IRTA Warning – Barter Related Cryptocurrencies - April 4, 2018

Background:

Cryptocurrency, blockchain and ethereum are developing at lightning speed across the globe. IRTA views these sectors as both a risk to, and a potential opportunity for the barter industry.

On the risk side, IRTA released a "Cryptocurrency Money Transmitter Advisory Memo," (attached) in February of 2016 that detailed the differences between cryptocurrencies and barter exchange trade dollars. It is important for barter exchanges to differentiate themselves from cryptocurrencies since banks and financial companies have, and continue to, deny merchant services and/or credit lines to barter exchanges, based on their misperception that barter exchanges are cryptocurrency organizations. If barter exchanges are deemed cryptocurrency companies, they can be subject to the expensive money transmitter financial registration requirements of their country and/or state.

The key elements that distinguish trade dollars from cryptocurrency are:

- Trade dollars do not have stored value, they do not earn interest and are not securities.
- Barter exchanges are third party record keepers, barter exchanges do not take possession of money for transfer.
- Barter exchanges do not hold collateral or guarantee trades between members.
- No cryptography methodologies are present with trade dollars.
- Trade dollars are pegged to the country currency and are not speculative in nature.

IRTA has received an important written opinion from California that supports IRTA's position that trade dollars are not cryptocurrencies and therefore are not subject to California money transmitter regulations, (see Addendum "A" of the attached IRTA Cryptocurrency Advisory Memo).

While fixed-value cryptocurrencies may develop into a valid opportunity for our industry – the meteoric rise in highly speculative cryptocurrencies and their ICO's can pose a threat to our industry.

Crypto Growth Spurned Multiple Oversight Responses

In February of 2016 there were approximately 500 cryptocurrencies, as of March 2018 the number has grown to over 1,550 cryptocurrency companies. Investor speculation in cryptocurrencies has reached a frenzied state while governments at every level try to decide whether to write strict anti-cryptocurrency regulations, leave it alone, or strike a "proportionate" appropriate balance.

While many financial observers characterized the 2017 cryptocurrency landscape as the "wild west," 2018 may well be destined to be the year of cryptocurrency regulatory reckoning.

The U.S. regulatory history to date concerning cryptocurrencies was recently best described by SEC Chairman as "a patchwork of regulations" that are either friendly, hostile or murky towards the cryptocurrency sector. The SEC's recent March 7th, 2018 public statement clearly communicated its desire

to apply securities laws to cryptocurrency exchanges and digital wallets. Yet, conversely, the Wyoming senate just passed legislation that exempts cryptocurrencies as "securities" and categorizes them as a new kind of "property" called "utility tokens" – thus arguably making Wyoming for the moment, the "go-to destination" for crypto businesses and investors.

Back on the stricter side, the Eastern District of New York recently ruled that cryptocurrencies are indeed commodities under the Commodity Exchange Act, (NYCE:CEA) and therefore subject to federal Commodity Futures Trading Commission's (CFTC) anti-fraud and anti-manipulation authority. Judge Weinstein noted, "until Congress clarifies the matter, the CFTC has concurrent authority" along with other state and federal administrative agencies and civil and criminal courts over cryptocurrency transactions.

Barter-Related Cryptocurrencies – Caution Required

During this period of regulatory evolution, the last six months has witnessed the creation of numerous barter industry related cryptocurrencies which seek to integrate themselves with traditional barter exchanges in three potential ways:

1) Cryptocurrency as an alternative payment system directly within the barter exchange system.

2) Offering cryptocurrency for purchase to the barter exchange and its members, via a direct reciprocal arrangement.

3) The barter company acting as a broker for various cryptocurrencies and introducing them as alternative payment options within its own barter exchange of even as a general recip currency between barter exchanges.

All three of the above approaches potentially create, at worst, a direct link between the barter exchange and cryptocurrencies, or at best, the inference that such link exists. The mere inference that a barter exchange is participating in cryptocurrency transactions puts it at risk of being denied merchant services or having its bank credit line facility withdrawn.

Furthermore, the current highly speculative, unregulated nature of cryptocurrency offerings, be they pre-ICO or at the ICO level, present an extremely volatile high-risk financial environment that could result in loses to the barter exchange itself and/or its members.

The threat of being perceived as a money transmitter, combined with the high-risk nature of cryptocurrencies, requires IRTA to caution exchange owners to do careful due diligence before deciding to participate with a barter-related cryptocurrency.

The Future – Going Forward

As stated in IRTA's initial February 25, 2016 Cryptocurrency Money Transmitter Advisory Memo, "the ongoing evolutionary nature of the cryptocurrencies and money transmitter regulations, IRTA will review" and provide updates on this topic as needed.

IRTA will continue to balance the opportunities and risks that cryptocurrencies present to the barter industry, or as best said by UK Chancellor, Phillip Hammond, "manage the risks around crypto assets, as well as harnessing the potential benefits of the underlying technology."

Cryptocurrency Money Transmitter Advisory Memo

February 25, 2016

General Background & Risk To The Barter Industry

The recent growth in popularity of Bitcoin and similar cryptocurrencies, (also known as altcoins), has caused confusion and fear though all sectors of the barter industry, be it retail barter exchanges, corporate barter companies, complementary currency systems or countertrade organizations.

Recent "guidance" directives from the IRS and the US Treasury Department's Financial Crimes Enforcement Network (FinCEN) have seemingly blurred the distinctions between cryptocurrencies and barter/trade credits even further. Meanwhile numerous states in the US, (and countries internationally), are re-writing their financial regulations in an attempt to regulate the transmission of Bitcoin-like cryptocurrencies by imposing expensive registration and capital deposit requirements. While the initial noble intent of such regulatory re-examination was/is to prevent financial crimes and protect consumers, the overt risk is that the new financial language will be so broad that it will inadvertently include barter business models in the definition of money transmitters, which we believe would be inaccurate.

The financial/banking sector's fear and confusion about cryptocurrencies is causing adverse effects to the barter industry. Barter exchanges have recently been denied cash credit lines from banks due to the banks' misperception that barter exchanges are money transmitters. Additionally, numerous credit card processing companies have decided not to accept applications from barter exchanges because they too have erroneously concluded that barter exchanges are money transmitters. We know of one instance where a bank terminated its relationship with a barter company after decades of doing business with the exchange.

In the past two years IRTA has successfully argued that barter/trade credits are not cryptocurrencies and therefore are not money transmitters and should not be subject to new regulations designed to reign-in cryptocurrencies. IRTA received a favorable opinion from the California Department of Business Oversight on June 26th, 2014 that defines the key elements that separates trade credits and the barter industry from the cryptocurrency world, (attached as Addendum "A").

This IRTA Advisory Memo will explain the important cryptocurrency/trade credit distinctions that are articulated in the model California Opinion and thereby serve as a tool for the barter industry to educate the financial/banking sector and business sectors so as to prevent adverse policy decisions that negatively affect the barter industry.

NOTE: DEFINITIONAL CLARIFICATION: The term "digital currency" and "virtual currency" for purposes of this memo are interchangeable. Cryptocurrencies are decentralized digital/virtual currencies that implement principles of cryptography technology, built on blockchain applications that operate to validate transactions and generate the currency itself. The blockchain provides a proof-of-work system to guard against digital counterfeiting.

NOTE: EVOLVING SECTOR: The cryptocurrency/money transmitter regulatory environment is constantly evolving. As such, IRTA will review and update this Advisory Memo as needed, and new revisions of this memo will be released accordingly in the future.

Money Transmitter Regulatory History - FinCEN

The US Federal government has regulated money transmission since 1970 via the Bank Secrecy Act (BSA). BSA related matters are administered by a bureau within the Financial Crimes Enforcement Network, (FinCEN). The BSA was passed to prevent money laundering and mandates that money service businesses (MSB's) report and record various financial transactions. FinCEN regulations require MSB's to register with FinCEN, report transactions to FinCEN and to adopt procedures that prevent money laundering. Several amendments to the BSA have occurred over the years; for example, the requirement from the 2001 Patriots Act that required financial companies to report all cash transactions exceeding $10,000.

In March of 2013 FinCEN issued new guidance to clarify the applicability of the BSA regarding persons/entities that are "creating, obtaining, distributing exchanging accepting or transmitting virtual currencies." The FinCEN guidelines further stated that persons/entities that obtain virtual currencies to purchase goods or services do not fit into the regulatory definition of a money transmitter. However, FinCEN went on to say that if the person/entity engaged in "the exchange of virtual currency for real currency" (ie the virtual currency is redeemable for cash), the person/entity would be considered a money transmitter.

IRTA's research of the March 2013 FinCEN guidelines concluded that unless the barter organization itself is trading or redeeming trade dollars for real cash, the organization would not fall under this new expanded guidance.

FinCen's focus via the BSA is on persons/entities that are moving currency under the radar. If a barter organization participates in the conversion of its currency to cash and back, such organizations could be considered money transmitters and subject to the BSA and/or state regulations. We are not aware of any barter retail organization that readily convert, or have a defined mechanism to convert barter/trade credits to cash.

IRS 2014 Guidelines

On March 25th, 2014 the IRS provided a notice, definitions and answers to sixteen frequently asked questions regarding virtual currency, (see attached Addendum "B" – IRS 3/25/14 Notice & IRS Notice 2014-21).

The IRS's notice defined virtual currency by stating that "virtual currency operates like "real" currency — i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance — but it does not have legal tender status in any jurisdiction."

Most importantly, the IRS notices said that "virtual currency is treated as property for US federal tax purposes may be used to pay for goods and services or held for investment." Further, the IRS stated that virtual currency "that has an equivalent value in real currency, or acts as a substitute for real currency is referred to as convertible virtual currency. Bitcoin is an example of a convertible virtual currency." Barter exchanges' barter/trade credits are not readily convertible to cash and barter exchanges do not have any mechanism to accomplish such a conversion.

State Review of Financial Regulations Aimed at Bitcoin-Like Cryptocurrencies & IRTA Reponses

While the federal government has weighed-in on defining virtual currency/cryptocurrency and money transmission, many states in the U.S. are also examining their old financial regulations and re-writing them in an effort to regulate the ever growing cryptocurrency sector. The new name for these regulatory state initiatives designed to reign-in cryptocurrencies is "Bitlicenses."

The California Department of Business Oversight's, (CDBO), June 26, 2014 opinion letter, (attached as Addendum "A") arguably provides important precedent and definitional criteria that provide the basis for IRTA's position that barter/trade credits are not cryptocurrencies and barter exchanges are not money transmitters.

IRTA pointed-out in its April 25th, 2014 letter, (attached as Addendum "C"), to the CDBO that barter exchanges are not money transmitters and therefore are not subject to California's proposed new Money Transmission Act, (MTA). IRTA's key points were:

- Barter exchanges comply with TEFRA based IRS 1099B reporting requirements.

- Barter exchange trade credits denote a trade exchange members' right to receive, or obligation to pay in the network. Such member rights are between the members and the exchange serves as an arms-length third-party record keeper.
- The barter exchange does not hold collateral or guarantee trades between members.
- Barter/trade credits are not redeemable for cash.
- Barter exchange member agreements specifically state that trade credit are not legal tender.
- Barter/trade credits do not have stored value, do not earn interest and are not securities.
- Barter exchanges do not take possession of money for transmission.

The CDBO's June 26th, 2014 favorable opinion agreed with IRTA's arguments by stating that:

- Barter exchanges are third-party "record keepers of trade credits" and do not "receive money for transmission as defined by CA Financial Code Section 2003(s)."
- Barter exchanges "do not meet the definition of issuer of stored value." CA Financial code Section 2003(v) defines "stored value" as to mean "a monetary value representing a claim against the issuer that is stored on an electronic or digital medium." The issuer of stored valueis the "entity that is liable to the holder of the stored value and has undertaken or is obligated to pay the stored value." Because "a barter exchange is not liable to the members for the value of their trade credits and it has not undertaken nor or is it obligated to pay the trade credits, a barter exchange is therefore not an issuer of stored value."
- Due to the above, "trade credits do not meet the definition of stored value."
- "Therefore, commercial barter exchanges do not need to be licensed under the MTA."

IRTA and legal counsel for National Commerce Exchange, (NCE), submitted a joint opinion letter to the New York State Department of Financial Services (NYDFS) on October 16th, 2014 which made several important additional arguments that distinguished barter exchange activity from money transmitter transactions, they were:

- Barter exchange transactions are not anonymous like cryptocurrency transactions. In fact barter exchanges report annually to the IRS all their members' names, addresses, and tax identification numbers who conducted barter transactions, pursuant to 1099B reporting requirements of TEFRA.
- Trade credits are not a digital or virtual currency based on the language of the proposed New York Code 23 NYDFS 200.1 (m) which defines virtual currency as "any type of digital currency unit that is used as a medium of exchange or a form of digital stored value…incorporated into a payment system technology." The CDBO's opinion arguably provides state opinion precedent that trade exchanges do not participate in issuing virtual currency with stored value.
- Barter/trade credits are merely an accounting unit, no cryptography technology is involved.
- Barter exchange trade credit systems do not involve "mining" (the sophisticated computer algorithm cryptography methodology that provides the proof-or-work cryptocurrency functionality).
- The value of trade exchange members' goods and services are valued and accounted for in U.S. dollars.

While the IRTA/NCE NYDFS letter specifically requested the NYDFS to exclude barter exchanges from their proposed virtual currency definition, the final NYDFS Rules that were released in June of 2015 contained a narrow definition of virtual currencies that included the component of a "stored value." Based on the California opinion, IRTA is satisfied that barter exchanges do not meet the definitional criteria for virtual currencies in the new NYDFS Code and thereby are not subject to the registration requirements contained therein.

International Approaches to Virtual Cryptocurrencies

The European approach to the money transmitter cryptocurrency regulation has taken a much more unified approach as opposed to the U.S.'s somewhat fragmented federal vs. state approach.

The European Banking Authority (EBA) has spent the last three years reviewing the risks and rewards of a regulatory reform regarding cryptocurrencies and released several comprehensive reports outlined various regulatory scenarios that may be applicable, (see their most recent report titled "Cryptotechnologies, A Major IT Innovation & Catalyst For Change" at:

https://www.abe-eba.eu/downloads/knowledge-and-research/EBA_20150511_EBA_Cryptotechnologies_a_major_IT_innovation_v1_0.pdf

The EBA has called for government and businesses to come together to develop regulatory solutions for the cryptocurrency sector which effectively requires a "digital revamping" of the European banking system.

The European Union's, (EU), highest court, The European Court of Justice, (ECJ), did render a decision on October 22, 2015 stating that Bitcoin transactions "are exempt from Value Added Tax, (VAT), under the provision concerning transactions relating to currency, bank notes and coins used in legal tender." The decision thereby operates to treat virtual currencies in the same way as traditional cash, (see attached Addendum "D" for the full ECJ opinion).

The EU Commission is also expected to address the anonymity component of cryptocurrencies when it releases its 4th Anti-Money Laundering Directive (4AML) the second quarter of 2016.

Review of Key Criteria That Separates the Barter Industry From Cryptocurrencies/Money Transmitters

When presented with the question of whether the barter industry engages in cryptocurrency and/or money transmission activities, the key delineating points are:

- Barter exchanges in the U.S. already comply with the legal mandates of TEFRA by providing 1099B reporting of all barter transactions, including the names, addresses and tax identification numbers of their members that made barter sales. Hence, barter exchange transactions between members are not anonymous.
- Barter/trade credits are simply a unit of accounting. Trade credits denote a trade exchange members' right to receive, or obligation to pay in the network. Such member rights are between the members and the exchange serves as an arms-length third-party record keeper.
- No cryptography methodologies are present with barter trade credits.
- Barter exchange does not hold collateral or guarantee trades between members.
- Trade credits are not redeemable or convertible for cash.
- Barter trade credits do not have stored value, do not earn interest and are not securities.
- As third party record keepers, barter exchanges do not take possession of money for transmission.
- Barter exchange trade credit systems do not involve "mining" (the sophisticated computer algorithm cryptography methodology that provides the proof-of-work cryptocurrency functionality).
- The value of trade exchange members' goods and services are valued and accounted for in U.S. dollars.

As stated earlier, due to the ongoing evolutionary nature of the cryptocurrencies and money transmitter regulations, IRTA will review and update this memo as needed.

Please review the IRTA website at www.irta.com regularly for recent updates and revisions to this advisory memo.

STATE OF CALIFORNIA – BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY EDMUND G. BROWN JR., Governor

DEPARTMENT OF BUSINESS OVERSIGHT

Ensuring a Fair and Secure Financial Services Marketplace for all Californians

Jan Lynn Owen
Commissioner of Business Oversight

June 26, 2014

Ron D. Whitney
Executive Director
International Reciprocal Trade Association
524 Middle Street
Portsmouth, VA 23704

Re: Opinion Request

Dear Mr. Whitney:

This is in response to your letter on behalf of the International Reciprocal Trade Association ("IRTA") to the Department of Business Oversight ("Department"), dated April 25, 2014. You have requested a determination of whether commercial barter exchanges are engaged in activities which are regulated by California Money Transmission Act, Financial Code Section 2000, et seq. (MTA).

According to your correspondence, barter exchanges act as a clearinghouse for barter transactions between their members. The recorded unit of account for the barter transactions is known as a "trade credit." While a trade credit has value, such credits exist solely to denote the right of a network member to receive, or the obligation of a network member to pay, a certain value in goods and services. Virtually all transactions are between members with a de minimus number of transactions occurring between a barter exchange and the network members. The barter exchange serves as an arms-length third party record keeper, not as a guarantor of a trade or holder of collateral to guarantee the trade. Trade credits are not redeemable for cash, or fiat currency, under any circumstances.

The role of a commercial barter exchange as a record keeper of trade credits does not constitute "receiving money for transmission," as defined in Financial Code Section 2003(s). Without making a determination of whether a trade credit is money or monetary value, the salient point is that a barter exchange does not "receive" any trade credits; it merely acts as the bookkeeper for keeping track of trade credits that members accumulate.

A commercial barter exchange also does not meet the definition of an "issuer" of stored value, as defined in Financial Code Section 2003(k). "Issuer" with regard to stored value means "the entity that is liable to the holder of the stored value and has undertaken or is obligated to pay the stored value." Because a barter exchange is not liable to the members for the value of their trade credits, and it has not undertaken nor or is it obligated to pay the trade credits; a barter exchange is therefore not an "issuer" of stored value. Financial Code Section 2003(v) defines "stored value" to mean monetary value representing a claim against the issuer that is stored on an electronic or digital medium, and that is a means of redemption for money or monetary value or payment for goods or services. Because a barter exchange is not an issuer of the trade credits, the trade credits do not represent a claim against the barter exchange. Thus, trade credits do not meet the definition of "stored value."

Based on all of the foregoing reasons, it is the Department's view that commercial barter exchanges, by acting as third party record keepers, are not engaged in: (1) "receiving money for transmission" as defined in Financial Code Section 2003(s); or (2) "issuing or selling stored value" as defined in Financial Code Section 2003(v). Therefore, commercial barter exchanges do not need to be licensed under the MTA.

This opinion is based solely on the facts presented in your correspondence and may change if any of the conditions or circumstances under which commercial barter exchanges provide services are altered in the future. If you have any questions or comments, please contact me at (415) 263-8528.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By Jennifer Rumberger

Jennifer L.W. Rumberger
Senior Counsel

JLWR:acp
cc: Robert Venchiarutti, Department of Business Oversight, San Francisco

IRS Virtual Currency Guidance : Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply

IR-2014-36, March. 25, 2014

WASHINGTON — The Internal Revenue Service today issued a notice providing answers to frequently asked questions (FAQs) on virtual currency, such as bitcoin. These FAQs provide basic information on the U.S. federal tax implications of transactions in, or transactions that use, virtual currency.

In some environments, virtual currency operates like "real" currency -- i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance -- but it does not have legal tender status in any jurisdiction.

The notice provides that virtual currency is treated as property for U.S. federal tax purposes. General tax principles that apply to property transactions apply to transactions using virtual currency. Among other things, this means that:

- Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to federal income tax withholding and payroll taxes.
- Payments using virtual currency made to independent contractors and other service providers are taxable and self-employment tax rules generally apply. Normally, payers must issue Form 1099.
- The character of gain or loss from the sale or exchange of virtual currency depends on whether the virtual currency is a capital asset in the hands of the taxpayer.
- A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property.

Further details, including a set of 16 questions and answers, are in Notice 2014-21, posted today on IRS.gov.

IRS Notice 2014-21

SECTION 1. PURPOSE

This notice describes how existing general tax principles apply to transactions using virtual currency. The notice provides this guidance in the form of answers to frequently asked questions.

SECTION 2. BACKGROUND

The Internal Revenue Service (IRS) is aware that "virtual currency" may be used to pay for goods or services, or held for investment. Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of

value. In some environments, it operates like "real" currency -- i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance -- but it does not have legal tender status in any jurisdiction. Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency. Bitcoin is one example of a convertible virtual currency. Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies. For a more comprehensive description of convertible virtual currencies to date, see Financial Crimes Enforcement Network (FinCEN) Guidance on the Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (FIN-2013-G001, March 18, 2013).

SECTION 3. SCOPE

In general, the sale or exchange of convertible virtual currency, or the use of convertible virtual currency to pay for goods or services in a real-world economy transaction, has tax consequences that may result in a tax liability. This notice addresses only the U.S. federal tax consequences of transactions in, or transactions that use, convertible virtual currency, and the term "virtual currency" as used in Section 4 refers only to convertible virtual currency. No inference should be drawn with respect to virtual currencies not described in this notice. The Treasury Department and the IRS recognize that there may be other questions regarding the tax consequences of virtual currency not addressed in this notice that warrant consideration. Therefore, the Treasury Department and the IRS request comments from the public regarding other types or aspects of virtual currency transactions that should be addressed in future guidance. Comments should be addressed to: 2 Internal Revenue Service Attn: CC:PA:LPD:PR (Notice 2014-21) Room 5203 P.O. Box 7604 Ben Franklin Station Washington, D.C. 20044 or hand delivered Monday through Friday between the hours of 8 A.M. and 4 P.M. to: Courier's Desk Internal Revenue Service Attn: CC:PA:LPD:PR (Notice 2014-21) 1111 Constitution Avenue, N.W. Washington, D.C. 20224 Alternatively, taxpayers may submit comments electronically via e-mail to the following address: Notice.Comments@irscounsel.treas.gov. Taxpayers should include "Notice 2014-21" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety. For purposes of the FAQs in this notice, the taxpayer's functional currency is assumed to be the U.S. dollar, the taxpayer is assumed to use the cash receipts and disbursements method of accounting and the taxpayer is assumed not to be under common control with any other party to a transaction.

SECTION 4. FREQUENTLY ASKED QUESTIONS

Q-1: How is virtual currency treated for federal tax purposes?

A-1: For federal tax purposes, virtual currency is treated as property. General tax principles applicable to property transactions apply to transactions using virtual currency.

Q-2: Is virtual currency treated as currency for purposes of determining whether a transaction results in foreign currency gain or loss under U.S. federal tax laws?

A-2: No. Under currently applicable law, virtual currency is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes.

Q-3: Must a taxpayer who receives virtual currency as payment for goods or services include in computing gross income the fair market value of the virtual currency?

A-3: Yes. A taxpayer who receives virtual currency as payment for goods or services must, in computing gross income, include the fair market value of the virtual currency, 3 measured in U.S. dollars, as of the date that the virtual currency was received. See Publication 525, Taxable and Nontaxable Income, for more information on miscellaneous income from exchanges involving property or services.

Q-4: What is the basis of virtual currency received as payment for goods or services in Q&A-3?

A-4: The basis of virtual currency that a taxpayer receives as payment for goods or services in Q&A-3 is the fair market value of the virtual currency in U.S. dollars as of the date of receipt. See Publication 551, Basis of Assets, for more information on the computation of basis when property is received for goods or services.

Q-5: How is the fair market value of virtual currency determined?

A-5: For U.S. tax purposes, transactions using virtual currency must be reported in U.S. dollars. Therefore, taxpayers will be required to determine the fair market value of virtual currency in U.S. dollars as of the date of payment or receipt. If a virtual currency is listed on an exchange and the exchange rate is established by market supply and demand, the fair market value of the virtual currency is determined by converting the virtual currency into U.S. dollars (or into another real currency which in turn can be converted into U.S. dollars) at the exchange rate, in a reasonable manner that is consistently applied.

Q-6: Does a taxpayer have gain or loss upon an exchange of virtual currency for other property?

A-6: Yes. If the fair market value of property received in exchange for virtual currency exceeds the taxpayer's adjusted basis of the virtual currency, the taxpayer has taxable gain. The taxpayer has a loss if the fair market value of the property received is less than the adjusted basis of the virtual currency. See Publication 544, Sales and Other Dispositions of Assets, for information about the tax treatment of sales and exchanges, such as whether a loss is deductible.

Q-7: What type of gain or loss does a taxpayer realize on the sale or exchange of virtual currency?

A-7: The character of the gain or loss generally depends on whether the virtual currency is a capital asset in the hands of the taxpayer. A taxpayer generally realizes capital gain or loss on the sale or exchange of virtual currency that is a capital asset in the hands of the taxpayer. For example, stocks, bonds, and other investment property are generally capital assets. A taxpayer generally realizes ordinary gain or loss on the sale or exchange of virtual currency that is not a capital asset in the hands of the taxpayer. Inventory and other property held mainly for sale to customers in a trade or 4 business are examples of property that is not a capital asset. See Publication 544 for more information about capital assets and the character of gain or loss.

Q-8: Does a taxpayer who "mines" virtual currency (for example, uses computer resources to validate Bitcoin transactions and maintain the public Bitcoin transaction ledger) realize gross income upon receipt of the virtual currency resulting from those activities?

A-8: Yes, when a taxpayer successfully "mines" virtual currency, the fair market value of the virtual currency as of the date of receipt is includible in gross income. See Publication 525, Taxable and Nontaxable Income, for more information on taxable income.

Q-9: Is an individual who "mines" virtual currency as a trade or business subject to self-employment tax on the income derived from those activities?

A-9: If a taxpayer's "mining" of virtual currency constitutes a trade or business, and the "mining" activity is not undertaken by the taxpayer as an employee, the net earnings from self-employment (generally, gross income derived from carrying on a trade or business less allowable deductions) resulting from those activities constitute self-employment income and are subject to the self-employment tax. See Chapter 10 of Publication 334, Tax Guide for Small Business, for more information on self-employment tax and Publication 535, Business Expenses, for more information on determining whether expenses are from a business activity carried on to make a profit.

Q-10: Does virtual currency received by an independent contractor for performing services constitute self-employment income?

A-10: Yes. Generally, self-employment income includes all gross income derived by an individual from any trade or business carried on by the individual as other than an employee. Consequently, the fair market value of virtual currency received for services performed as an independent contractor, measured in U.S. dollars as of the date of receipt, constitutes self-employment income and is subject to the self-employment tax. See FS-2007-18, April 2007, Business or Hobby? Answer Has Implications for Deductions, for information on determining whether an activity is a business or a hobby.

Q-11: Does virtual currency paid by an employer as remuneration for services constitute wages for employment tax purposes?

A-11: Yes. Generally, the medium in which remuneration for services is paid is immaterial to the determination of whether the remuneration constitutes wages for employment tax purposes. Consequently, the fair market value of virtual currency paid as wages is subject to federal income tax withholding, Federal Insurance Contributions 5 Act (FICA) tax, and Federal Unemployment Tax Act (FUTA) tax and must be reported on Form W-2, Wage and Tax Statement. See Publication 15 (Circular E), Employer's Tax Guide, for information on the withholding, depositing, reporting, and paying of employment taxes.

Q-12: Is a payment made using virtual currency subject to information reporting?

A-12: A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property. For example, a person who in the course of a trade or business makes a payment of fixed and determinable income using virtual currency with a value of $600 or more to a U.S. non-exempt recipient in a taxable year is required to report the payment to the IRS and to the payee. Examples of payments of fixed and determinable income include rent, salaries, wages, premiums, annuities, and compensation.

Q-13: Is a person who in the course of a trade or business makes a payment using virtual currency worth $600 or more to an independent contractor for performing services required to file an information return with the IRS?

A-13: Generally, a person who in the course of a trade or business makes a payment of $600 or more in a taxable year to an independent contractor for the performance of services is required to report that payment to the IRS and to the payee on Form 1099- MISC, Miscellaneous Income. Payments of virtual currency required to be reported on Form 1099-MISC should be reported using the fair market value of the virtual currency in U.S. dollars as of the date of payment. The payment recipient may have income even if the recipient does not receive a Form 1099-MISC. See the Instructions to Form 1099-MISC and the General Instructions for Certain Information Returns for more information. For payments to non-U.S. persons, see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Q-14: Are payments made using virtual currency subject to backup withholding?

A-14: Payments made using virtual currency are subject to backup withholding to the same extent as other payments made in property. Therefore, payors making reportable payments using virtual currency must solicit a taxpayer identification number (TIN) from the payee. The payor must backup withhold from the payment if a TIN is not obtained prior to payment or if the payor receives notification from the IRS that backup withholding is required. See Publication 1281, Backup Withholding for Missing and Incorrect Name/TINs, for more information.

Q-15: Are there IRS information reporting requirements for a person who settles payments made in virtual currency on behalf of merchants that accept virtual currency from their customers?

A-15: Yes, if certain requirements are met. In general, a third party that contracts with a substantial number of unrelated merchants to settle payments between the merchants and their customers is a third party settlement organization (TPSO). A TPSO is required to report payments made to a merchant on a Form 1099-K, Payment Card and Third Party Network Transactions, if, for the calendar year, both (1) the number of transactions settled for the merchant exceeds 200, and (2) the gross amount of payments made to the merchant exceeds $20,000. When completing Boxes 1, 3, and 5a-1 on the Form 1099-K, transactions where the TPSO settles payments made with virtual currency are aggregated with transactions where the TPSO settles payments made with real currency to determine the total amounts to be reported in those boxes. When determining whether the transactions are reportable, the value of the virtual currency is the fair market value of the virtual currency in U.S. dollars on the date of payment. See The Third Party Information Reporting Center, http://www.irs.gov/TaxProfessionals/Third-Party-Reporting-Information-Center, for more information on reporting transactions on Form 1099-K.

Q-16: Will taxpayers be subject to penalties for having treated a virtual currency transaction in a manner that is inconsistent with this notice prior to March 25, 2014?

A-16: Taxpayers may be subject to penalties for failure to comply with tax laws. For example, underpayments attributable to virtual currency transactions may be subject to penalties, such as accuracy-related penalties under section 6662. In addition, failure to timely or correctly report virtual currency transactions when required to do so may be subject to information reporting penalties under section 6721 and 6722. However, penalty relief may be available to taxpayers and persons required to file an information return who are able to establish that the underpayment or failure to properly file information returns is due to reasonable cause. SECTION 5. DRAFTING INFORMATION The principal author of this notice is Keith A. Aqui of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information about income tax issues addressed in this notice, please contact Mr. Aqui at (202) 317-4718; for further information about employment tax issues addressed in this notice, please contact Mr. Neil D. Shepherd at (202) 317- 4774; for further information about information reporting issues addressed in this notice, please contact Ms. Adrienne E. Griffin at (202) 317- 6845; and for further information regarding foreign currency issues addressed in this notice, please contact Mr. Raymond J. Stahl at (202) 317- 6938. These are not toll-free calls

International Reciprocal Trade Association
524 Middle Street Portsmouth, VA 23704
PH: 757-393-2292 FAX: 757-257-4014

April 25, 2014

Jennifer Rumberger, Esq.
Senior Counsel
Department of Business Oversight - Legal Division
State of California
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Dear Ms. Rumberger:

The International Reciprocal Trade Association (IRTA) is a non-profit association founded in 1979 to promoting equitable standards of practice within the the commercial trade exchange industry (sometimes known as the commercial barter industry) worldwide. www.irta.com

IRTA secured the passage of the "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) in the U.S. which recognized barter exchanges as third party record keepers and mandated that barter exchanges report the barter sales of their members via an IRS 1099B form.

We are writing you in response to your March 26, 2014 letter, "Invitation For Comments On Proposed Rulemaking Under The California Money Transmission Act." Our purpose is to advise you about the fundamentals of the lawful U.S. barter industry and to clarify that barter transactions conducted through organized barter exchanges that comply with TEFRA are not considered "money transmissions" under the current or proposed revised California Money Transmission Act, nor restricted in anyway under the California Financial Code.

Barter exchanges act as a clearinghouse for barter transactions between their members. The recorded unit of account for the barter transactions are known as "trade credits." Such credits have value and are accepted as final means of payment within the barter network, nevertheless such credits exist solely to denote the right of a network member to receive, or the obligation of a network member to pay, a certain value in goods and services. Transactions occurring between a trade clearinghouse and the network members are de minimus; virtually all transactions are between members, with the trade exchange serving as an arms-length third-party

record keeper and not as guarantor of a trade or holder of collateral to guarantee a trade. The sole guarantee of a trade credit is a network member's contractual obligation to supply goods and services and accept payment in accordance with terms of the agreement. Trade credits ARE NOT REDEEMABLE FOR CASH, under any circumstances.

Trade credits are not "money" or considered legal tender and therefore do not constitute "monetary value" as defined in the California Financial Code. They are not a standard of value because prices are set in local currency, and they are neither intended as a store of value nor effective as such, because they do not earn interest. They have transaction value only. Moreover, trade credits are not "securities" in the sense of transfers of debt and equity capital. Barter exchanges do not "take possession of money for transmission" as is required in Section 80.129 of the proposed changes to the CA Money Transmission Act. For all of the above reasons, it is clear that lawful barter exchange transactions do no meet definitional criteria to be considered money transmitters under the current or proposed revised CA Money Transmitter Act.

Thank you for the opportunity to bring these matters to your attention. We ask for your assurance that commercial trade exchanges which facilitate sales of goods and services are not intended to be covered by the proposed changes to Subchapter 80 of the California Money Transmission Act, and that commercial barter exchanges are not considered money transmitters under the California Financial Code.

Should you have any questions, we shall be pleased to assist you in any way.

Sincerely,

Ron D. Whitney
Executive Director

JUDGMENT OF THE COURT (Fifth Chamber)

22 October 2015 (*)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 2(1)(c) and 135(1)(d) to (f) — Services for consideration — Transactions to exchange the 'bitcoin' virtual currency for traditional currencies — Exemption)

In Case C−264/14,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), made by decision of 27 May 2014, received at the Court on 2 June 2014, in the proceedings

Skatteverket

v

David Hedqvist,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Šváby, A. Rosas (Rapporteur), E. Juhász and C. Vajda, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2015,

after considering the observations submitted on behalf of:

– the Skatteverket, by M. Loeb, acting as legal adviser,

– Hedqvist, by A. Erasmie, advokat, and F. Berndt, jur. kand.,

– the Swedish Government, by A. Falk and E. Karlsson, acting as Agents,

– the German Government, by T. Henze and K. Petersen, acting as Agents,

– the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,

– the European Commission, by L. Lozano Palacios, M. Owsiany-Hornung, K. Simonsson and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 July 2015,

gives the following

Judgment

1 This request for a preliminary ruling relates to the interpretation of Articles 2(1) and 135(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, 'the VAT Directive').

2 The request has been made in proceedings between the Skatteverket (Swedish tax authority) and Mr Hedqvist concerning a preliminary decision given by the Swedish Revenue Law Commission (Skatterättsnämnden) on whether transactions to exchange a traditional currency for the 'Bitcoin' virtual currency or vice versa, which Mr Hedqvist wished to perform through a company, were subject to value added tax ('VAT').

Legal context

EU law

3 Article 2 of the VAT Directive provides:

'1. The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…'

4 Article 14(1) of that directive provides:

'"Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.'

5 Article 24(1) of that directive is worded as follows:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods.'

6 Article 135 of the VAT Directive provides:

'(1) Member States shall exempt the following transactions:

…

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

(e) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

(f) transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2);

…'

Swedish law

7 Under Chapter 1 of the Law (1994:200) on VAT, (mervärdesskattelagen (1994:200), 'the Law on VAT'), Paragraph 1 provides that VAT is to be paid to the State on supplies within national territory of taxable goods or services effected by a taxable person acting as such.

8 Under Chapter 3 of that law, Paragraph 23(1) provides that bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or which are of numismatic interest, are exempt from VAT.

9 Also under Chapter 3, Paragraph 9 provides that supplies of banking and financial services and transactions involving securities and similar transactions are exempt from tax. Banking and financial services do not include notarial activity, collection of invoices or administrative services relating to factoring or the leasing of storage facilities.

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 Mr Hedqvist wishes to provide, through a company, services consisting of the exchange of traditional currency for the 'bitcoin' virtual currency and vice versa.

11 According to the order for reference the 'bitcoin' virtual currency is used, principally, for payments made between private individuals via the internet and in certain online shops that accept the currency. The virtual currency does not have a single issuer and instead is created directly in a network by a special algorithm. The system for the 'bitcoin' virtual currency allows anonymous ownership and the transfer of 'bitcoin' amounts within the network by users who have 'bitcoin' addresses. A 'bitcoin' address may be compared to a bank account number.

12 Referring to a 2012 report by the European Central Bank on virtual currencies, the referring court states that a virtual currency can be defined as a type of unregulated, digital money, which is issued and controlled by its developers and accepted by members of a specific virtual community. The 'bitcoin' virtual currency is one of the virtual currency schemes with 'bidirectional flow', which users can purchase and sell on the basis of an exchange rate. Such virtual currencies are analogous to other convertible currencies as regards their use in the real world. They allow both real and virtual goods and services to be purchased. Virtual currencies differ from electronic money, as defined in Directive 2009/110/EC of the European Parliament and the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ 2009 L 267, p. 7), in so far as, unlike that money, for virtual currencies the funds are not expressed in traditional accounting units, such as in euro, but in virtual accounting units, such as the 'bitcoin'.

13 The referring court states that the transactions envisaged by Mr Hedqvist would be carried out

electronically via the company's website. That company would purchase units of the 'bitcoin' virtual currency directly from private individuals and companies, or from an international exchange site. The company would then resell the units on such an exchange site, or store them. Mr Hedqvist's company would also sell such units to private individuals or to companies that place an order on its website. In a situation where the client has accepted the price in Swedish Crowns offered by Mr Hedqvist's company and a payment has been received, the sold units of the 'bitcoin' virtual currency would be sent automatically to the 'bitcoin' address indicated. The 'bitcoin' virtual currency units sold by the company would either be those that it would purchase directly on the exchange site after the client had placed his order, or those that the company already had in stock. The price proposed by the company to clients would be based on the current price on a particular exchange site, to which a certain percentage would be added. The difference between the purchase price and the sale price would constitute Mr Hedqvist's company's earnings. The company would not charge any other fees.

14 The transactions that Mr Hedqvist intends to carry out are thus limited to the purchase and sale of 'bitcoin' virtual currency units in exchange for traditional currencies, such as the Swedish crown, or vice versa. It is not apparent from the order for reference that those transactions would include payments made using 'bitcoin'.

15 Before starting to carry out such transactions, Mr Hedqvist requested a preliminary decision from the Revenue Law Commission in order to establish whether VAT must be paid on the purchase and sale of 'bitcoin' virtual currency units.

16 In a decision of 14 October 2013, the Revenue Law Commission found, on the basis of the judgment in *First National Bank of Chicago* (C−172/96, EU:C:1998:354), that Mr Hedqvist would be supplying an exchange service effected for consideration. The Revenue Law Commission held, however, that the exchange service was covered by the exemption under Chapter 3, Paragraph 9, of the Law on VAT.

17 According to the Revenue Law Commission, the 'bitcoin' virtual currency is a means of payment used in a similar way to legal means of payment. Furthermore, the term 'legal tender' referred to in Article 135(1)(e) of the VAT Directive is used in order to restrict the scope of the exemption as regards bank notes and coins. It follows, according to the Revenue Law Commission, that that term must be taken to mean that it relates only to bank notes and coins and not to currencies. That interpretation is also consistent with the objective of the exemptions laid down in Article 135(1)(b) to (g) of the VAT Directive, namely to avoid the difficulties involved in making financial services subject to VAT.

18 The Skatteverket appealed against the Revenue Law Commission's decision to the Högsta förvaltningsdomstolen (Supreme Administrative Court) arguing that the service to which Mr Hedqvist's request refers is not covered by the exemption under Chapter 3, Paragraph 9, of the Law on VAT.

19 Mr Hedqvist submits that the appeal by the Skatteverket should be dismissed and the preliminary decision by the Revenue Law Commission should be confirmed.

20 The referring court considers that it can be inferred from the judgment in *First National Bank of Chicago* (C−172/96, EU:C:1998:354) that transactions to exchange a virtual currency for a traditional currency and vice versa, in return for payment of a sum equal to the difference between

the purchase price paid by the operator and the sale price obtained by him, constitutes the provision of services for consideration. In such a case, the question arises whether the transactions are covered by one of the exemptions for financial services laid down in Article 135(1) of the VAT Directive, more specifically, those set out in points (d) to (f) of that provision.

21 Having doubts as to whether one of those exemptions applies to such transactions, the Högsta förvaltningsdomstolen (Supreme Administrative Court) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 2(1) of the VAT Directive to be interpreted as meaning that transactions in the form of what has been described as the exchange of virtual currency for traditional currency and vice versa, which is effected for consideration added by the supplier when the exchange rates are determined, constitute the supply of a service effected for consideration?

2. If so, must Article 135(1) [of that directive] be interpreted as meaning that the abovementioned exchange transactions are tax exempt?'

The questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 2(1)(c) of the VAT Directive must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitutes the supply of services for consideration within the meaning of that article.

23 Article 2(1) of the VAT Directive provides that the supply of goods and services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT.

24 It must be held, first, that the 'bitcoin' virtual currency with bidirectional flow, which will be exchanged for traditional currencies in the context of exchange transactions, cannot be characterised as 'tangible property' within the meaning of Article 14 of the VAT Directive, given that, as the Advocate General has observed in point 17 of her Opinion, that virtual currency has no purpose other than to be a means of payment.

25 The same is true for traditional currencies, since it involves money which is legal tender (see, to that effect, judgment in *First National Bank of Chicago*, C−172/96, EU:C:1998:354, paragraph 25).

26 Consequently, the transactions at issue in the main proceedings, which consist of the exchange of different means of payment, do not fall within the concept of the 'supply of goods', laid down in Article 14 of the directive. In those circumstances, those transactions constitute the supply of services, within the meaning of Article 24 of the VAT Directive.

27 As regards, in the second place, the supply of services for consideration, it must be recalled that a supply of services is effected 'for consideration' within the meaning of Article 2(1)(c) of the VAT Directive, and is therefore subject to VAT, only if there is a direct link between the services supplied

and the consideration received by the taxable person (judgments in *Loyalty Management UK and Baxi Group*, C−53/09 and C−55/09, EU:C:2010:590, paragraph 51 and the case-law cited, and *Serebryannay vek*, C−283/12, EU:C:2013:599, paragraph 37). Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration given in return for the service supplied to the recipient (judgment in *Le Rayon d'Or*, C−151/13, EU:C:2014:185, paragraph 29 and the case-law cited).

28 In the case in the main proceedings, it is clear from the material in the case file submitted to the Court that there would be a synallagmatic legal relationship between Mr Hedqvist's company and the other party to the contract in which the parties to the transaction would agree, reciprocally, to transfer amounts of a certain currency and receive the corresponding value in a virtual currency with bidirectional flow, or vice versa. It is also clear that Mr Hedqvist's company would be remunerated for supplying the service by a consideration equal to the margin that it would include in the calculation of the exchange rate at which it would be willing to sell and purchase the currencies concerned.

29 The Court has already held that it is irrelevant, for the purposes of determining whether a supply of services is effected for consideration, that the remuneration does not take the form of a payment of a commission or specific fees (judgment in *First National Bank of Chicago*, C−172/96, EU:C:1998:354, paragraph 33).

30 Having regard to the foregoing considerations, it must be held that transactions such as those at issue in the main proceedings, constitute the supply of services for a consideration that has a direct link with the service provided, that is to say, the supply of services for consideration within the meaning of Article 2(1)(c) of the VAT Directive.

31 Consequently, the answer to the first question is that Article 2(1)(c) of the VAT Directive must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitute the supply of services for consideration within the meaning of that article.

The second question

32 By its second question, the referring court asks, in essence, whether Article 135(1)(d) to (f) of the VAT Directive must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are exempt from VAT.

33 As a preliminary point, it should be borne in mind that, in accordance with the Court's case-law, the exemptions laid down in Article 135(1) of the VAT Directive constitute independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see, inter alia, judgments of *Skandinaviska Enskilda Banken*, C−540/09, EU:C:2011:137, paragraph 19 and the case-law cited, and *DTZ Zadelhoff*, C−259/11,

EU:C:2012:423, paragraph 19).

34 It is also established case-law that the terms used to specify those exemptions are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (judgments in *Ludwig*, C−453/05, EU:C:2007:369, paragraph 21, and *DTZ Zadelhoff*, C−259/11, EU:C:2012:423, paragraph 20).

35 Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by the exemptions laid down in Article 135(1) of the VAT Directive and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Thus, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 135(1) must be construed in such a way as to deprive the exemptions of their effect (see, inter alia, judgments in *Don Bosco Onroerend Goed*, C−461/08, EU:C:2009:722, paragraph 25; *DTZ Zadelhoff*, C−259/11, EU:C:2012:423, paragraph 21; and *J.J. Komen en Zonen Beheer Heerhugowaard*, C−326/11, EU:C:2012:461, paragraph 20).

36 In that regard, it is clear from the Court's case-law that the purpose of the exemptions laid down in Article 135(1)(d) to (f) of the VAT Directive is, inter alia, to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible (see, inter alia, judgment in *Velvet & Steel Immobilien*, C−455/05, EU:C:2007:232, paragraph 24, and the Order in *Tiercé Ladbroke*, C−231/07 and C−232/07, EU:C:2008:275, paragraph 24).

37 Moreover, the transactions exempt from VAT under those provisions are, by their nature, financial transactions even though they do not necessarily have to be carried out by banks or financial institutions (see judgments in *Velvet & Steel Immobilien*, C−455/05, EU:C:2007:232, paragraphs 21 and 22 and the case-law cited, and *Granton Advertising*, C−461/12, EU:C:2014:1745, paragraph 29).

38 As regards, in the first place, the exemptions laid down in Article 135(1)(d) of the VAT Directive, it should be recalled that, according to that provision, Member States are to exempt transactions involving, inter alia, 'deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments'.

39 The transactions exempted under that provision are thus defined according to the nature of the services provided. In order to be regarded as exempt transactions the services in question must, viewed broadly, form a distinct whole, fulfilling the specific, essential functions of a service described in that provision (see judgment in *Axa UK*, C−175/09, EU:C:2010:646, paragraphs 26 and 27 and the case-law cited).

40 It is clear from the wording of Article 135(1)(d) of the VAT Directive, read in the light of the judgment in *Granton Advertising* (C−461/12, EU:C:2014:1745, paragraphs 37 and 38), that the transactions referred to in that provision concern services or instruments that operate as a way of transferring money.

41 Furthermore, as the Advocate General observed in points 51 and 52 of her Opinion, that provision does not cover transactions that involve money itself, which are the object of a specific provision, namely Article 135(1)(e) of the VAT Directive.

42 The 'bitcoin' virtual currency, being a contractual means of payment, cannot be regarded as a current account or a deposit account, a payment or a transfer. Moreover, unlike a debt, cheques and other negotiable instruments referred to in Article 135(1)(d) of the VAT Directive, the 'bitcoin' virtual currency is a direct means of payment between the operators that accept it.

43 Therefore, transactions such as those in the main proceedings do not fall within the scope of the exemptions provided for under that provision.

44 As regards, in the second place, the exemptions laid down in Article 135(1)(e) of the VAT Directive, that provision provides that Member States are to exempt transactions involving, inter alia, 'currency [and] bank notes and coins used as legal tender'.

45 In that regard, it must be recalled that the concepts used in that provision must be interpreted and applied uniformly in the light of the versions in all the languages of the European Union (see, to that effect, judgments in *Velvet & Steel Immobilien*, C−455/05, EU:C:2007:232, paragraph 16 and the case-law cited, and *Commission* v *Spain*, C−189/11, EU:C:2013:587, paragraph 56).

46 As the Advocate General observes at points 31 to 34 of her Opinion, the various language versions of Article 135(1)(e) of the VAT Directive do not allow it to be determined without ambiguity whether that provision applies only to transactions involving traditional currencies or whether, on the contrary, it is also intended to cover transactions involving another currency.

47 Where there are linguistic differences, the scope of the expression in question cannot be determined on the basis of an interpretation which is exclusively textual. That expression must therefore be interpreted in the light of the context in which it is used and of the aims and scheme of the VAT Directive (see judgments in *Velvet & Steel Immobilien*, C−455/05, EU:C:2007:232, paragraph 20 and the case-law cited, and *Commission* v *Spain*, C−189/11, EU:C:2013:587, paragraph 56).

48 As is recalled in paragraphs 36 and 37 of this judgment, the exemptions laid down by Article 135(1)(e) of the VAT Directive are intended to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible which arise in the context of the taxation of financial transactions.

49 Transactions involving non-traditional currencies, that is to say, currencies other than those that are legal tender in one or more countries, in so far as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment, are financial transactions.

50 Furthermore, as Mr Hedqvist submitted, in essence, at the hearing, in the case of exchange transactions in particular, the difficulties connected with determining the taxable amount and the amount of VAT deductible may be the same, whether it is a case of the exchange of traditional currencies, normally entirely exempt under Article 135(1)(e) of the VAT Directive, or the exchange of such currencies for virtual currencies with bi-directional flow, which — without being legal tender — are a means of payment accepted by the parties to a transaction, and vice versa.

51 It therefore follows from the context and the aims of Article 135(1)(e) that to interpret that provision as including only transactions involving traditional currencies would deprive it of part of its effect.

52 In the case in the main proceedings, it is common ground that the 'bitcoin' virtual currency has no other purpose than to be a means of payment and that it is accepted for that purpose by certain operators.

53 Consequently, it must be held that Article 135(1)(e) of the VAT Directive also covers the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients.

54 As regards, finally, the exemptions laid down in Article 135(1)(f) of the VAT Directive, it suffices to recall that that provision covers, inter alia, transactions in 'shares, interests in companies or associations, debentures and other securities', namely securities conferring a property right over legal persons and 'other securities' that have to be regarded as being comparable in nature to the other securities specifically mentioned in that provision (judgment in *Granton Advertising*, C−461/12, EU:C:2014:1745, paragraph 27).

55 It is common ground that the 'bitcoin' virtual currency is neither a security conferring a property right nor a security of a comparable nature.

56 Therefore the transactions at issue in the main proceedings do not fall within the scope of the exemptions laid down in Article 135(1)(f) of the VAT Directive.

57 Having regard to the foregoing considerations, the answer to the second question is that:

– Article 135(1)(e) of the VAT Directive must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are transactions exempt from VAT, within the meaning of that provision;

– Article 135(1)(d) and (f) of the VAT Directive must be interpreted as meaning that such a supply of services does not fall within the scope of application of those provisions.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment

of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitute the supply of services for consideration within the meaning of that article.

2. **Article 135(1)(e) of Directive 2006/112 must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are transactions exempt from VAT, within the meaning of that provision.**

   Article 135(1)(d) and (f) of Directive 2006/112 must be interpreted as meaning that such a supply of services does not fall within the scope of application of those provisions.

[Signatures]

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* Language of the case: Swedish.