VAT Treatment of Cryptocurrencies – Some Thoughts on the Libra Project

On 18 June 2019, Mark Zuckerberg officially announced the *Libra project* with a popular post on Facebook. The idea of launching a global *stablecoin* that would benefit from an easily accessible and globally available financial infrastructure was born. Based on the blockchain system, Libra would distinguish itself from other popular cryptocurrencies (like bitcoins) for being collateralized (and therefore "stable") and for its creation process. In this article, the author will first briefly describe the Libra project and make some observations about Libra by analysing its functioning and determining whether it is a fully stablecoin or not. She will then examine the issue from the point of view of VAT, which could possibly be taken into account on transactions made using Libra.

1. Introduction

On 18 June 2019, Mark Zuckerberg officially announced[1] the *Libra project* with a popular post on Facebook. The idea of launching a global *stablecoin* (i.e. a kind of cryptocurrency) based on a financial infrastructure that is easily accessible and available worldwide was born. Based on the blockchain system, Libra would distinguish itself from other popular cryptocurrencies (like bitcoins) for being collateralized (and therefore "stable") and for its creation process. In fact, Libra would be "minted" by the Libra Association against payment in fiat currency by authorized resellers. In addition, Calibra, a subsidiary of Facebook, will provide users with a wallet exclusively designed for Libra. With the Calibra wallet, it will be possible to exchange Libra into fiat currency and vice versa. However, not everyone welcomed this project, and for several reasons. The resistance from some market players, primarily banks and regulators, has not, however, slowed down or caused Zuckerberg and his business partner David Marcus (the head of Libra project) to desist from advancing with the plan. On the contrary, it has made them more aware[2] of the difficulty of implementing such an initiative.

We do not know if this stablecoin will come into being but if it does, it is better to have already made some tax observations in order to be prepared when the time comes. In this article, the author will first briefly describe the Libra project (section 2.) and provide some considerations about Libra by analysing its functioning and determining whether it is a fully stablecoin or not (section 3.). She will then examine the issue from the point of view of VAT, which could possibly be taken into account on transactions made using Libra (section 4.).

2. The Libra Project

The advent of the Internet has brought information and increased exchanges even in the most remote corners of the globe, yet without being able to provide the same services that the civilized world enjoys. Indeed, as the introductory white paper[3] to Libra explains, Zuckerberg's idea comes from a need that must be met. With its official announcement,[4] Zuckerberg is in particular targeting the 1.7 billion adults worldwide who do not currently use banking services (the so-called "unbanked") but who, for the most part, have Internet access. From a questionable, colonizing point of view, the American entrepreneur proposes himself as a paladin of civilization, ready to make available to the most unfortunate an extremely accessible and effective financial infrastructure.

However, it is difficult to think that the American entrepreneur is only targeting such a category of possible users, when he can already count on a stable and established community, with more than 2 billion people using Facebook, Instagram, WhatsApp, or Messenger monthly.[5] In fact, without great surprise, Facebook has launched through its subsidiary *Calibra* the first wallet through which it will be possible to conclude transactions in Libra on all the platforms mentioned, as well as to exchange Libra into fiat currency[6] (and vice versa).[7]

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1. *See* Mark Zuckerberg's post on Facebook (18 June 2019). Available at https://www.facebook.com/zuck/posts/10107693323579671 (accessed 3 Feb. 2020) [hereinafter Zuckerberg's post].
2. *See* full transcript of Mark Zuckerberg's leaked internal Facebook meetings, on the plan to launch Libra. Available at https://www.theverge.com/2019/10/1/20892354/mark-zuckerberg-full-transcript-leaked-facebook-meetings?fbclid=IwAR2-Egzr43FZ_f16TAq08-bc_M_m3Hlm9jZDlmiG7YFJk4-KY4TvDtBX7o8 (accessed 3 Feb. 2020).

3. *See* Libra Association's white paper. Available at https://libra.org/white-paper/ (accessed 3 Feb. 2020) [hereinafter Libra's white paper].
4. *See* Zuckerberg's post, *supra* n. 1.
5. *See* Facebook's official data. Available at https://about.fb.com/company-info/ (accessed 3 Feb. 2020).
6. According to the European Central Bank (ECB), fiat currency (or fiat money) "[…] is money that is declared legal tender and issued by a central bank but, unlike representative money, cannot be converted into, for example, a fixed weight of gold. It has no intrinsic value – the paper used for banknotes is in principle worthless – yet is still accepted in exchange for goods and services because people trust the central bank to keep the value of money stable over time". *See* ECB's Explainer *What is money?* (24 Nov. 2015, updated 20 Jun. 2017). Available at https://www.ecb.europa.eu/explainers/tell-me-more/html/what_is_money.en.html (accessed 3 Feb. 2020).
7. For more information, *see* Calibra's website https://calibra.com/#intro (accessed 3 Feb. 2020).

It is from this reflection that the concerns of the United States' largest banks and the US Federal Reserve probably arise. In particular, they fear that "the Libra Association[8] structure has the potential to reduce the ability of states to monitor, manage, and influence local economies". This is why they feel the need for strict regulations in order to prevent damage and limit risks. Moreover, according to them, regulators should also consider the impact on taxation.[9]

In contrast, Mark Brenson, director of the Swiss Financial Market Supervisory Authority (FINMA), has not made any particular criticisms of the future Facebook stablecoin. In an interview with the newspaper Neue Zürcher Zeitung,[10] he stated that the authority he represents does not intend to stop the advance of this kind of innovations, but that it will simply *apply the existing rules* with caution and precision, always in the interest of the Swiss financial market's stakeholders. In particular, he fears that opposing such developments and challenges would lead Switzerland to lose its international leadership and competitiveness in the financial sector. Apparently, risk is part of the game.

3. Qualification of Libra: Is It a "Stablecoin"?

In order to proceed with the analysis of Libra from a VAT perspective, we must first try to define cryptocurrencies and stablecoins, in order to then determine whether Libra belongs to this particular category of virtual currencies or not. Many questions arise: Should we consider Libra a full-fledged cryptocurrency or not? Between cryptocurrencies, does Libra belong to the niche of stablecoins? What criteria must be met for these purposes? Are they met in the specific case? The following subsections seek to provide an answer to these questions.

3.1. The definition of cryptocurrencies

Developed on the basis of the example of the Bitcoin, the first decentralized system,[11] cryptocurrencies are blockchain-based *virtual currencies* that use a decentralized *cryptography system* in order to secure and record transactions. According to the European Banking Authority (EBA)[12] "[virtual currencies] are defined as a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a FC [fiat currency], but is used by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically". Indeed, one of the first questions that arose in relation to cryptocurrencies was whether they could perform the function of fiat currency, which traditionally consists in representing (i) a unit of account, (ii) a means of exchange and (iii) a store of value.

In its guidelines[13] of 16 February 2018, FINMA gave a first answer and took position by defining payment tokens (synonymous with cryptocurrencies) as "tokens which are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer". Indeed, according to their economic function, cryptocurrencies can typically meet the necessary requirements for performing as fiat currency equivalent. However, an assessment on a case-by-case basis is always preferred.

As mentioned, cryptocurrencies represent a subset of virtual currencies. What characterizes cryptocurrencies is that they are based on the *blockchain system*. The blockchain is generally an open-source software that works like a digital, decentralized database which records chronologically all transactions occurring through it. Manipulation of the blockchain is therefore an unrealizable possibility since any transaction is copied to each new block of data that is inserted in the blockchain. The latter is spread identically in several sites (i.e. computers), called validator nodes, and is continuously updated. Among blockchains, the author thus distinguishes between "permissioned" systems, where, in order to become a validator node, access must be granted, and "permissionless" systems, where it is sufficient to simply meet specific technical requirements.

Most cryptocurrencies, notably bitcoins, are created through a process called "mining". In this process, all occurs at the level of the miners, namely the persons responsible for validating each transaction taking place via the blockchain through a process called "proof of work" (PoW).[14] This validation generally demands a considerable amount of energy because it can only take place after the resolution of complex calculations requiring extraordinary computing power.[15]

When mining is not involved, cryptocurrencies are usually created via an initial coin offering (ICO), which is basically a "process used to raise capital using blockchain technology". Indeed, in this particular form of crowdfund-

8. The Libra Association is an independent, non-profit organization based in Geneva, Switzerland, that will govern and coordinate the Libra project.

9. *See* the minutes of the meeting of the Federal Advisory Council and the Board of Governors (6 Sept. 2019), p. 6. Available at https://www.federalreserve.gov/aboutthefed/files/fac-20190906.pdf (accessed 3 Feb. 2020).

10. *See* Mark Branson's interview for Neue Zürcher Zeitung newspaper (12 Sept. 2019). Available at https://www.nzz.ch/wirtschaft/wenn-der-schweizer-finanzplatz-noch-ambitionen-hat-muss-er-mit-aufmerksamkeit-koennen-ld.1508040 (accessed 3 Feb. 2020).

11. T. Obrist & R. Pfister, *Tax treatment of cryptocurrency holders and miners in the era of virtual currencies from a multijurisdictional and Swiss perspective*, in D. Kraus, T. Obrist & O. Hari eds., *Blockchains, Smart contracts, Decentralised Autonomous Organisations and the Law*, p. 303 (University of Neuchâtel 2019).

12. *See* EBA, *EBA Opinion on 'virtual currencies'* (4 Jul. 2014), p. 11. Available at https://eba.europa.eu/sites/default/documents/files/documents/10180/657547/81409b94-4222-45d7-ba3b-7deb5863ab57/EBA-Op-2014-08%20Opinion%20on%20Virtual%20Currencies.pdf?retry=1 (accessed 3 Feb. 2020).

13. FINMA, *Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)* (16 Feb. 2018). Available at https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/ (accessed 3 Feb. 2020).

14. M. Huber, S. Guler & J. Dumont, *By the Same Token: Swiss Tax Questions in the Context of Initial Coin Offerings*, 20 Derivatives & Financial Instruments 3, secs. 3.2.4. and 3.2.5. (2018), Journal Articles & Papers IBFD.

15. V. Mignon, *Le "[B]itcoin", un nouveau défi pour le juriste Suisse?*, p. 6, Jusletter (May 2015).

ing, investors buy cryptocurrency using fiat currency or another cryptocurrency.[16]

3.2. The definition of stablecoins

Stablecoins are a relatively recent subset of traditional cryptocurrencies. Invented in 2014, they claim to *minimize their volatility*, thus making them more attractive to investors. Since the beginning, stablecoins have been successful and their market share value has significantly increased over time, reaching 2.7% of the total of cryptocurrencies existing in 2019. For example, Tether (USDT), one of the oldest stablecoins, is the second most traded on the cryptomarket after bitcoins.[17]

In order to ensure the stability of their value, stablecoins provide traditional mechanisms that should give a sufficient level of reassurance against default risk, thus making them more attractive to the public. Depending on the parameter on which they are based, stablecoins can be divided into two major categories: (i) asset backed and (ii) algorithmic.

In the first case, the stablecoin is *collateralized by the constitution of a parallel reserve* that preserves its value and price. Depending on the asset chosen for the constitution of this reserve, asset-backed stablecoins can be divided into three subcategories: (i) fiat-backed[18] ("off-chain" collateral), (ii) cryptocurrency-backed ("on-chain" collateral) and (iii) commodities-backed stablecoins. The author has also identified a fourth category that could be defined as "hybrid-backed", i.e. when several stabilization parameters are taken at the same time (e.g. CHF and gold or CHF and BTC).

In the second case, an *algorithm* artificially adjusts the value of the stablecoin to keep its price stable based on demand. However, in the eyes of the investor this second category of stablecoins may be less convincing, as there is no corresponding asset to redeem in case of default.[19]

3.3. Main features of Libra

According to Libra's white paper, "Libra is designed to be a stable digital crypto currency",[20] namely a stablecoin. Indeed, there will be only a digital version of it, without any tangible correspondent in the real world. Its virtual nature will ensure absolute immediacy in transfers of sums between users, as well as easy and secure payments of goods and services online.

Libra will be built on the "Libra Blockchain", an open-source software. Unlike traditional blockchain systems that collect blocks of transactions, the Libra Blockchain uses a single data structure that chronologically records all transactions occurring through it. At first, the Libra Blockchain will operate on a "permissioned" system, although the Libra Association plans to make it "permissionless" in the future.[21]

Libra will be backed (or collateralized) by a reserve of assets that should preserve its intrinsic value and ensure the stability of its price over time. This reserve, an "off-chain" collateral, will consist of a combination of bank deposits and short-term government securities and will represent the consideration given by authorized resellers to purchase Libra. The interest earned on the reserve will serve to cover the costs of the system, thus reducing fees on users' transactions.[22]

The payment of authorized resellers and the consequent creation of the reserve will start the mint process of Libra, i.e. its creation. In fact, the Libra Association will create (mint) Libra only once the correspondent in fiat currency will be paid. Authorized resellers can also decide to resell Libra to the Libra Association and thus regain the amount initially paid. In this case, Libra will be destroyed (burned).[23]

3.4. Libra as a stablecoin?

Based on section 3.3., there is no doubt that Libra belongs to the superset of virtual currencies and, more specifically, to the subset of cryptocurrencies. Among cryptocurrencies, Libra belongs to the niche of *stablecoins*.

Libra is actually a virtual currency because there is *no tangible counterpart* to it in the real world, it is not issued by a central bank or a public authority and it may be used to *purchase products or pay for services*. It falls within the definition of cryptocurrency as it is based on the blockchain, although it is not created through the traditional mining process but it is minted by the Libra Association once purchased by authorized resellers against payment in fiat currency. Libra also meets the requirements to be part of the stablecoins category, being *collateralized "off-chain"* by a combination of bank deposits and short-term government securities.

On this basis, the Libra Association submitted to FINMA a request for an initial assessment of the Libra project.[24] In response, the Swiss authority stated that, according to the "substance over form" principle,[25] the issuance of the stablecoin would require a *payment system licence* from FINMA, in accordance with the Financial Market Infrastructure Act (FMIA). The granting of such a licence would lead to the immediate and automatic application of the regulation provided for by the Anti-Money Laun-

16. Obrist & Pfister, *supra* n. 11.
17. For further information, *see* Blockain.com, *2019 State of Stablecoins*. Available at https://www.blockchain.com/research (accessed 3 Feb. 2020).
18. For example, a one-to-one reserve ratio between the token (tether, USDT) and its correspondent in fiat currency (US dollars, USD) protects Tether from volatility risks.
19. For more information on the advantages and disadvantages of each category of stablecoins, *see* L. Abraham & D. Guégan, *The other side of the Coin: Risks of the Libra Blockchain*, p. 7 et seq. (27 Jan. 2020). Available at https://arxiv.org/abs/1910.07775 (accessed 3 Feb. 2020).
20. Libra's white paper, p. 7.
21. Id., at p. 5.
22. Id., at p. 7.
23. Id., at p. 8.
24. FINMA, Press release on stablecoins guidelines (11 Sept. 2019). Available at https://www.finma.ch/en/news/2019/09/20190911-mm-stable-coins/ (accessed 3 Feb. 2020).
25. According to this principle, FINMA performs the analysis of each blockchain-based token following a more economical approach, focusing primarily on the function and purpose of the token observed.

dering Act (AMLA). Other risks inherent in the project, such as bank-like risks, would lead to additional requirements.

Therefore, in the event that the Libra project were to proceed and see the light of day, we already have an indication of the possible consequences from a Swiss financial market law point of view. However, from a tax law perspective, some questions may still arise. This leads us to the second part of this article, in which we will focus on the potential VAT treatment of Libra. The analysis will be restricted to the Swiss jurisdiction. However, the author would not exclude that a similar treatment at the European level may be foreseeable since, as will be further discussed, Swiss VAT is highly euro compatible and the Swiss solution may find its roots in a judgment of the Court of Justice of the European Union (ECJ).

4. Libra and VAT: Quid Iuris?

4.1. Overview of the Swiss VAT system

Like all traditional VAT, the Swiss VAT[26] is a general tax levied on all supplies of goods and/or services provided in Switzerland at all stages of production and which, allowing the deduction of the input tax, is intended to tax only the added value realized by the taxable person. It is a consumption tax as the end-consumers, independently of their economic situation, support it.

The Swiss VAT system is *intentionally compatible*[27] with European VAT. Although the first one has some peculiarities that we do not find at the European level, such as the standard tax rate of 7.7%,[28] it can be said in general that the two systems are harmonized, especially in order to avoid situations of double (non-)taxation.[29] For this reason, the Swiss Federal Court has often taken into consideration the decisions taken at European level in relation to the VAT Directive[30] to interpret the Swiss VAT Act (VATA).[31]

4.2. Could Libra fall within the scope of Swiss VAT?

4.2.1. Transactions at stake and relevant case law of the ECJ

There are two relevant operations in Libra that could fall within the scope of Swiss VAT, namely (i) the *creation of Libra against fiat currency* (mint process) and (ii) the *exchange of Libra into fiat currency* (or vice versa).

As already mentioned, the creation of Libra (mint) will not take place according to the usual process of most cryptocurrencies, namely mining. For Libra, everything will happen at the level of the Libra Association, which is responsible for the "creation" of the stablecoin following its acquisition from authorized resellers. In order to be able to buy and receive Libra, resellers will have to provide the association with the equivalent in fiat currency.[32] These assets will constitute the reserve that should ensure a certain stability to the cryptocurrency. In addition, the interest matured on the reserve will be used to maintain the system and reduce transaction costs.[33]

As soon as Libra will be available to users, Calibra, Facebook's subsidiary, will launch a wallet exclusively designed for Libra. This will allow users to send, spend and save the stablecoin. For this purpose, it will be possible to convert local currency into Libra to add money to the wallet, and then convert it back when a withdrawal is needed. At each conversion, Calibra's application will provide users with an exchange rate. Consequently, it is very likely that the application will include a margin consisting of the difference between, on the one hand, the price at which Calibra purchases the currency and, on the other hand, the price at which it sells it to the application's users.

In a 2015 decision, the ECJ decided on the VAT treatment of transactions involving bitcoins (*Skatteverket v. Hedqvist*).[34] This decision has set standards that are relevant for the discussion in this article. Mr Hedqvist owned a Swedish trading company that *bought and sold bitcoin units (cryptocurrency) in exchange for fiat currencies, or vice versa.* For this service, the company did not charge any particular fees but still made a profit based on the difference (margin) between the purchase price and the selling price offered to customers. In order to qualify the nature of such an activity, the ECJ first qualified the object traded: bitcoins on the one hand, and fiat currencies on the other. In both cases, the result is that they represent *means of payment*. For bitcoins in particular, the ECJ determined that they represent an *intangible property* that has no other purposes than to be a means of payment.[35] Consequently, it follows that the transaction analysed does not constitute a supply of goods but rather a supply of services within the meaning of article 24 of the VAT Directive.[36] The onerous nature of such a service is also present, as Mr Hedqvist's company was remunerated on the margin included in the

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26. CH: Federal Act on Value Added Tax, 12 Jun. 2009 [hereinafter VATA].
27. Swiss Federal Council, Message concerning the simplification of VAT, 25 June 2006, FF 2008 6277, p. 6314 [hereinafter Message on VAT simplification]. In order to simplify economic exchanges between Switzerland and the European Union, system compatibility is necessary. However, this compatibility must be achieved at the practical level ("compatibility of results") and not necessarily at the legislative level ("technical compatibility").
28. Art. 25(1) VATA. The standard rate of VAT applicable to goods and services by all EU Member States is at least 15% according to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, art. 97, Primary Sources IBFD, [hereinafter VAT Directive]. Other differences with the European VAT system are, for example, the definitions of supply, the tax treatment of donations and subsidies and the basis for calculating self-supply.
29. Message on VAT simplification, p. 6315.
30. Cf. *supra* n. 28.
31. D. Clavadetscher, *Kommentar zum Schweizerischen Steuerrecht*, in M. Zweifel et al. eds., *Bundesgesetz über die Mehrwertsteuer*, para. 37 ad art. 1. (Helbing Lichtenhahn Verlag 2015). On the euro compatibility of Swiss VAT, *see also* CH: Swiss Federal Court, Case 125 II 480; and T. Obrist, *Introduction au droit fiscal suisse*, p. 268 (2nd ed., University of Neuchâtel 2018).

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32. Libra's white paper, p. 8.
33. Id., at p. 7.
34. SE: ECJ, 22 Oct. 2015, Case C-264/14, *Skatteverket v. David Hedqvist*, Case Law IBFD (accessed 13 Feb. 2020).
35. *Hedqvist* (C-264/14), para. 24 et seq.
36. Id., at para. 26.

exchange rate applied to the currencies traded. Moreover, the consideration for the service provided had a direct link with the service itself.[37] Indeed, at the conclusion of this first part of the judgment, the ECJ ruled that the activity of Mr Hedqvist constitutes *a supply of services for consideration* within the meaning of article 2(1)(c) of the VAT Directive.

Once it had determined that the transactions carried out by Mr Hedqvist's company fall within the scope of the VAT Directive, the ECJ had to decide whether they are in any way exempt from VAT. The exemptions that could be taken into account are provided for in article 135(1)(d) of the VAT Directive and constitute autonomous concepts of EU law.[38] Their interpretation must respect both the objectives pursued by the law and the principle of tax neutrality.[39] The provisions cited concern *financial transactions* whose exemption is justified by a need to overcome the difficulties involved in determining the tax base and the amount of deductible VAT.[40] Therefore, the first question that arises is whether transactions in non-fiat currencies also constitute financial transactions. According to the ECJ, this is the case as long as non-fiat currencies are accepted by the parties to the transaction as a contractual means of payment that has no other purpose than this.[41]

Then, between the many financial transactions listed by the above-mentioned provisions, those of article 135(1)(e) of the VAT Directive which relate to currencies could be particularly relevant. Indeed, the second question to be addressed is whether exchange transactions in non-fiat currencies (virtual currencies, more specifically cryptocurrencies in the case at stake) fall within the scope of this provision or whether it only concerns transactions in fiat currency. According to the principles of interpretation mentioned above, the purpose of the law may determine its scope. The ECJ thus makes a *teleological interpretation* of the provision cited, assuming that it would be rendered meaningless if transactions in non-fiat currencies did not fall within its scope. Exchange transactions in bitcoins pose the same difficulties in determining the tax base and the amount of deductible VAT as fiat currency exchange transactions. Thus, they should *benefit from the same exemption from VAT.*

Based on this decision, the author assumes that minting and exchanging Libra falls within the scope of the Swiss VAT system (section 4.2.2.) but benefits from an exemption from VAT (section 4.2.3.).

4.2.2. Do the activities fall within the scope of the VATA?

The reasoning is common to both operations as they have two major points in common: (i) both consist in the *exchange of means of payment* and (ii) constitute *financial transactions* as long as all parties to the transaction accept Libra as a contractual means of payment that has no other purpose than this.

Material scope

Concerning the material scope, a transaction is subject to Swiss VAT whenever it includes the following three components: (i) a *supply*, (ii) a *consideration* and (iii) an *exchange relation* between the two. The concept of supply is a generic term covering supplies of both goods[42] and services.[43] The notion of a supply of goods under the VATA must be carefully analysed on a case-by-case basis, as it sometimes differs from general notions traditionally employed in Swiss law.

With regard to the supply of services,[44] the law merely defines it as *any transaction that does not fall within the notion of supply of goods.* Such an operation is also carried out when an intangible asset or right is made available.

In the case at stake, the three conditions provided by the law are fulfilled in both operations. Thus, the supply corresponds to a *supply of services* within the meaning of article 3(e) of the VATA since in both cases transactions concern intangible assets (everything happens virtually). Moreover, the author considers that the service is provided against consideration. In the first operation, the consideration for the service provided by the Libra Association takes the form of authorized resellers' payments in fiat currency (the reserve). In the second operation, the consideration can be in fiat currency (or Libra) and will result from a margin probably included in the exchange rate. That margin would compensate Calibra for the service provided as an exchange platform. The exchange relationship between the supply and the consideration is also present, as the two operations are linked economically to each other in both cases.

Territorial scope

For the operations to fall within the territorial scope of the VATA, they must be located in Switzerland.[45] As it is a supply of services in both cases, it will be the registered office/fixed establishment or domicile/place of normal abode of the recipient that will be taken into account. Thus, as long as the authorized resellers of the Libra Association or the holders of the Calibra wallet have their *registered office or domicile in Switzerland*, the territorial condition is respected.

Personal scope

Concerning the personal scope of application, by law,[46] any entity (individual or legal person) that carries on a business, regardless of its legal form and purpose, is a taxable person for Swiss VAT purposes if it *supplies services on Swiss territory or* has its *registered office* there. As soon as the conditions set out above are met, the taxable

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37. Id., at para. 28 et seq.
38. Id., at para. 33.
39. Id., at para. 35.
40. Id., at para. 40.
41. Id., at para. 49.

42. Art. 3(d) VATA.
43. Art. 3(e) VATA.
44. Id.
45. Art. 1(2)(a) VATA.
46. Art. 10(1) VATA.

person must voluntarily notify the Swiss Federal Tax Administration (FTA) within 30 days.

However, an entity may be *exempt from Swiss VAT* if certain special conditions[47] are met, in particular if its annual worldwide[48] turnover is less than CHF 100,000[49] and is generated from services that are not exempt from the tax without credit.[50] A company may also be exempted independently of its turnover when (i) it has its registered office outside Switzerland and (ii) it exclusively provides services exempt from tax[51] or located in Switzerland in accordance with article 8(1) of the VATA, except if these are telecommunications or electronic services provided to non-taxable recipients.

Based on the above, it seems at first sight that the activities under scrutiny also fall in the personal scope of application. For the Libra Association, this is clearly the case as it has its registered office in Geneva, Switzerland. However, an *exemption* could still be considered. Thus, if the Libra Association's turnover is less than CHF 100,000 and is generated from services that are not exempt from the tax without credit (article 21(2) of the VATA), it should be exempt from Swiss VAT liability. As the Libra Association's turnover cannot yet be known (even if it is expected to exceed the mentioned cap), it remains to be determined whether the services provided are exempted from the scope of the law. The possible application of an exemption will be discussed in section 4.2.3.

For Calibra, as it has its registered office in Menlo Park, California (United States), the criterion will also be met from the moment it will provide services on Swiss territory, which will be the case if Calibra's exchange platform and wallet services will be available to Swiss users. However, the same exemption applicable to the Libra Association could be relevant for Calibra too, as long as the conditions are met. Moreover, since Calibra's registered office is located abroad, it could also be exempt from Swiss VAT if it will exclusively provide services (i) exempt from tax in accordance with article 23 of the VATA or (ii) located in Switzerland in accordance with article 8(1) of the VATA. If the second condition is likely to be met, the exemption provided for in article 23 of the VATA can be easily excluded following a first reading of the provision.

4.2.3. Do the activities benefit from a tax exemption?

For various reasons (economic, social, etc.), the VATA provides for a long list of supplies *exempt from the tax without credit*.[52] This means that, in the transaction, the consideration received for the exempt supply does not include VAT. In order to avoid a hidden tax on exempt supplies, the legislator has provided an *option for the taxation of supplies exempt from the tax without credit*.[53]

However, the option of article 22 of the VATA is not applicable to all supplies provided for in article 21 of the VATA. In particular, among supplies excluded from the option,[54] those relating to *money and capital markets* are particularly relevant.[55]

Once again, these supplies are organized in a long list of different financial transactions, one of which particularly applies to "turnovers, including brokerage, relating to [domestic and foreign] legal tenders [such as] currency [and] coins".[56]

In this respect, the particularity of these exemptions lies in the purpose of their existence. As mentioned, the reasons behind it are different, but the exemption for services provided in the field of money and capital markets is mainly intended to be *practical.* Indeed, the difficulty in correctly assessing the services provided as well as other general economic reasons justify the exemption of these services.[57]

Based on the above, it remains to be determined whether the services provided by the Libra Association and Calibra could possibly fall within one of the exemptions provided for in article 21(2) of the VATA. Following a similar reasoning to that of the ECJ, it is necessary to determine whether the transactions studied in this article so far can be assimilated to financial transactions. In this regard, it is essential to determine whether cryptocurrencies have the character of means of payment. As we have seen, this depends at both the European and the Swiss level on the perception of the parties to the transaction. If the parties consider cryptocurrencies to be *means of payment*, then transactions involving them may fall into the category of financial transactions for VAT purposes. In Switzerland, the FTA also shares this view regarding payment tokens in general.[58]

Thus, financial transactions are exempt from Swiss VAT pursuant to article 21(2)(19) of the VATA. Between the operations provided for in this provision, as mentioned, those concerning turnovers and brokerage of legal tenders (fiat currency) could be relevant. This raises the question of whether, like its European counterpart, this provision also includes cryptocurrencies by analogy or only applies to fiat currencies. Indeed, the euro compatibility of Swiss VAT has once again won, with the FTA's response[59] going in the same direction as the ECJ's decision in *Skatteverket v. Hedqvist*. Thus, article 21(2)(19)(d) of the VATA must be interpreted in the same way as article 135(I)(e) of the VAT Directive, i.e. according to a *teleological interpretation* of

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47. Art. 10(2) VATA.
48. In Switzerland and abroad.
49. This threshold rises to CHF 150,000 for public utility institutions and non-profit sports or cultural companies managed on a voluntary basis.
50. *See* list provided for in art. 21(2) VATA.
51. Art. 23 VATA.
52. Art. 21 VATA.
53. Art. 22 VATA.
54. Art. 22(2) VATA.
55. Art. 21(2)(19) VATA.
56. Art. 21(2)(19)(d) VATA.
57. P. Mollard, X. Oberson & B. Tissot, *Traité TVA*, p. 318 et seq. (Helbing Lichtenhahn Verlag 2009); M. Reich, *Steuerrecht*, p. 672 (Schulthess 2012).
58. FTA, MWSt-Info, 04 Steuerobjekt, 2.7.3.1 Grundlage [VAT-Info, 04 Object of the tax, 2.7.3.1 Base]. Available at https://www.gate. estv.admin.ch/mwst-webpublikationen/public/pages/taxInfos/cipher Display.xhtml?publicationId=1003047&componentId=1479067&lang= fr (accessed 3 Feb. 2020).
59. Id., at 2.7.3.4. Available at https://www.gate.estv.admin.ch/mwst-webpublikationen/public/pages/taxInfos/cipherDisplay.xhtml?componentId=1479288&publicationId=1003047&lang=fr (accessed 3 Feb. 2020).

the provision, which would therefore include the notion of cryptocurrencies.

Therefore, according to the author, even if the transactions analysed could fall within the scope of the VATA, they should be *exempt from Swiss VAT* under the application by analogy of article 21(2)(19)(d) of the VATA. Indeed, VAT will not be levied on any margin provided by the Libra Association when creating Libra against fiat currency, nor on the exchange of Libra into fiat currency (or vice versa) via the Calibra application.

5. Conclusion

With this contribution, the author explored more closely the last major initiative of the blue digital giant: Libra. Created by the Libra Association against fiat currency by authorized resellers, this stablecoin might revolutionize the financial market as we know it. It will connect people and make international transactions even more accessible. Thanks to the Calibra wallet, it will also be possible to send, spend and save Libra, but also to convert it into fiat currency (or vice versa).

The author has identified the two main operations in Libra that could trigger the levy of VAT: (i) the creation of Libra against fiat currency and (ii) the exchange of Libra into fiat currency (or vice versa). After a brief recall of the essential elements of Swiss VAT, she analysed a judgment of the ECJ to determine whether its application by analogy could have been relevant in this particular case. The author thus concluded that, like the ECJ's decision in *Skatteverket v. Hedqvist*, even if falling within the scope of the VATA, the financial transactions at stake should benefit from the *application by analogy of the exemption from VAT* provided for in article 21(2)(19)(d) of the VATA. Based on the above, in the author's view, Swiss VAT should be levied neither (i) on authorized resellers' payments for the creation of Libra by the Libra Association, nor (ii) on the margin eventually included in the exchange rate provided by Calibra.

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