22 The described processes can also be automated. A practical example is the use of debit cards. Users provide crypto-assets and can then use their card to make payments. The credit card company exchanges the crypto-assets into euros or another government-issued currency and processes the payment.

8. Determining the balance (UTXO, account-based method)

- 23 There are two main methods for determining the balance of crypto-assets assigned to a public key. In the case of Bitcoin and several other crypto-assets (especially Cardano), the balance is recorded as the total of the "unspent transaction output" (UTXO), in other words the difference between the input and output. Units of value (coins) are formed for every input and output. If only parts of a coin are sold, the remainder flows back into the user's public key as change (or change output).

Example:

A has acquired 0.01 bitcoins in an initial transaction and 0.02 bitcoins in a subsequent transaction. The balance of unspent transaction outputs (UTXOs) is 0.03 bitcoins.

Now A sells 0.025 bitcoins to B. To complete the transaction three outputs are necessary:

- (1) Output of 0.025 bitcoins to B*
- (2) Output of 0.001 bitcoins as a transaction fee*
- (3) Output of the remaining balance ("change") of 0.004 bitcoins back to A*

- 24 The second method, known as the account-based method, is used for example for Ether, EOS and Tron. It functions similarly to a bank account, in that inputs and outputs are booked in an asset account so that the balance is continually adjusted.

9. Initial coin offerings (ICOs)

- 25 The term initial coin offering (ICO) is based on the term initial public offering (IPO). In an IPO, a company's existing shares or shares from a capital increase are offered on the capital market. This kind of initial offering involves the sale of shares, while an ICO

involves the issuance of crypto-assets in exchange for other crypto-assets or units of government-issued currency (e.g. euros). Like an IPO, an ICO is used to raise capital.

10. Lending

- 26 With lending, crypto-assets are loaned for use in exchange for a fee.

11. Fork (hard fork)

- 27 A fork is what happens when a blockchain and its crypto-assets split or diverge. Hard forks are the most relevant forks when it comes to income tax. Crypto-assets are based on the open-source idea. This means that the source code of the blockchain is publicly available and can be used and modified for free. The source code can be viewed, downloaded and modified by anyone. It may develop in a direction that the original developers do not want to support, but which is now favoured by a majority or at least a significant minority of the network's users. As a result, differences of opinion regarding how the blockchain should be further developed can arise within the network and – based on the open-source principle – can only be resolved by consensus. If a consensus cannot be reached, the blockchain is forked. This results in an additional version of the blockchain and its crypto-assets that coexists with the original blockchain and its crypto-assets. Following the split, the two blockchains continue to develop separately. In the course of the forking process, holders of crypto-assets of the blockchain that existed before the hard fork receive an equal number of crypto-assets of the new blockchain without having to pay any consideration.
- 28 With a soft fork, too, the blockchain underlying the crypto-asset in question is further developed. However, with a soft fork all nodes can continue to process all blocks, which means that the blockchain and its crypto-assets are not split.

12. Airdrop

- 29 With an airdrop, crypto-assets are distributed “without valuable consideration”. Usually these are marketing stunts of one kind or another. For example, an airdrop might require participants to fill in several online forms with the aim of collecting customer data. Other airdrops require participants to promote the project on social media. In the case of bigger airdrops, sometimes only a certain percentage of the participants who fulfil the requirements receive the crypto-assets being distributed, for example based on a random selection process. However, an airdrop can also take place in such a way that crypto-assets are transferred to the owner of a public key without any action having to be taken on their part (see paragraph 18).

13. Transaction overviews

- 29a Centralised exchanges and wallet providers usually give their users the option of downloading a list of the transactions that they carried out on the respective exchange or with their wallet (transaction overviews). These are usually provided in the form of structured (database formats such as csv, xml, db or accdb files) or unstructured file formats (document formats such as PDF files). Unstructured file formats usually present the transactions chronologically and differentiate between crypto-assets. The technology usually allows users to suppress specific data sets when performing an export or to make subsequent changes. With some providers, transaction overviews are available only for a limited period, so users have to ensure that they download them in that time.

14. Tax reports

- 29b Various private providers offer tax reports. They determine a taxpayer's income in connection with crypto-assets (for example, income from private sales transactions, other income from rendering of services) and produce a tax report that resembles a tax certificate from a bank. Different report settings can be selected, depending on the provider. Usually, a tax report is based on wallet information or transaction overviews from one or more exchanges (see paragraph 29a) selected and provided by the taxpayer. The report's completeness therefore depends largely on the underlying data. Taxpayers can manually amend the results, particularly to correct values that are missing or have been transferred incorrectly (for example, acquisition cost, acquisition date); in some cases, they can also change the income tax parameters or valuation of individual transactions.

II. Classification for income tax purposes

- 30 Activities in connection with crypto-assets may – depending on the circumstances of the particular case and having regard to the information set out in the following – result in income in any income category (section 2 (1) sentence 1 of the Income Tax Act (*Einkommensteuergesetz*)). Possible categories include, in particular, commercial income (*Einkünfte aus Gewerbebetrieb*, section 15), investment income (*Einkünfte aus Kapitalvermögen*, section 20), income from private sales transactions (*Einkünfte aus privaten Veräußerungsgeschäften*, section 22 no 2 in conjunction with section 23) and other income (*sonstige Einkünfte*, section 22 no 3).

1. Asset nature of crypto-assets

- 31 Individual crypto-assets are assets (Federal Fiscal Court judgment of 14 February 2023, IX R 3/22, Federal Tax Gazette II p. 571). They confer the ability to assign to another public key the economic benefit assigned to the owner's public key. They can be valued on the basis of a market price that, as a rule, can be determined from exchanges (such as

the Börse Stuttgart Digital Exchange, Kraken, Coinbase or Bitpanda) or listings (such as <https://www.coinmarketcap.com/de> or <https://www.coingecko.com/de>).

- 32 Assets are attributable to their owner. The beneficial owner is whoever can initiate transactions and thus has “control” over which public keys the crypto-assets are assigned to. As a rule, this is the owner of the private key (Federal Fiscal Court judgment of 14 February 2023, IX R 3/22, Federal Tax Gazette II p. 571). However, attribution to the beneficial owner is unaffected if transactions are initiated via platforms that administer private keys or use them on the beneficial owner’s instructions (see paragraph 19).

2. Income in connection with block creation through proof of work (mining) or proof of stake (forging)

- 33 Mining and forging are acts that constitute an acquisition (*Anschaffung*). Acquisition is the purchase, for valuable consideration, of a pre-existing or already present asset from a third party, as opposed to production (*Herstellung*), which is creating, or causing to be created, an asset that did not previously exist (Federal Fiscal Court judgment of 2 May 2000, IX R 73/98, Federal Tax Gazette II p. 614 and of 2 September 1988, III R 53/84, Federal Tax Gazette II p. 1009). Although the crypto-assets distributed to a block creator are put into circulation for the first time at the time of block creation, all crypto-assets are already established on creation of the blockchain’s genesis block. Block creators have no influence on the features of newly released crypto-assets. Because of this, block creation must be distinguished from the situation of the issuer in an ICO, who determines the features of the issued crypto-assets and hence also produces them. The body of parties who have rights to the blockchain grant the released crypto-assets in exchange for the service provided by block creators. Transaction fees are also paid in exchange for the service provided by block creators. Both cases therefore constitute a purchase for valuable consideration from a third party.
- 34 Mining and forging can be a private or a commercial activity, depending on the circumstances of the particular case. The income includes both the block reward and the transaction fees received.

a) Commercial income (*Einkünfte aus Gewerbebetrieb*) under section 15 of the Income Tax Act

- 35 If income from block creation is not already categorised as commercial income on account of an entity’s legal form, classification as a commercial activity depends on whether the criteria are met for a commercial operation under section 15 (2) of the Income Tax Act.

COURTESY TRANSLATION

- 36 Block creation is deemed to be a sustained activity if it is intended to be repeated (see Official Income Tax Handbook 2023 (“Amtliches Einkommensteuer-Handbuch 2023”, EStH 2023), H 15.2 (*Wiederholungsabsicht* [intention to repeat])).
- 37 It must be capable of generating a profit over the long term (see EStH 2023, H 15.3 (*Totalgewinn* [enterprise lifetime net profit])).
- 38 Block creators already participate in general economic activity by virtue of the fact that they make their computing power available to network participants in order to verify transaction data and include that data in a new block to be created on the blockchain. The fact that the block reward depends on the completed creation of the block does not negate participation in general economic activity.
- 39 Block creation does not constitute private asset management. In both mining and forging, block creators receive block rewards and transaction fees in exchange for the creation of new blocks. This activity thus matches the profile of a service provider (*Dienstleister*).
- 40 Block creation by a mining pool may meet the criteria for co-entrepreneurship depending on the specific contractual arrangement. The general rules for assuming co-entrepreneurship apply (see EStH 2023, H 15.8 (1) (*Allgemeines* [General])). There is no co-entrepreneurship if individual miners merely provide mining pool operators with computing power for valuable consideration in a service relationship. A staking pool does not, as a rule, constitute co-entrepreneurship.

aa) Capital comparison method

aaa) Assets

- 41 See paragraph 31 for the asset nature of crypto-assets. Crypto-assets are non-depreciable assets that are categorised under tangible assets and are classified as fixed or current assets in accordance with general tax law accounting principles. If classified as fixed assets, they are recorded under long-term financial assets within the meaning of section 266 (2) A. III. of the Commercial Code (*Handelsgesetzbuch*); if classified as current assets, they are recorded under other assets within the meaning of section 266 (2) B. II. 4. of the Commercial Code.

bbb) Initial valuation

- 42 Crypto-assets that are allocated for block creation or as a transaction fee are deemed to be acquired (exchange-like transaction – see also paragraph 33).

- 43 The acquisition cost is the market price at the time of acquisition of the crypto-assets (by inference from section 6 (6) sentence 1 of the Income Tax Act). The price on an exchange (such as Börse Stuttgart Digital Exchange, Kraken, Coinbase or Bitpanda) or a web-based listing (such as <https://www.coinmarketcap.com/de> or <https://www.coingecko.com/de>) can be applied as the market price. See paragraph 91 for the admissibility of daily prices instead of the price at the time of acquisition.

bb) Cash basis accounting

- 44 Where profit is determined on a cash accounting basis in accordance with section 4 (3) of the Income Tax Act, the receipt of crypto-assets in an exchange-like transaction results in business income. Crypto-assets, as unsecuritised receivables and rights comparable to securities, are to be regarded as assets within the meaning of section 4 (3) sentence 4 of the Income Tax Act whose acquisition cost (section 6 (6) of the Income Tax Act – see paragraph 43) is not to be deducted as a business expense until the time of receipt of the sale proceeds or, in the case of withdrawals, the time of the withdrawal. The assets are to be included in the inventory lists to be maintained under section 4 (3) sentence 5 of the Income Tax Act.

b) Other income from rendering of service (*sonstige Einkünfte aus Leistungen*) within the meaning of section 22 no 3 of the Income Tax Act

- 45 Income from block creation that does not come under any other income category is taxable as rendering of service under section 22 no 3 of the Income Tax Act. This may be the case, for example, if the criterion of commercial activity under section 15 (2) of the Income Tax Act is not met because the activity is not sustained (see paragraph 36). Such income is not subject to income tax if, together with other income from rendering of service, it amounts to less than €256 per calendar year (section 22 no 3 sentence 2 of the Income Tax Act).
- 46 For this purpose, rendering of service can be any active, passive or non-commercial conduct on the part of the taxpayer. The link between the rendering of service and the consideration does not need to be synallagmatic (reciprocal). Neither is it necessary for the parties rendering the service (in this case, block creators) already to expect a consideration when doing so. Instead, it is sufficient for a consideration given in connection with their conduct (doing, permitting, or refraining from doing) to be accepted by them as such. By doing so, they bring their conduct within the ambit of economic activity and hence of taxation (Federal Fiscal Court judgment of 24 April 2012, IX R 6/10, Federal Tax Gazette II p. 581). For this purpose, no distinction is made between block rewards and transaction fees. This also applies to participation in mining and staking pools or in cloud mining services.

- 47 Under section 8 (2) sentence 1 of the Income Tax Act, crypto-assets received by way of block creation are valued at the market price at the time of acquisition (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91). Deductible income-related expenses (*Werbungskosten*) include, for example, expenditure for the purchase of the necessary hardware and software (where applicable in the form of tax depreciation) and for electricity.

3. Income from the use of crypto-assets for (passive) staking

- 48 Income from (passive) staking in the sense used here of putting up a stake without being involved as a forger in block creation – participation in a staking pool, or platform staking (see paragraph 13) – is generally subject to taxation under section 22 no 3 of the Income Tax Act as gains that are classified under private asset management. In exchange for their service (temporarily forgoing the use of the crypto-assets), taxpayers receive consideration in the form of additional crypto-assets (see paragraph 46). The crypto-assets obtained are valued at the market price at the time of acquisition (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91).
- 48a For reasons of simplicity, it is admissible if, in the course of a year, the time of acquisition or the time of receipt of crypto-assets received through (passive) staking is assumed to be the time of deposit in the wallet (claiming, see paragraph 13). The receipt of crypto-assets that have not yet been claimed must be taken into account at the end of the fiscal year/calendar year at the latest.
- 49 In so far as staked crypto-assets are business assets, the consideration constitutes business income. The crypto-assets received for (passive) staking are recognised as assets (increasing profit) at the market price at the time of receipt (see paragraphs 43, 48a and 91).

4. Income from operation of a master node

- 50 In so far as taxpayers generate income from a master node or other node, the comments on block creation through proof of stake in paragraphs 33 to 39 apply accordingly.

5. Income from the sale of crypto-assets

a) Income tax treatment in the case of business assets

- 51 If the crypto-assets are business assets, the sale proceeds are business income. When determining the capital gain, the individual acquisition cost – less depreciation if applicable – of the sold crypto-assets is deducted. In departure from this, if the individual

acquisition cost cannot be determined and individually attributed in a particular case, the crypto-assets may be valued at the average acquisition cost.

- 52 If crypto-assets are repeatedly bought and sold (including exchanging them for other crypto-assets), such trading may constitute a commercial activity. This can be distinguished from private asset management by applying the criteria for commercial securities and foreign exchange trading (see EStH 2023, H 15.7 (9) (*An- und Verkauf von Wertpapieren* [Purchase and sale of securities])).

b) Income tax treatment in the case of private assets

- 53 Crypto-assets are “other assets” within the meaning of section 23 (1) sentence 1 no 2 of the Income Tax Act (Federal Fiscal Court judgment of 14 February 2023, IX R 3/22, Federal Tax Gazette II p. 571; see paragraph 31). Profits from the sale of crypto-assets held as private assets therefore constitute income from private sales transactions under section 22 no 2 in conjunction with section 23 (1) sentence 1 no 2 of the Income Tax Act if the length of time between acquisition and sale is no more than one year (for the specific income tax treatment of utility and security tokens, see paragraph 77 et seqq.). It is not necessary to establish the intention to generate income as this is already objectively established by sale within the holding period. However, under section 23 (3) sentence 5 of the Income Tax Act, the profits remain tax-free if the sum total of the profits generated from all private sale transactions in the calendar year (the total profits) is less than €1,000 (prior to the 2023 assessment period: €600).
- 54 An acquisition transaction and a sale transaction are required. An acquisition is a purchase from a third party for valuable consideration. This includes, in particular, crypto-assets obtained in connection with block creation (see paragraph 42) and, depending on the circumstances, crypto-assets obtained in an ICO or airdrop (see paragraph 75). Crypto-assets are also considered to be purchased for valuable consideration if the taxpayer has received them in exchange for units of a government-issued currency (such as euros), for goods or services or for other crypto-assets or if they have been obtained by lending or (passive) staking. As the mirror image of an acquisition, the transfer of the acquired asset to a third party for valuable consideration constitutes a sale. An exchange of crypto-assets for units of a government-issued currency (such as euros), for goods or services or for other crypto-assets is therefore a sale.
- 55 The holding periods under section 23 (1) sentence 1 no 2 of the Income Tax Act restart on each such exchange. In the case of acquisition or sale on a centralised exchange, the one-year holding period is determined on the basis of the times recorded on the exchange.

For reasons of simplicity, in the case of direct purchase or direct sale without an intermediary, e.g. via a decentralised exchange, the times recorded in the wallet are generally to be used. If the question of whether the one-year holding period has been exceeded is sought to be resolved by reference to a contract of sale, the taxpayers must prove the time of conclusion of the contract by means of suitable documents.

- 56 If taxpayers sell crypto-assets and the balance is determined using the UTXO model, where any unsold portion is returned to the sender's public key as change (or change output, see example in paragraph 23), the change is treated, for tax purposes, on the basis of the acquisition data of the sold crypto-assets.

aa) Determination of the capital gain

- 57 The profit or loss from a sale of crypto-assets is determined as the sale proceeds less acquisition cost and income-related expenses. Income-related expenses must be apportioned to taxable and non-taxable private sales transactions. Private sales transactions are non-taxable if, for example, the crypto-assets are sold after the holding periods set out in section 23 of the Income Tax Act (see paragraph 55).
- 58 In the case of a sale in euros, the sale proceeds are the agreed purchase price. If crypto-assets are exchanged for other crypto-assets, the sale proceeds from the crypto-assets given in exchange are the market price, at the time of exchange, of the other crypto-assets received in exchange (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91). If it is not possible to determine a market price for the crypto-assets received, it is admissible for the market price of the crypto-assets given in exchange to be used instead.
- 59 The market price of the crypto-assets given in exchange – plus any incidental expenses – also constitutes the acquisition cost of the crypto-assets received in exchange. Transaction fees paid in connection with the sale are to be taken into account as income-related expenses.
- 60 If crypto-assets are given in exchange for a service or for goods, the sale proceeds from the crypto-assets given in exchange are the agreed valuable consideration in euros. If no express amount was specified for the valuable consideration, the sale proceeds are the market price of the crypto-assets given in exchange.

bb) Sequence of use

- 61 The sequence of use of sold crypto-assets is determined on a unit-by-unit basis (see paragraph 51). If this is not possible, then for the purposes of the holding period the crypto-assets of the same trade name (e.g. Bitcoin or Ether) that were acquired first are deemed to be sold and the value is determined using the average (Federal Fiscal Court judgment of 24 November 1993, X R 49/90, Federal Tax Gazette II 1994 p. 591). For reasons of simplicity, it may be assumed for the purposes of determining the value that the crypto-assets of the same trade name that were acquired first are sold first (first in, first out, or FIFO).
- 62 The analysis is on a wallet-by-wallet basis. Within a wallet, the selected method must be retained until all crypto-assets of the same trade name in the wallet have been sold. The method may be changed after the sale of all crypto-assets of the same trade name in the wallet and the subsequent purchase of new crypto-assets of that trade name (right to select the method). If crypto-currencies of different trade names are held in the same wallet, the methods may be selected separately.

cc) No extension of the holding period to ten years

- 63 The extension of the holding period under section 23 (1) sentence 1 no 2, sentence 4, of the Income Tax Act does not apply to currency or payment tokens (see paragraph 3).

6. Income from the use of crypto-assets for lending

a) Income tax treatment in the case of business assets

- 64 Income from the lending of crypto-assets that constitute business assets is business income. Crypto-assets received for lending are acquired, and they are valued at the market price at the time of receipt (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91; for claiming see paragraph 48a). For cash basis accounting, see paragraph 44.

b) Income tax treatment in the case of private assets

- 65 Income from lending is taxable under section 22 no 3 of the Income Tax Act. Income from lending is generated on the basis of rendering of service by the taxpayer. Crypto-assets received for lending are acquired, and they are valued at the market price at the time of receipt (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91; for claiming see paragraph 48a). For the sale of crypto-assets received for lending, please refer to the comments in paragraphs 53 et seqq.

7. Income tax treatment of crypto-assets received from hard forks

a) Income tax treatment in the case of business assets

- 66 If crypto-assets are business assets and a hard fork results in crypto-assets of a new blockchain that are also business assets, then the crypto-assets of the separate blockchains constitute separate assets.
- 67 With crypto-assets, taxpayers always have the possibility of receiving the same number of additional crypto-assets of a new blockchain as a result of a hard fork of the underlying blockchain. If crypto-assets are acquired (see in particular paragraph 42), crypto-assets of a new blockchain created as a result of a subsequent hard fork are also deemed to be acquired. The acquisition cost of the crypto-assets predating the hard fork is allocated to those assets. The allocation scale is based on the ratio of the market prices of the separate crypto-assets at the time of the hard fork (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91). If no value can be attributed to the crypto-assets of the new blockchain after a hard fork, the acquisition cost remains with the crypto-assets predating the hard fork. For cash basis accounting, see paragraph 44.

b) Income tax treatment in the case of private assets

- 68 A hard fork does not result in income under section 22 no 3 of the Income Tax Act. If, however, new crypto-assets resulting from a fork are sold, the profits are taxable as income from private sales transactions under section 22 no 2 in conjunction with section 23 (1) sentence 1 no 2 of the Income Tax Act if the crypto-assets predating the hard fork were acquired and the time span between that acquisition and the sale does not exceed one year (see paragraphs 67 and 53 et seq.). For the allocation of the acquisition cost, see paragraph 67. The time of acquisition of the new crypto-assets corresponds to that of the crypto-assets predating the hard fork.

8. Income tax treatment of crypto-assets received from airdrops

a) Income tax treatment in the case of business assets

- 69 In so far as the receipt of crypto-assets is business-related, it constitutes business income. The crypto-assets are valued at the market price at the time of receipt (for determination of the market price and admissibility of daily prices, see paragraphs 43 and 91). In cases where it is not yet possible to determine a market price at the time of receipt, it is admissible for crypto-assets received in an airdrop to be valued at €0. For cash basis accounting, see paragraph 44.

b) Income tax treatment in the case of private assets

aa) Other income from rendering of service (*sonstige Einkünfte aus Leistungen*) under section 22 no 3 of the Income Tax Act

- 70 The receipt of additional crypto-assets may result in other income from rendering of service within the meaning of section 22 no 3 of the Income Tax Act. This is the case – despite the marketing nature of many airdrops – if interested parties are required to render a service (see paragraph 46), and hence in particular in the case of active engagement such as mentioning the airdrop or the project initiator in social media posts. Taxpayers also engage in rendering of service within the meaning of section 22 no 3 of the Income Tax Act if they upload images, photos or videos of their own to a platform and receive crypto-assets in return, even if ownership of the images, photos or videos remains with the taxpayer.
- 71 If the allocation of crypto-assets is conditional upon taxpayers providing data that goes beyond the information needed for the transaction, then that provision of data constitutes rendering of service within the meaning of section 22 no 3 of the Income Tax Act, for which they receive crypto-assets as consideration. This is assumed in any case if taxpayers are obliged to, or have to agree to, make available personal data in connection with an airdrop. Unlike participation in a conventional reward system or prize draw for which a postal address, among other things, has to be provided for identification purposes, the taxpayer's public key suffices for allocation of an airdrop.
- 72 If an airdrop is designed in such a way that, in addition to rendering of service, the receipt of crypto-assets is partly decided by “chance” (see paragraph 29), then the necessary link between the rendering of service and the consideration is rendered obsolete by the “chance” element.
- 73 The crypto-assets are valued at the market price at the time of purchase (for determination of the market price, see paragraphs 43 and 91). In cases where it is not yet possible to determine a market price at the time of purchase, it is admissible for crypto-assets received in an airdrop to be valued at €0.
- 74 If there is no economic connection between the allocation of crypto-assets and a rendering of service, then this may constitute a gift for which the tax rules on gifts apply.

bb) Income from private sales transactions (*Einkünfte aus privaten Veräußerungsgeschäften*) under section 22 no 2 in conjunction with section 23 (1) sentence 1 no 2 of the Income Tax Act

- 75 If crypto-assets are allocated on the basis of a rendering of service within the meaning of section 22 no 3 of the Income Tax Act, then they are also deemed to be acquired. The acquisition cost is recognised at the value of the data provided or of the action performed. There is a rebuttable presumption that the value of the data provided or of the action performed corresponds to the market price of the consideration (for the determination of the market price and admissibility of daily prices, see paragraphs 43 and 91; for valuation at €0 in the event no market price can be determined, see paragraph 73). Because of the acquisition, a later sale of the allocated crypto-assets may be taxable as a private sale transaction (unless there is investment income); reference is made to the comments in paragraph 53 et seqq. In the case of purchase without valuable consideration, the acquisition by the legal predecessor applies (section 23 (1) sentence 3 of the Income Tax Act).

9. Initial coin offerings (ICOs)

- 76 In an ICO, crypto-assets are issued by the issuer. In the issuer's business assets, they may – depending on their structure – constitute equity (capital provided for an indefinite period) or debt (capital provided for a finite period). For income tax purposes, they must be classified on the basis of their legal substance. The income tax treatment follows the general principles. The issued crypto-assets are assets that were internally generated by the issuer; they are recognised at production cost. When they are exchanged (e.g. for other crypto-assets) or sold, the issuer realises a profit or a loss unless matching liabilities or equity amounts are to be recognised on the equity and liabilities side of the balance sheet. It must be examined in each particular case whether the issue terms of the crypto-assets create contractual obligations towards crypto-asset holders that have to be recognised as a liability or a provision if they meet the criteria for doing so.

10. Specific income tax treatment of utility and security tokens

a) Income tax treatment in the case of business assets

- 77 For income tax purposes, a distinction is made according to whether the crypto-assets confer a special legal position on holders. They may have to be recorded as assets under financial assets or as receivables. For further assessment, the general accounting principles apply. For cash basis accounting, see paragraph 44.

b) Income tax treatment in the case of private assets

- 78 The classification of income for income tax purposes depends on the rights and entitlements conferred in each particular case.

aa) Utility tokens

- 79 A redemption of utility tokens is irrelevant for income tax purposes (Federal Fiscal Court judgment of 6 February 2018, IX R 33/17, Federal Tax Gazette II p. 525). There is no sale, as there is no transfer to a third party for valuable consideration if the entitlement to goods or services embodied in the utility tokens is merely redeemed and the goods or services are received by use of the utility tokens.
- 80 If acquired utility tokens are sold, there may be income from private sales transactions under section 22 no 2 in conjunction with section 23 (1) sentence 1 no 2 of the Income Tax Act. This also applies if utility tokens are used as a means of exchange (hybrid tokens). Reference is made to the related comments in paragraph 53 et seqq.

bb) Security tokens

- 81 Depending on how they are structured, crypto-assets may also be deemed to be securities or other financial instruments.
- 82 The income tax treatment of current income under section 20 (1) no 1 or no 7 of the Income Tax Act and of the capital gains under section 20 (2) sentence 1 no 1 or no 7 of the Income Tax Act depends on how the crypto-assets are structured in each particular case.
- 83 If the conferred right is a bond, the classification of the resulting income or profits for income tax purposes depends on whether it establishes a financial claim (*Kapitalforderung*) within the meaning of section 20 (1) no 7 of the Income Tax Act or merely a non-financial claim.
- 84 If the bond solely confers a claim to delivery of a fixed quantity of crypto-assets deposited with the issuer or a claim to a payout by the issuer of proceeds from their sale, then there is no financial claim within the meaning of section 20 (1) no 7 of the Income Tax Act, but rather a non-financial claim. The Federal Fiscal Court rulings on Xetra-Gold bearer bonds (Federal Fiscal Court judgments of 12 May 2015, VIII R 35/14, Federal Tax Gazette II p. 834 and VIII R 4/15, Federal Tax Gazette II p. 835 and Federal Fiscal Court judgment of 6 February 2018, IX R 33/17, Federal Tax Gazette II p. 525) and the Federal Fiscal Court ruling on gold bullion securities (Federal Fiscal Court judgment of 16 2020, VIII 7/17, Federal Tax Gazette II 2021 p. 9) apply accordingly.
- 85 The sale of such a bond may result in income from private sales transactions under section 22 no 2 in conjunction with section 23 (1) sentence 1 no 2 of the Income Tax Act.

Reference is made to the related comments in paragraph 53 et seqq. For the investor, payments by the issuer during the term of the bonds constitute other income within the meaning of section 22 no 3 of the Income Tax Act. The allocated crypto-assets are valued as of the time of receipt.

- 86 If, on the other hand, the bonds constitute a financial claim within the meaning of section 20 (1) no 7 of the Income Tax Act, income received during the holding period results in investment income (current investment income). A sale of the bonds falls within the scope of section 20 (2) sentence 1 no 7 of the Income Tax Act. In the case of income not received in euros, section 20 (3) and section 20 (4) sentence 1 second half-sentence, of the Income Tax Act apply.

III. Tax filing, cooperation and record-keeping obligations

1. General aspects

- 87 The special technological features of crypto-assets also have to be taken into account with respect to tax filing, cooperation and record-keeping obligations. For example, transactions can be carried out directly on chain, i.e. they can be initiated within the network through a transaction or, in the case of a block reward, through the protocol and documented in a new block (see paragraph 21). Decentralised exchanges (DEXs, see paragraph 20a) also operate based on such direct blockchain access. The information thus documented in a public blockchain is usually visible to anybody but, due to pseudonymisation through public keys (see paragraph 18), the identity of individual taxpayers cannot be directly inferred from it. The relevant information continues to fall within the information sphere of taxpayers, who are thus closer to the evidence. Therefore, the mere provision of a public key without any additional information does not constitute sufficient evidence for income tax purposes. However, if a public key complements other information, it can be used to verify the accuracy and completeness of information and records. If crypto-assets are traded on a centralised exchange (CEX, see paragraph 20), individual transactions are usually not documented in the blockchain, but only in the records kept by the exchange regarding the balances of users' accounts. This information also falls within the taxpayers' sphere.
- 88 The information contained in the tax returns must be the truth to the best of the declarant's knowledge and belief (section 150 (2) of the Fiscal Code). Taxpayers are obliged to cooperate with the authorities in establishing the facts of the case (see sections 90, 93 and 97 of the Fiscal Code and section 12 of the Defence against Tax Havens Act (*Steueroasenabwehrgesetz*)). The revenue authorities' duty to investigate the facts of a case by virtue of office subject to the principle of proportionality (section 88 of

the Fiscal Code) and the obligation of participants to cooperate have equal status (Federal Fiscal Court judgment of 15 February 1989, X R 16/86, Federal Tax Gazette II p. 462).

- 89 If crypto-assets are purchased or sold through a centralised exchange run by a foreign operator, taxpayers are subject to an extended obligation to cooperate pursuant to section 90 (2) of the Fiscal Code. In such cases, in addition to their obligation under section 90 (1) of the Fiscal Code to disclose the relevant facts and indicate any evidence known to them, taxpayers must clarify the circumstances and procure the necessary evidence. This particularly includes the obligation to regularly and completely retrieve the transaction overviews made available by centralised exchanges (CEXs, see paragraphs 20 and 29a). Any missing records and any loss of data (e.g. in case of insolvency of the exchange or due to hacking) are to the taxpayer's detriment. Section 90 (2) of the Fiscal Code generally also applies if crypto-assets are purchased or sold through a decentralised exchange (DEX, see paragraph 20a). This is because in this case, too, foreign stakeholders are usually involved, since blockchain network nodes are located around the world and exchange partners are not selected based on their residence.
- 90 If taxpayers use tax reports, the following applies subject to chapters III.2 and III.3: Income must be declared in a complete and accurate manner and has to be verifiable for the revenue authority. Income is deemed to be verifiable for the revenue authority if it can be determined and calculated based on the available documents and information. For tax assessment purposes, verifiability can also be ensured through tax reports, provided that such reports appear plausible during processing because there is no evidence of any incompleteness (e.g. no obviously missing acquisition cost, wallets or exchanges), they are internally consistent (e.g. they do not contain contradictory information) and they do not discernibly conflict with other findings of the revenue authority (e.g. with other income, sources of funds, other tax reports or transaction overviews). Furthermore, in order to ensure sufficient plausibility, taxpayers must regularly provide extracts from the report settings showing the underlying facts (e.g. applied prices and sequence of use such as FIFO, see paragraph 61) as well as an explanation of the underlying valuations for income tax purposes. Any adjustments or corrections do not usually affect plausibility if they are clearly marked and comprehensible reasons are provided (e.g. missing acquisition cost or acquisition data in case of transfers to other exchanges). A tax report that appears plausible can serve as a basis for assessment. In such cases, the revenue authority can dispense with further investigations into the facts or limit its activities to verifying individual transactions (in particular manually adjusted entries). This is without prejudice to section 88 (2)

sentence 1 and sections 145 et seqq. of the Fiscal Code as well as to the possibility of more in-depth investigations (particularly as part of an external audit).

- 91 If market prices are not valued at the time of acquisition or exchange but at daily prices determined based on documented standards, such daily prices can be used by the revenue authority as a tax base for the time being provided that it is ensured that values are determined consistently. The daily price can particularly be the average daily price, time-of-day price or daily closing price. The average daily price is the average of all market prices of a crypto-asset from a price source (see paragraph 43) during a trading day; the time-of-day price is the market price of a crypto-asset from a price source at a certain constant time of each day; the daily closing price is the last market price of a crypto-asset from a price source on a calendar day. Values are deemed not to be determined in a consistent way if, for example, both the acquisition cost and sales prices are valued at daily prices but such daily prices are determined based on different sources or times (e.g. if the acquisition cost is taken from the web-based listing with the highest market prices while sales prices are taken from the web-based listing with the lowest market prices, see paragraph 43). Any corrections of individual values, e.g. values that were determined incorrectly due to different designations in the sources used, do not usually affect consistency. If taxpayers use tax reports of multiple providers, each tax report must be evaluated separately in order to ensure that values are determined consistently.
- 92 Pursuant to section 162 of the Fiscal Code, where the revenue authority cannot determine or calculate the tax base, the revenue authority must estimate it. This particularly applies if taxpayers failed to provide sufficient information or sufficient explanations and the revenue authority cannot determine the tax base with sufficient certainty in any other way. The aim of the estimate is to obtain a result that reflects the actual circumstances as accurately as possible (Federal Fiscal Court judgment of 29 May 2008, VI R 11/07, Federal Tax Gazette II p. 933). If individual items of information or evidence are missing, the remaining documents and data provided by the taxpayer for purposes of plausibility must at least be taken into account in the estimate. Therefore, transaction overviews or tax reports made available by exchanges or wallet providers (see paragraphs 29a and 29b) can also serve as a basis for realistic estimates in individual cases. Estimates must not be used as a means of imposing penalties on taxpayers.
- 2. Cooperation, record-keeping and retention obligations in the case of business assets**
- 93 Tax-related account-keeping and record-keeping obligations are laid down in the Fiscal Code (e.g. sections 90 (3), 141, 143 and 144), the Defence against Tax Havens Act (section 12) and various specific tax laws (e.g. section 22 of the VAT Act

(*Umsatzsteuergesetz*) and, with respect to cash basis accounting, section 4 (3) sentence 5 of the Income Tax Act).

- 94 Pursuant to section 140 of the Fiscal Code, any account-keeping and record-keeping obligations that are laid down in laws other than tax laws but are relevant for taxation must also be fulfilled for tax law purposes. Such other account-keeping and record-keeping obligations can mainly be found in sections 238 et seqq. of the Commercial Code and the principles of proper accounting under commercial law specified there.
- 95 Apart from the accounts, records and transaction-related documents retained for non-tax and tax purposes, all documents must be retained that are relevant in order to understand and verify the records required by law for taxation in each case. These include both paper documents and all electronic documents (e.g. data, data sets and electronic records) showing that the formal rules have been implemented and compliance with them has been monitored.
- 96 The account-keeping and record-keeping obligations, the other required records including the documents necessary to understand them and the retention of such accounts, records and documents are governed by sections 145 to 147 of the Fiscal Code. In particular, pursuant to section 146 (1) sentence 1 of the Fiscal Code, accounting entries and other required records must be made separately, completely, correctly and in a timely and orderly manner and, pursuant to section 146 (4) of the Fiscal Code, they must not be made in such a manner as to render any changes made to them no longer determinable.
- 97 Further information can be found in the “Principles for proper management and storage of accounts, records and documents in electronic form and for data access” (*Grundsätze zur ordnungsmäßigen Führung und Aufbewahrung von Büchern, Aufzeichnungen und Unterlagen in elektronischer Form sowie zum Datenzugriff* (GoBD), Federal Ministry of Finance circular of 28 November 2019, Federal Tax Gazette I p. 1269, as amended by the Federal Ministry of Finance circular of 11 March 2024, Federal Tax Gazette I p. 374).
- 98 If special software is used for complying with the account-keeping and record-keeping obligations in connection with crypto-assets, process documentation must be prepared for such software (see paragraphs 32 and 151 et seqq. of the GoBD) in addition to fulfilling the rest of the GoBD. In particular, the principles of immutability and completeness must be observed (see section 146 (4) of the Fiscal Code and paragraphs 107 et seqq. of the GoBD).

- 99 If accounts, records and documents to be retained under section 147 (1) of the Fiscal Code are kept, in whole or in part, using a data processing system, the duty to afford access to data pursuant to section 147 (6) of the Fiscal Code must be observed in the case of an external audit (section 193 (1) of the Fiscal Code). The duty to afford access to data to the revenue authorities pursuant to section 147 (6) of the Fiscal Code also applies to special software (see paragraph 98) if and to the extent that such software serves to fulfil record-keeping or retention obligations. Furthermore, access to documents not subject to a retention obligation may be requested during an external audit in order to determine the facts that may be relevant for taxation (see section 200 (1) sentences 1 and 2 of the Fiscal Code).

3. Cooperation and retention obligations in the case of private assets

- 100 Subject to paragraph 105, the general cooperation obligations described in paragraphs 87 to 92 apply in the case of private assets. The revenue authority may request that taxpayers furnish evidence, e.g. through questionnaires, without prejudice to the general rules on burden of proof.
- 101 In particular, tax reports that appear plausible (see paragraphs 29b and 90) can help the revenue authority to verify income declared by taxpayers. The revenue authority may request the documents and files (e.g. transaction overviews or CSV files) used to prepare such tax reports. When the revenue authority has exhausted its own investigative capabilities, e.g. the use of a block explorer (see paragraph 20), it is also deemed proportionate to request screenshots, e.g. of a wallet or an account held with a centralised exchange, in order to verify individual items of information (e.g. a particular acquisition).
- 102 In addition to tax reports, structured listings or tables can also help to verify the information provided by taxpayers. Such listings or tables include both taxpayers' own overviews and transaction overviews made available by centralised exchanges and wallet providers (see paragraph 29a). In order to allow for an accurate determination of income from private sales transactions in the case of trade in crypto-assets, such overviews should ensure that each private sales transaction can be verified separately, i.e. they should at least contain the full name or abbreviation and the number of relevant crypto-assets, the profit including the acquisition cost and sale proceeds or the time and price of purchase and sale as well as the holding period. In the case of other income from rendering of service (e.g. lending), provided that a tax report is accepted, the start date, end date, object, fees and terms of lending must be known in order to allow for an accurate determination for tax purposes. Paragraph 101 applies accordingly.

103 Depending on the complexity and number of transactions, the overviews provided by taxpayers in accordance with paragraph 102 can, for example, additionally include the following documents and data and the corresponding receipts, and any missing information may be requested by the revenue authority:

- Time of acquisition, acquired quantity, type of acquisition (e.g. purchase/exchange, ICO, mining/forging, (passive) staking, lending or, in the case of airdrops, description of the conditions for the allocation of crypto-assets in order to determine whether the criteria for rendering of service are met) and the exchange that was used (see paragraphs 70 et seqq.)
- Acquisition cost, incidental expenses (e.g. transaction fees) and other costs (e.g. for opening an account) in euros; market price and the exchange or web-based listing (e.g. <https://www.coinmarketcap.com/de> or <https://www.coingecko.com/de>) from which the market price was taken unless the acquisition was made in euros
- Time of sale, quantity sold, type of sale (sale/exchange) and the exchange that was used
- Sale proceeds and sale costs (e.g. transaction fees) in euros; market price and the exchange or web-based listing (e.g. <https://www.coinmarketcap.com/de> or <https://www.coingecko.com/de>) from which the market price was taken unless the sale was made in euros
- Documents on purchases and exchanges of goods and services made using crypto-assets in order to determine the sale proceeds at which they are to be recognised (when credit cards are used, it is generally sufficient to provide the relevant credit card statement)
- Documentation of the sequence of use applied (unit-by-unit basis, average or FIFO method) for the relevant wallet and/or individual crypto-assets
- Documentation of regroupings within wallets to apply the average or FIFO method on a wallet-by-wallet basis
- Relevant documentation of other income from mining, forging, (passive) staking, lending and/or participation in airdrops or similar transactions

104 In order to be able to verify the data provided by a taxpayer, the revenue authority may on a case-by-case basis request from the taxpayer information on sources of funds, wallet balances on reference dates such as 31 December of the assessment period and the previous year, wallet addresses used and transaction hashes (in the case of direct trading, e.g. through decentralised exchanges) or account information on the exchanges that were used.

- 105 Taxpayers whose total positive income from employment, investment income, income from renting and leasing or other income as defined in section 22 of the Income Tax Act (surplus income) exceeds €500,000 (from 1 January 2027: €750,000) in a particular calendar year must observe the retention provisions laid down in section 147a of the Fiscal Code. This means that they must retain for six years the records and documents that pertain to the underlying income and income-related expenses. Taxpayers may also retain such records and documents on data storage devices (section 147 (2) of the Fiscal Code applies accordingly). If a data processing system or special software is used for complying with retention obligations, the revenue authority may, pursuant to section 147 (6) in conjunction with section 147a (1) sentence 5 of the Fiscal Code, request access to the data stored on such systems during an external audit (section 193 (1) of the Fiscal Code).

IV. Scope of application and transition period

- 106 This circular applies to all open cases from the time of publication in Part I of the Federal Tax Gazette. For assessment periods up to and including 2024, it is admissible to determine prices in accordance with the rules laid down in paragraphs 43 and 58, and the paragraphs referring thereto, of the 10 May 2022 version of the Federal Ministry of Finance circular that apply until the publication of this Federal Ministry of Finance circular in Part I of the Federal Tax Gazette and to keep records in a manner different from that described in paragraphs 87 et seqq. outside the GoBD's scope of application.