

# **GUIDELINES**

**for the purpose of the**

## **Duty on Documents and**

## **Transfers Act**

**Issued On: 01/11/2018**

These guidelines issued under article 22A of the Duty on Documents and Transfers Act, hereinafter referred to as the “Act”, set out the Commissioner for Revenue’s (CfR) position for duty purposes in connection with activities involving distributed ledger technology (DLT) assets. For the avoidance of doubt, these Guidelines do not cover electronic money that is representative of fiat currency. These Guidelines are applicable solely to the purposes of the Act (including any rules or regulations issued thereunder) and have no bearing on any other law.

## **A. Types of DLT Assets for the purposes of Duty on Documents and Transfers Act**

For the purposes of these Guidelines, DLT assets shall be categorised as follows:

### **1. Coins**

This category refers to DLT Assets designed solely as a means of payment, which do not have any of the characteristics of a security, have no connection with any project or equity in the issuer, and whose utility, value or application is in no way directly related to the redemption of goods or services. These are cryptocurrencies that are designed to be used as a means of payment or medium of exchange, or function as a store of value: functionally they constitute the cryptographic equivalent of fiat currencies and are meant to serve as an alternative to legal tender. Cryptocurrencies fall outside the scope of the DDTA.

### **2. Tokens**

#### **a) Financial tokens**

This category refers to DLT Assets exhibiting qualities that are similar to equities, debentures, units in collective investment schemes, or derivatives and including Financial Instruments. Generally, they might be known as security, asset or asset backed tokens. These tokens would be analogous to equities, debentures, units in collective investment schemes, or derivatives, where they grant rights to dividends in a similar fashion as equities/shares, or to interest payments like bonds, or to payments from units in collective investment schemes, or payments linked with the performance of a specific asset like derivatives, respectively. Alternatively, they could grant rewards based on performance, or voting rights, or represent ownership in assets, or rights secured by an asset as in asset-backed tokens, or a combination of the foregoing.

## b) Utility tokens

This category refers to DLT Assets whose utility, value or application is restricted solely to the acquisition of goods or services either solely within the DLT platform on, or in relation to which they are issued or within a limited network of DLT platforms. This category also includes all other DLT Assets that are tokens whose utility is restricted solely to the acquisition of goods or services, i.e. whether or not listed on any DLT exchange, may be transferred on a peer to peer basis, or may be converted into another type of DLT Asset but only until such time as it is so converted. They do not have any connection with the equity of the issuer and do not have the characteristics of a security thus falling outside the scope of the DDTA.

It may also be possible for tokens to contain the features of both financial and utility tokens, depending on the terms and conditions of the said tokens, such that in practice they are referred to as 'hybrids'.

Where a hybrid token is used in a particular case as a utility token then it is to be treated as such, while if in another occasion the same token is used as a coin, then it needs to be treated as such.

Ultimately, the duty treatment of transactions concerning any type of DLT asset will not necessarily be determined by its categorisation but will depend on the purpose for and context in which the transaction is made according to the Act.

## **B. General Approach to Duty Treatment under the Duty on Document and Transfers Act**

The duty treatment in relation to any transaction involving DLT assets shall be in accordance with current tax provisions, jurisprudence and principles. Transactions that are subject to duty need to be analysed in the same way as any other transaction i.e. by reference to the nature of the activities, the status of the parties and the specific facts and circumstances of the particular case.

Any obligation under the Duty on Documents and Transfers Act (DDTA) to keep proper records shall apply to transactions involving DLT assets. The equivalent value in fiat currency may be determined by reference to the rate established by the relevant Maltese authority, and where such is not available by reference to the average quoted price on three reputable exchanges, on the date of the relevant transaction or event, or such other methodology to the satisfaction of the CfR. Applicable penalties may apply where proper records are not kept and where there is failure to report and pay any liability to tax.

The provisions of article 3(2) DDTA are pertinent in the case of DLT assets. Consequently, one needs to look at the intrinsic nature and effects of a particular transaction to which the DDTA refers without regard to the apparent title or form. Hence where transfers involve DLT assets that have the same characteristics as “marketable securities” as defined in the Act, they shall be subject to duty in accordance with the applicable provisions of the DDTA.