

Crypto ETPs and German Tax Treatment



In Short

On 10 May 2022, the German Bundesministerium für Finanzen (“BMF”) published a circular on the [“Treatment of virtual currencies and other tokens under German Income Tax Law”](#), clarifying the German tax treatment of gains made on investments in virtual currencies and other tokens. This brought their treatment into line with that of certain commodities. 21Shares’ believe that the clarifications in this circular confirm that private investors in most of 21Shares’ ETPs¹ should not have to pay capital gains taxes on their holdings of these ETPs provided that they have held them for at least 1 year.

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Full Details

How are profits from capital gains taxed in Germany?

Section 20 of the German Income Tax Act ("ITA", Einkommensteuergesetz, [EStG §20](#)) defines capital gains. German private investors who sell financial instruments (e.g. shares) are subject to a special flat-tax, the so-called Abgeltungssteuer, which amounts to 25% (plus 5.5% solidarity surcharge and church taxes, if applicable), irrespective of the holding period of the financial instrument.

What does the BMF circular state regarding crypto ETPs?

At point 85, the [BMF circular](#) defines the treatment of crypto ETPs: *"If the bond solely embodies a claim to delivery of a fixed quantity of units of virtual currency or other tokens deposited with the issuer or a claim to a payout by the issuer of proceeds from the sale of units of virtual currency or other tokens, then there is not a financial claim within the meaning of section 20 (1) no 7 of the Income Tax Act but a non-financial claim. The Federal Fiscal Court rulings on Xetra-Gold bearer bonds^{2,3,4} and the Federal Fiscal Court ruling on gold bullion securities⁵ are to be applied with the necessary modifications."*

What is the content of the gold rulings?

In the case of Xetra-Gold Notes and Gold Bullion Securities, the court has decided that investors should be taxed as if they were holding the underlying gold directly if certain structural requirements are met. Capital gains on these financial instruments are therefore taxed as income from private sales transactions according to Section 23 ITA ([EstG §23](#)) and are tax-free after a holding period of at least one year. As certain crypto ETPs are

similar in their legal structure to the mentioned gold products, these crypto ETPs may yield similar tax treatments.

What are the requirements and implications for crypto ETPs?

In order for a crypto ETP to be exempted from the German income tax after a 1 year holding period, it must be backed by and securitize a claim to the underlying physical crypto. This means that:

- The ETP has to be 100% physically backed by the underlying asset it is tracking.
- The private investor is entitled to physical redemption, which is either the physical delivery of the underlying crypto asset collateral (physical settlement) or receiving the proceeds from the sale of the underlying crypto asset collateral by the issuer (cash settlement). The physical settlement option does not need to be exercised in order for the gains to not be subject to taxation after the respective holding period.

Which 21Shares' ETPs are exempt from German income tax after the respective holding period?

All 21Shares' ETPs are fully physically backed by the respective crypto assets and all long products provide investors with the option for the physical delivery of the underlying(s) (except for ETPs that hold commodities as underlying(s), like BOLD). Therefore, in accordance with the conditions set out by the BMF, the gains made by German private investors disposing of 21Shares' crypto ETPs are not subject to German income tax, provided that the investor has held the ETP for a minimum period of one year.

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¹See also page 45 of the [EU Base Prospectus](#). ²Federal Fiscal Court decisions of 12 May 2015, VIII R35/14. ³Federal Fiscal Court decisions of 12 May 2015, VIII R 4/15. ⁴Federal Fiscal Court decision of 6 February 2018, IX R 33/17. ⁵Federal Fiscal Court decision of 16 June 2020, VIII 7/17