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# Treatment of Cryptocurrency in Germany and Comparison with India

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## ABSTRACT

*Germany is startup hub including those relating to crypto currency and blockchain as this country has developed favourable tax laws, entrepreneurship environment and maintains good professionals network. In 2017 it has also conducted various meet ups for blockchain/bitcoin startups which involved a minimum of 400 members. This acts of it encourage entrepreneurs to meet people with similar mindset and develop better ideas and helps in building new business relations among them.*

*The author in this article has analysed how the cryptocurrency is treated in Germany and the various issues related/connected to it like the system of taxing of it, the issues of money laundering and the methods/techniques used for its regulations, AMLD5 regulation. The author has compared such treatment of cryptocurrency in Germany with the situation in India and how India could refer to such countries to adopt some of the regulatory framework or to make its own effective regulations.*

**Keywords:** *Cryptocurrency, Money Laundering, Terrorist Financing, AMLD5.*

## I. INTRODUCTION

Germany is startup hub including those relating to crypto currency and blockchain as this country has developed favourable tax laws, entrepreneurship environment and maintains good professionals network. In 2017 it has also conducted various meet ups for blockchain/bitcoin startups which involved a minimum of 400 members. This acts of it encourage entrepreneurs to meet people with similar mindset and develop better ideas and helps in building new business relations among them. Founders subjected to limited liability in GmbH, it has been company type most preferable for crypto currency.<sup>2</sup>

Startups of Blockchain and crypto currency engaged in lots of activities like from creating digital wallets and platforms for running blockchain-based applications, to offering transaction and exchange solutions for crypto currency trading.

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<sup>2</sup>De, Nikhilesh. "Germany Won't Tax Bitcoin Users For Using The Cryptocurrency As A Means Of Payment." YouTube, 1 Mar. 2018, [youtu.be/C-DdhHg06xo](https://youtu.be/C-DdhHg06xo).

**1. Trading-companies-** A crypto currency specialised trading company is a common idea of business which is similar to stock exchange but trades only with digital-currencies

**2. Digital – wallet** provides storing and using of acquired digital-currency services is an business idea. The offering of crypto currency wallets and software for doing digital coins payment and transactions are done by these companies.

**3. Bitcoin-ATM:** It is physically a machine designed specially for crypto currency and employed by investors and is similar to ATM.

**4. Crypto currency-Consultancy:** Those investors who already have enough experience in purchase, sale and trade of crypto currency in Germany may adopt this business idea.<sup>3</sup>

## II. TAXING SYSTEM OF CRYPTOCURRENCY

The crypto currency is not taxable when it is used as a mere means of payment.

When acting as an intermediary for exchange of crypto currency with fiat or vice-versa which is considered as supply of services and not taxable.

The providers of digital wallets or other services to whom the payment fees has been sent can also be taxed. Miners acts are considered as voluntary who receive block rewards will not be taxed.

The one buying or selling in its own name being exchange operators as an intermediary will be exempted from tax but the one which acts as a technical market place gets no tax exemption.

When a private-individual does purchase or sale of crypto currency and such transaction is considered as 'private disposal of other assets' under sec 22 and 23(1) No.2 of German Income Tax Act. The fees is deducted for trading on exchanges. According to sec 23(3) of Act, [(Acquisition cost and income related expenses) -selling price] gives either the gain or loss. And further the initial cost is required to be deducted from selling price. If the time exceeds one year between the purchase and sale of it then is exempted from tax for full gain.

All the private-disposal transaction are not subjected to tax till the limit of 600 Euros which is an exemption under sec 23(3) but exceeding which will lead to taxing of the whole. This taxability of crypto currency is for exchange of crypto currency into euros or foreign currency or vice-versa or into other crypto currencies or for purchase of goods or services. But the income from trading business of crypto currencies on commercial basis is subjected to taxation under sec 15 of Income Tax Act , and also trade tax is applicable. In amount of 24,500 euros

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<sup>3</sup>“Cryptocurrency Business Ideas in Germany.” Lawyers Germany, 2 May 2018, [www.lawyersgermany.com/cryptocurrency-business-ideas-in-germany](http://www.lawyersgermany.com/cryptocurrency-business-ideas-in-germany).

a tax allowance is provide under sec 11(1) of German Trade Tax Act.<sup>4</sup>

### **III. REGULATION TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING**

Bafin's money laundering supervision is applicable on the bodies in financial sector including companies or persons selling or converting e-money and also ensure those under its supervision are implementing statutory-obligations adopted for purpose like CWG, KWG, VAG, ZAG, KAGB.

The department for prevention of money laundering has been vested with responsibility by Bafin to supervise money laundering and also implementation of statutory regulations in order to prevent committing criminal offences as per sec 50 of GWG and 25h of KWG respectively. And responsible for automated account information. This helps in identifying the suspected terrorists or criminal accounts and German registered credit institutions and information passed to appropriate authority and Such department may freeze accounts if any of those accounts are found to be uncovered and belonging to alleged terrorists. Like Financial Action Task Force, AMLC, subcommittee of joint committee of the European Supervisory Authorities, it represents Bafin in various european and international bodies.

The obliged parties need to follow simplified due diligence measure and analyse risk factors mentioned in CWG Annex 1 but it may require to follow enhanced measures of due diligence mentioned in Annex 2 of CWG when found by way of risk analysis that there would be higher risk of money laundering and terrorist financing as per sec 15(2) of CWG.

The obliged parties are required to do risk management u/s 4 , risk analysis u/s-5, and internal risk measures u/s-6 of GWG as to an approach to reduce risk of money laundering and terrorist financing. The information regarding the type and extent of business and purpose and type of business relationship and transactions, documents must be updated from time to time as helps in knowing suspicious transactions or business relationships. When found that an asset related to transaction or business relation has origin at/from a criminal act then such suspicious must be notified to Financial Intelligence unit.<sup>5</sup>

### **IV. AMLD5 REGULATION**

The rules of national regulations relating to the crypto activities has been reformed by legislator of Germany through the 'Fifth Anti-Money Laundering Directive (AMLD5)'. Within the

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<sup>4</sup> "The Fiscal Treatment of Cryptocurrencies in Germany." The Fiscal Treatment of Cryptocurrencies in Germany - Important Questions, Winheller, Attorneys at Law and Tax Advisors, [www.winheller.com/en/banking-finance-and-insurance-law/bitcoin-trading/bitcoin-and-tax/taxation-cryptocurrencies-germany.html](http://www.winheller.com/en/banking-finance-and-insurance-law/bitcoin-trading/bitcoin-and-tax/taxation-cryptocurrencies-germany.html).

<sup>5</sup> "Prevention of Money Laundering and Terrorist Financing." BaFin, [www.bafin.de/EN/Aufsicht/Geldwaeschep-raevention/geldwaeschepraevention\\_node\\_en.html](http://www.bafin.de/EN/Aufsicht/Geldwaeschep-raevention/geldwaeschepraevention_node_en.html).

definition of financial instruments, the crypto assets as a new category has been inserted in it so as to cover it within the KWG meaning and all crypto tokens which have relevancy to financial market are also covered in it.

Payment-tokens, virtual-currencies, security investment tokens are included in the new definition. And this new definition is more related to financial-services and business of banking. It requires a German license for activities of trading which targets the market of German like the Virtual currency exchange platform (VCEP). Under KWG licence is required for the crypto -custody business which has been introduced as a regulating new financial service.

Some requirements like obligation of reporting or remuneration provisions, liquidity requirements, etc.) provided in KWG are exempted where the Crypto Custody Business which is being conducted as sole activity by CWP (custodian wallet providers). It is undecided as to crypto assets in trading companies, exchanges, crypto-wallets to trade as asset-class. For defining the taxability of crypto-assets there is no Indian-legislation determining clear rule of law.<sup>6</sup>

## **V. COMPARISON WITH INDIA**

The financial authorities of countries regulate their trading process differently. India currently has very limited idea on how to proceed with crypto. The regulation of trading by financial-authorities is different for each country. India has very limited idea on how to treat crypto currency. India is still undecided on whether crypto assets should Trading companies, bitcoin exchanges, crypto wallets be treated as an asset class and this made the CA's to interpret rules of taxation existing in respect to crypto-assets.

So it would be useful if Indian adopt some of the German regulatory framework of crypto currency as Berlin, German is one of the startup hub even of cryptocurrency and blockchain as is having favourable tax laws, and how the money laundering and terrorist financing issues are dealt by its Financial supervisory authority.

Further India may encourage various forms of startups like crptocurrency trading, digital wallet, Bitcoin ATM, crypto currency consulting, trading companies as these are some of the possible crypto currency startups areas. The most suitable form is GmbH in Germany.<sup>7</sup> And by

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<sup>6</sup> “New Regulatory Regime for Crypto Assets in Germany.” Global Law Firm | Norton Rose Fulbright, Mar. 2020, [www.nortonrosefulbright.com/en/knowledge/publications/5ee1e37e/new-regulatory-regime-for-crypto-assets-in-germany](http://www.nortonrosefulbright.com/en/knowledge/publications/5ee1e37e/new-regulatory-regime-for-crypto-assets-in-germany).

<sup>7</sup> “Open a Cryptocurrency Company in Germany.” Lawyers Germany, 18 July 2018, [www.lawyersgermany.com/open-a-cryptocurrency-company-in-germany](http://www.lawyersgermany.com/open-a-cryptocurrency-company-in-germany).

conducting various business meetups the Indian companies could plan further crypto currency restructuring methods/strategies.

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<sup>7</sup> “Cryptocurrency Business Ideas in Germany.” Lawyers Germany, 2 May 2018, [www.lawyersgermany.com/cryptocurrency-business-ideas-in-germany](http://www.lawyersgermany.com/cryptocurrency-business-ideas-in-germany).