

SPECIFICITIES IN THE TAXATION OF CLASSICAL CURRENCY GAINS AND LOSSES IN GERMANY

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INTRODUCTION

- I. Legal background: specific legal features
- II. Currency transactions
 1. The taxation of income arising from foreign exchange (private purposes)
 2. Currency gains and losses in the context of forward contracts
 3. Banking transactions in foreign currency: swap transaction
 4. Taxation of income earned in a foreign currency
- III. Summary, conclusions

I. LEGAL BACKGROUND: SPECIFIC LEGAL FEATURES

Primary source of law	Income Tax Act of Germany (EStG)	
Key point of the regulation	Determination of the type of income	
Relevant types of income	Other incomes (§ 22) ➤ Private divestment transactions (§ 23)	Incomes from capital assets (§ 20)
Cases in question	Foreign currency transactions	Forward exchange transactions, Swap transactions

II. 1. THE TAXATION OF INCOME ARISING FROM FOREIGN EXCHANGE (PRIVATE PURPOSES)

Comparative criteria	Germany	Hungary	Italy
Tax exemption / Tax liability	Taxable under specific conditions	Taxable but under specific conditions: tax-exempt	Taxable under specific conditions
Conditions	Profit above 600 euros, purchase and sale within 1 year	If the conversion is part of business operations: taxable, if not: tax-exempt	Unrelated to commercial transactions, settled by difference and often automatically renewed
Additional specificities	Aggregation of the profits from all other private divestment transactions (Also transactions with cryptocurrencies)	If the conversion is part of businesslike manner: income shall be considered as “other income”	Taxed through a substitutive tax applied by the intermediary on the algebraic sum of differentials, incomes and costs obtained in each contract
Legal basis	§ 23 Sect. 3 S. 5 EStG	Annex No. 1 of the PIT Act	Artt. 67, co. 1 lett. c-ter) and 67 co. 1-ter TUIR.
Tax consequences	If the exemption limit is exceeded by the total profit realized in a calendar year, the gain is fully taxable	In case of business operations: the “other income” (as part of the consolidated tax base) is subject to a tax of 15 %	

II.2. CURRENCY GAINS AND LOSSES IN THE CONTEXT OF FORWARD CONTRACTS: FUTURES

Comparative criteria	Germany	Hungary	Italy
Tax exemption / Tax liability	Taxable	Taxable	Taxable
Conditions	All transactions are to be treated as forward transactions which oblige to pay the difference between an agreed price and the price of the underlying asset on a certain reference date		
Additional specificities	Considered as income from capital assets since 2009	Income arising from currency forward contract is considered as “ <i>other income</i> ” (Part of the consolidated tax base)	
Legal basis	In Principle: § 20 Sect. 2 Nr. 3a EStG As exception: § 23 Sect. 1 Nr. 2 EStG	§ 28 of the PIT Act	Dlgs n° 141/2010 interv. disciplining these incomes as incomes deriving from derivative contracts (Art. 67 co. 1 lett. c-quarter TUIR)
Tax cosequences	Special tax rate of 25 % for the income of capital assets (§ 32d EStG)	Income arising from this contract is subject to a tax of 15 % as part of the consolidated tax base	

II.3 BANKING TRANSACTIONS IN FOREIGN CURRENCY: SWAP TRANSACTION

Comparative criteria	Germany	Hungary	Italy
Tax exemption / Tax liability	Taxable	Taxable	Taxable
Conditions	Conversion of principal denominations in different currencies at the same exchange rate at the beginning and end of the agreed duration of the transaction.		
Additional specificities	The losses from swap contracts reduce income from rental and leasing contracts, which is another type of income (§ 21 EStG)	Income arising swap is considered as separately taxed income	Any purchases of foreign currency in function of the forward exchange is to be considered an autonomous and independent operation
Legal basis	§ 20 Sect. 2 Nr. 3a and 3b EStG	§ 65/B of the PIT Act	Artt. 67, co. 1 lett. c-ter) and 67 co. 1-ter TUIR.
Tax consequences	Are considered forward transactions for income tax purposes, losses can be offset againsts other	Income realized on swap is a subject to a tax of 15 %, losses can be offset	

II. 4 TAXATION OF INCOME EARNED IN A FOREIGN CURRENCY

Comparative criteria	Germany	Hungary	Italy
Tax exemption / Tax liability	Taxable	Taxable	Taxable
Conditions	Foreign currency gains in connection with capital investments are subject to income tax	If the income is taxable under the PIT Act, income earned in a foreign currency is subject to the personal income tax as well	
Additional specificities	Income earned in a foreign currency shall be translated into forints or euros, using the official foreign exchange rate or the euro exchange rate published by the Central Bank of Hungary or the euro exchange rate published daily by the European Central Bank		
Legal basis	§ 20 Sect. 4 S. 1 EStG for the incomes from capital assets	§ 5 (7) of the PIT Act	
Tax consequences	After the conversion, the income will be taxed according to the rules of the taxation of capital	The fact that the income is earned in a foreign currency has no effect on the tax liability	

III. SUMMARY, CONCLUSIONS

- Number of definitional and conceptual questions
- Different or partly different answers of the national legislations
- The foreign exchange markets can have a very significant tax impact

An overview of the rules governing classical currency gains and losses can serve as a starting point for the observation of the transactions and the tax issues of cryptocurrencies

THANK YOU FOR YOUR ATTENTION!