

Swiss Canton of Geneva publishes Initial Coin Offerings Guide

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Executive summary

The Swiss Canton of Geneva published, on 17 October 2018, an updated version of its Initial Coin Offerings (ICOs) Guide. This guide offers a summary of the relevant regulatory aspects and tax treatments in Geneva with regard to ICOs and is intended to assist ICO projects in their search for the best location and to ensure consistency within the administration. The guide describes the qualification criteria for facilitating and accelerating ICO projects getting established in Geneva. In particular, Geneva authorities offer entrepreneurs a clearly outlined procedure for their ICO project and the possibility of obtaining an evaluation of the project, as well as the possibility of being put into contact, according to their needs, with professionals in the Geneva ICO-ecosystem.

To date, several of the largest ICOs have taken place in Switzerland. With the present initiative, Geneva - like the Crypto Valley in the Swiss Canton of Zug - intends to strengthen its position as a center of digital innovation on an international scale, in particular with respect to blockchain technology, ICOs and distributed ledgers.

Detailed discussion

Background

In the course of the globally rapidly increasing interest around blockchain technology, Switzerland is positioning itself as a “Crypto Nation.” This is especially due to the much publicized practical guide on token classification published in the first quarter of 2018 by the Swiss Financial Market Supervisory Authority (FINMA) and even more by the general support of the Federal Council and other Swiss authorities, which pursue a strategy of promoting and supporting innovation in financial technologies (fintech) in Switzerland. Notably the Swiss cantons of Zug (known as “Crypto Valley”) and Geneva are emerging as international hubs for cryptocurrency and cybersecurity. They are showing a strong interest in hosting ICO projects and actively support companies operating blockchain applications.

With its profoundly international nature and its multicultural tradition, the Canton of Geneva provides the ideal setting for ICO projects. The canton offers quality infrastructures, a favorable tax system, and a competent blockchain ecosystem composed of entrepreneurs, academics, and an administration that has already supported several projects using blockchain technology.

Publication of ICO guide and evaluation of ICO projects

In order to facilitate and accelerate the implementation of ICO projects, the Directorate General for Economic Development, Research, and Innovation (DG DERI) of the Canton of Geneva has published an updated version of its ICO guide on 17 October 2018.¹ With this initiative, the Geneva authorities offer entrepreneurs the possibility to obtain an assessment of their ICO project, as well as being put in contact, according to their needs, with professionals in the Geneva ecosystem.

Concretely, the ICO guide outlines in detail the procedure as well as the information and documents necessary for such evaluation by the authorities. The guide identifies seven areas of evaluation for an ICO that project promoters should analyze in order to assess the progress of their project:

1. Composition of the ICO team and its ecosystem
2. Technological aspects
3. Concept and business plan
4. Legal aspects

5. The investor onboarding process
6. Marketing strategy and public relations
7. Calendar (state of advancement)

In order to obtain such evaluation by the Geneva authorities, the interested entrepreneurs basically need to submit all relevant documents (i.e., white paper, business plan, yellow paper, by-laws, audit reports, CVs, etc.) in relation to their project to a committee composed of experts from different sectors (i.e., legal and compliance, accounting, auditing and taxation, banking, technical, etc.) that will assess together with the Geneva authorities in a holistic approach the feasibility of the project in the canton and in particular highlight where the project might be improved. The evaluation consists of a short memorandum summarizing the degree of advancement of the project and providing recommendations to the ICO project promoters.

Basic principles of regulatory and tax aspects of an ICO

Apart from outlining the details of the mentioned ICO evaluation, the ICO guide also summarizes in a practical approach relevant regulatory and fiscal aspects to be considered when conducting an ICO in Switzerland.

Regarding the regulatory framework in Switzerland for ICOs, the guide refers to the guidelines published in the first quarter of 2018 by the FINMA according to which tokens issued during an ICO may be classified into three main categories: payment tokens, utility tokens and asset tokens.² Basically, this classification represents the first regulatory step to be taken by the ICO promoter in order to further determine the applicable rules from a financial market regulation perspective.

With regard to the tax aspects, the ICO guide states that in particular for Value Added Tax (VAT) purposes the classification of the tokens according to the FINMA guidelines are to be considered. Notably, the emission of utility tokens could qualify as a taxable service subject to Swiss VAT under certain circumstances.³ Regarding corporate taxation on the other hand, the decisive factor to determine the tax consequences is the accounting treatment of the ICO.⁴

Concretely, at the level of the legal entity issuing the tokens, the cantonal tax authority treats the financial resources received in exchange for the issued tokens (ICO proceeds) as basically constituting a taxable income (booked in the profit and loss statement (P&L)) of the entity in question.

Generally, ICO proceeds are qualified as taxable income regardless of the nature of the tokens issued (payment tokens, utility tokens, asset tokens, or hybrid tokens).

However, to the extent that the issuing entity has formally committed itself to allocate the financial resources obtained during the ICO to the future development and financing of its project, it is accepted by the tax authorities that it may constitute a provision against its P&L statement, up to the amount of the proceeds from the ICO, and thereby neutralize the generally taxable income in the year of the ICO.

That provision must then be dissolved, by crediting the P&L statement, as the project development phase advances and the financial resources obtained during the ICO are invested, or over a period to be determined beforehand with the Geneva tax authorities. At the end of the project's development phase, any potential balance must be dissolved and credited to the P&L, thus constituting residual taxable income.

It is explicitly recommended in the ICO guide of the Geneva authorities to have the tax treatment confirmed with the tax authorities by a binding ruling request before conducting the ICO.

Tax holiday and other aspects to be considered for a Geneva ICO project

Irrespective of the aforementioned tax treatment of the income generated by issuing tokens, such ICO projects may additionally apply for a general tax holiday in Geneva for a maximum period of 10 years. To obtain a tax holiday in Geneva, basically it has to be demonstrated that the project serves the economic interest of the canton (various criteria to be analyzed: grade of innovation, new jobs created, collaboration with public institutions, amount invested in canton, etc.).

If no such tax holiday may be obtained, the ICO entity would be subject to ordinary corporate income tax. Generally, taxation of companies in the canton of Geneva currently corresponds to an effective tax rate of 24.2%. However, in the course of the current Swiss tax reform the canton of Geneva intends to lower its effective tax rate to 13.79% (in principle as of 2020).

Finally, there might also soon be some development with regard to the often encountered regulatory concerns of banks to accept ICO entities as clients. Considering the generally increased acceptance of ICO-related businesses in Switzerland, it may be expected that there should soon be a change to a more crypto-friendly approach of certain Swiss banks.

Implications

Due to its favorable regulatory and fiscal ecosystem as well as the numerous professionals specialized in blockchain technology, Geneva is a very attractive place to launch an ICO project.

However, businesses should contact the respective authorities early in an ICO-process to take advantage of the described evaluation offering and in order to be well-positioned from a regulatory and tax perspective before executing the contemplated ICO project.

Endnotes

1. A first version of the ICO guide was published by the same authorities earlier this year.
2. The individual token classifications are not mutually exclusive. Asset and utility tokens can also be classified as payment tokens (referred to as hybrid tokens).
3. The ICO proceeds could be considered as pre-payment of services to be provided in future.
4. Authoritative principle: General principle in Swiss tax law that the treatment for book purposes must also be adopted for the determination of taxable profit (*principe de détermination/Massgeblichkeitsprinzip*).

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