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## Contents

<b>Introduction</b> .....	7
<b>Jacek Adamek:</b> <i>Halal</i> food market vs. Polish meat producers. On the dissimilarities in approaching the idea of sustainable development .....	9
<b>Arkadiusz Babczuk:</b> Debt of municipal companies in Poland in the light of research .....	20
<b>Melania Bąk:</b> Social responsibility of accounting vs. corporate image .....	45
<b>Piotr Bolibok:</b> Value relevance of impairment provisions in the Polish banking sector.....	58
<b>Grażyna Borys:</b> Selected directions of increasing efficiency in supporting thermomodernization in buildings from public funding.....	68
<b>Jarosław Dziuba:</b> Environmental aspects in the system of local taxes and tax policy of cities with the <i>powiat</i> status in Poland .....	78
<b>Elżbieta Hajduga:</b> Social insurance of farmers vs. the concept of sustainable development.....	89
<b>Alicja Janusz, Teresa Orzeszko:</b> Education as an operation area of domestic listed bank foundations .....	100
<b>Joanna Kogut:</b> Directions of changes in SME accounting in accordance with the amended Accounting Act.....	126
<b>Andrzej Koza:</b> Grants for employment as an instrument for counteracting unemployment of persons with disabilities in the Czech Republic and Poland .....	138
<b>Robert Kurek:</b> Bitcoin vs. legal and tax regulations in Poland and worldwide .....	153
<b>Agnieszka Łukasiewicz-Kamińska:</b> Digital currencies and their impact on monetary systems.....	162
<b>Małgorzata A. Olszak, Mateusz Pipień, Sylwia Roszkowska:</b> Do loan loss provisions accounting and procyclicality matter for the effects of capital on loan growth of big banks in the European Union? .....	171
<b>Małgorzata Solarz:</b> Equity release type of financial services in the context of the intergenerational justice principle.....	182

## Streszczenia

<b>Jacek Adamek:</b> Rynek żywności <i>halal</i> a polscy producenci mięsa. O odmienności pojmowania idei zrównoważonego rozwoju.....	9
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<b>Arkadiusz Babczuk:</b> Zadłużenie spółek komunalnych w świetle badań.....	20
<b>Melania Bąk:</b> Społeczna odpowiedzialność rachunkowości a wizerunek przedsiębiorstwa .....	45
<b>Piotr Bolibok:</b> Znaczenie odpisów aktualizujących z tytułu utraty wartości i rezerw dla wartości rynkowej w polskim sektorze bankowym.....	58
<b>Grażyna Borys:</b> Wybrane kierunki zwiększenia efektywności wspierania termomodernizacji w budynkach ze środków publicznych .....	68
<b>Jarosław Dziuba:</b> Aspekty ekologiczne w systemie podatków lokalnych i polityce podatkowej miast na prawach powiatu w Polsce.....	78
<b>Elżbieta Hajduga:</b> Ubezpieczenie społeczne rolników a koncepcja zrównoważonego rozwoju .....	89
<b>Alicja Janusz, Teresa Orzeszko:</b> Edukacja jako obszar działania fundacji krajowych banków giełdowych .....	100
<b>Joanna Kogut:</b> Zmiany ustawy o rachunkowości i ich wpływ na poprawę warunków wykonywania działalności gospodarczej.....	126
<b>Andrzej Koza:</b> Dotacje do zatrudnienia jako instrument przeciwdziałania bezrobociu osób niepełnosprawnych w Czechach i w Polsce.....	138
<b>Robert Kurek:</b> Bitcoin a regulacje prawno-podatkowe w Polsce i na świecie.	153
<b>Agnieszka Łukasiewicz-Kamińska:</b> Waluty cyfrowe i ich wpływ na systemy monetarne .....	162
<b>Małgorzata A. Olszak, Mateusz Pipień, Sylwia Roszkowska:</b> Czy specyfika zastosowania rezerw na ryzyko kredytowe i ich procykliczność wpływają na związek między aktywnością kredytową i kapitałami dużych banków w Unii Europejskiej? .....	171
<b>Małgorzata Solarz:</b> Usługi finansowe typu <i>equity release</i> w kontekście zasady sprawiedliwości międzypokoleniowej.....	182

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## **BITCOIN VS. LEGAL AND TAX REGULATIONS IN POLAND AND WORLDWIDE**

### **BITCOIN A REGULACJE PRAWNO-PODATKOWE W POLSCE I NA ŚWIECIE**

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**Summary:** The article presents an analysis of legal regulations referring to bitcoin in Poland and worldwide. At the background of the Polish legislation (currently) bitcoin cannot be referred to as a legal means of payment, since it neither functions as an instrument of money market in the light of the legislation in force, nor represents a currency regarded as legal means of payment. Moreover, none of the public institutions can use it in the legal sense. Bitcoin is also not used in international financial settlements and the legal regulations of other countries are largely varied – from referring to bitcoin as private money to the total ban on using it. Both complex and supranational regulations of all the issues related to bitcoin (detailed regulations and guidelines suggesting businesses the manner of procedures and performing operations using it) are necessary to take advantage of innovation and potential offered by bitcoin in terms of making payments, which can determine the future direction of global money.

**Keywords:** bitcoin, currency, legal regulations.

**Streszczenie:** W artykule przedstawiona została analiza regulacji prawnych dotyczących bitcoina w Polsce i na świecie. Na gruncie polskiego prawa (jak na razie) bitcoina nie można traktować na równi z prawnym środkiem płatniczym, nie funkcjonuje on bowiem jako instrument rynku pieniężnego w rozumieniu stosownych przepisów, ani nie jest walutą uznawaną jako prawny środek płatniczy. W sensie prawnym nie mogą posługiwać się nim także żadne instytucje publiczne. Bitcoin nie jest również stosowany w rozliczeniach międzynarodowych a regulacje prawne innych krajów są skrajnie rozbieżne – od traktowania bitcoina jako pieniądza prywatny do całkowitego zakazu posługiwania się nim. Kompleksowa, ponadnarodowa regulacja wszystkich kwestii związanych z bitcoinem (przepisy szczególne i wytyczne sugerujące podmiotom sposób postępowania i dokonywania operacji z jego wykorzystaniem) jest konieczna, by wykorzystać innowacyjność i potencjał bitcoina pod względem płatności, co może wytyczyć kierunek dla przyszłości światowego pieniądza.

**Słowa kluczowe:** bitcoin, pieniądz, regulacje prawne.

## 1. Introduction

Bitcoin represents a digital currency which is gaining importance as independent money used in performing payment transactions not only online, but also in real life. Currency trading, generated by special software by means of a peer-to-peer system, violates neither the Polish nor the European Union law. Worldwide (apart from few exceptions) it is not referred to as illegal either and in general the principle – *quae non sunt prohibita, permissa intelleguntur* – is applied. In many respects, however, this currency is not a sufficient one and both the legal and the tax status of bitcoin remains unclear.

The purpose of this study is to analyze and evaluate the current legal and tax regulations status regarding bitcoin in view of occurring challenges related to its usage in economic turnover and everyday life. The analysis will be performed as at 30 September 2014 and due to the absence of bitcoin's uniform legal classification, the conducted analysis is of fragmentary nature. The author's intention is also to demonstrate a need for prompt and complex regulations of bitcoin, since it constitutes a peculiar novelty both in a general perspective and in the area of tax law.

## 2. Legal and tax regulations of bitcoin and other e-currencies in Poland

Bitcoin takes the form of a 24-digit encoded sequence of zeros and ones which can be stored in a personal computer in the form of a portfolio file or kept on external sites. The application of a peer-to-peer communication model results in the fact that the system for central monitoring, verification and confirmation of transactions is required for bitcoin's emission and trading and therefore neither any central body nor any other supervisory institution covers the functioning of BTC.

Bitcoin is not a novelty on the Polish market. In terms of the bitcoin mining level, Poland is ranked as 10th with the Polish bitcoin market occupying leading positions worldwide [Puls Biznesu 2013]. Bitcoin's role in social and economic life is also gaining significance, especially with regard to its virtual and finance related aspects.

The systems of anonymous payments (digital platforms, online games) and cryptocurrency, the circulation of which is gaining significance, do not represent "real" money according to the official standpoint and cannot be used by individuals or legal persons as a legal means of payment [Pismo Ministerstwa Finansów do Marszałka Senatu z dnia 28 czerwca 2013]. In line with the legal status as at 30 September 2014:

- virtual currencies (e-currencies) do not represent either domestic or foreign means of payment in the light of Foreign Exchange Law Act [Ustawa z 27 lipca 2002] – they are not generally acceptable and are considered as a means of payment only based on an agreement entered into by settling parties;

- virtual currencies (e-currencies) do not constitute either electronic or digital money in accordance with the Act on electronic payment instruments [Ustawa z 12 września 2002] – the provision stating its “expression in the form of monetary means” as well as “issuance for disposal based on an agreement in exchange for monetary means presenting nominal value not less than this particular value” raise doubts in terms of its classification as electronic or digital money;
- virtual currency trading does not constitute a payment service and thus the object of trade does not represent a currency either in the light of Payment Services Act [Ustawa z 19 sierpnia 2011], which provides regulations for setting up and running a business dealing with payment services (in terms of virtual currency transactions it refers to payment transactions and arranging infrastructure for such operations);
- e-currencies do not constitute any category of a financial instrument in the light of the Act on financial instruments trading [Ustawa z 29 lipca 2005] and therefore should not be referred to as either securities or other financial instruments other than securities (shares in collective investment schemes, money market instruments or derivatives: options, futures, swaps, forward contracts, etc.).

As already mentioned, generating and trading bitcoins does not infringe the Polish law; however, the failure to allocate a currency, a payment service or a financial instrument status to bitcoin makes all the issues related to BTC taxation particularly difficult.

In accordance with the income tax law covering natural persons [Ustawa z 26 lipca 1991] selling bitcoin (its exchange into currency) should be qualified as income resulting from the disposal of property rights. A separate classification refers to income generated based on bitcoin transactions, which theoretically should be covered by 19% tax rate on capital gains (income from foreign exchange differences); however, they are not, since BTC is not a currency and virtual payment means are not taxed until they can be exchanged into real money or goods [Szulc 2014].

Entrepreneurs follow different income settlement rules. If the exchange of bitcoin into real money takes place within the framework of their business activities, it will also be regarded as a source of income to be settled in line with tax rates in force (18%, 32%, 19% linear rate or 3% lump sum on recorded income if business activities performed by an entrepreneur can be regarded as services in trading unprocessed, previously purchased products and goods – e.g. virtual currencies).

BTC status in terms of VAT is not entirely clear either, since owing to its non-uniform qualification results in the fact that BTC, however, does not have to be covered by this particular tax. Tax Chamber in Katowice expressed its opinion in this matter by issuing an interpretation [Interpretacja z 21 czerwca 2013], in which the standpoint of an applicant regarding the possibility of approaching bitcoin as a payment instrument and the possibility of bitcoin trading exemption from VAT as a financial mediation service – Art. 43, paragraph 1, item 1 of VAT Act [Ustawa z 11 marca 2004] considered them incorrect and decided that bitcoin trading cannot

be exempt from tax covering financial services and may result in an obligation to pay VAT. The term “may” is used because the Ministry of Finance indicated that goods trading in the virtual world can be considered as an “electronic service” covered by VAT depending on its provision location, purchaser’s status (whether he/she is subject to VAT) and the registered place of business, as well as the service provider registered place of business. The bitcoin system is, however, constructed in such a way that both a purchaser and a vendor remain hidden behind a sequence of letters and digits constituting their private key and thus there is no possibility to prove who owns a key and where a given subject has its business seat, unless the subject reveals it him/herself. In such a situation covering bitcoin trading by the provisions regulating VAT can turn out impossible, which therefore makes settling this tax impossible by those trading in bitcoins [Panas, Nogacki 2014].

### 3. Legal and tax regulations covering bitcoin worldwide

There are no contracts or agreements defining the general framework of bitcoin legal status at an international arena. Since it does not meet the requirements of Art. VIII of the International Monetary Fund Statute [IMF 2011], it does not have the status of a convertible currency either and according to the official standpoints of almost all countries worldwide it is defined as “a conventional means of payment of a given social group.”

In the opinion of the European Union Member States, the problem of bitcoin and other virtual currencies exceeds the existing legal framework and requires a common EU approach to be developed, which will most probably take place along with the amendment to the Directive on payment services – PSD [Directive 2007/64/EC]. Regulations will then be harmonized at the European Union level, which means that the provisions which refer to e-currencies defining (including bitcoin) and their taxation should be relatively harmonized in all Member States. The approach of financial payment regulators will, however, be crucial for the possibilities of bitcoin further development, so that bitcoin is no longer observed as a threat, but as complementary to modern methods of performing payments [Leal 2014].

The phenomenon of virtual currency is not disregarded by the European central banks and financial supervisions, but these issues do not go beyond warnings emphasizing the risks involved in purchasing, owning and trading in virtual currencies [Handelsblatt 2014] or conducting analyses and research covering this problem [ECB 2012]; however, neglecting suggestions for implementing regulatory solutions referring to the principles of trading or servicing payments made in bitcoins or, in a broader sense, e-currencies.

A court in Texas acted as the precursor of bitcoin “legalization” in the USA and decided in August 2013, in the course of working on a case against the organizers of a bitcoin financial pyramid, that bitcoin represents a means of payment equal to US dollars so that the organizers could be accused of a crime and sentenced [Węglewski



2013]. The issues of bitcoin trading regulations were already discussed in March 2013 when FinCen (Financial Crimes Enforcement Network) established restrictive requirements for the animators of bitcoin market who performed business activities in the USA and published guidelines referring to virtual currency payment service (presenting a standpoint that all operators of such payments should be subject to the same regulations as the “real” money operators). Positive aspects, in terms of verifying consumer protection requirements and regulations covering money laundering, can also be expected in the State of New York, where the financial regulator developed a set of principles and specific provisions aimed at bitcoin companies licensing [Jones 2013].

In **Great Britain** bitcoin was initially qualified as a voucher, which meant that bitcoin transactions were repeatedly subject to VAT due both at the time of purchase and while exchanging it to a different product (also subject to VAT). At the beginning of 2014 HMRC (Her Majesty’s Revenue and Custom), initiated work on regulations according to which bitcoin could be classified as “private money” and thus the need for adding VAT on bitcoin purchase would disappear. After implementing the analyzed solutions, VAT would be added to transaction fees on stock exchange offering the possibility of bitcoin purchase. In principle, the proposal also provides for capital gains tax exemption, however, only if a bitcoins holder will own them for less than a year [Bitcoin.pl 2014].

In **Germany** bitcoin was considered as a means of payment (currency) in private trading. Such an attitude was motivated by purely instrumental reasons – the desire to control and tax BTC market transactions, mainly income from stock market speculations on bitcoin which, due to its exchange rate significant fluctuations, allow making profits by many Germans. Capital gains taxation was covered by guidelines providing that BTC trading profits are tax free, however, no sooner than one year of holding it [Gotthold, Eckert 2013]. German Ministry of Finance issued an interpretation regarding VAT taxation stating that it does not cover bitcoin trading [Eckert 2013].

**Russia** represents a particular country in which bitcoin’s situation is relatively variable. In 2013 Sberbank, one of the largest Russian banks, planned electronic currency issuance (such as bitcoin) in cooperation with Yandex, the most popular search engine. However, at the beginning of 2014 the Bank of Russia published a negative comment about virtual currencies emphasizing that there occurs a huge speculative risk related to this type of money and “money substitutes” issuance is forbidden [Stasiuk 2014], as provided in Art. 27 of Russia’s Federal Law. Moreover, the statement issued by the Russian Attorney General’s Office made it clear that bitcoin users may be accused of criminal activity.

In **Sweden** tax authorities initially did not recognize bitcoin as a currency, but as an electronic service only, subject to VAT. However, when the BTC status was referred to Swedish jurisdiction it was decided that since bitcoin can be used in purchasing goods and services it does represent a currency exempt from VAT.

Swedish parliament is also considering bitcoin's recognition as a legal currency. The situation is slightly different in **Norway**, where bitcoin is recognized as an electronic service rather than a currency, whereas in **India** a general rule applies that a payment for goods in bitcoins is considered a barter – VAT should be added while selling bitcoins for a real currency [Panas, Nogacki 2014]. The parliament in **Switzerland** initiated efforts to develop provisions allowing bitcoin to be recognized as any foreign currency [Hajdarbegovic 2013]. In **France** the first bitcoin exchange platform holding a license of a payment institution was established at the end of 2012. The French financial supervision adopted that companies accepting payments to exchange them into a virtual currency should be covered by the same provisions as companies rendering payment services. In the **Czech Republic** Dagensia.eu platform, which deals with bitcoin exchange, received a “payment institution” license from the financial supervision in mid-2013, whereas in **Singapore** bitcoin was released for trading by taxing its exchange for goods, services or physical currency – in line with the Singapore law, capital gains from bitcoin trading, investing, exchanging into other cryptocurrencies and virtual goods are subject to 0% tax rate [Fuller 2014].

In the absence of legal regulations covering virtual currencies some countries perceive them such an enormous threat and even resort to banning them. This is what **Thailand** initially decided to do and justified it by “the absence of responsible powers allowing the state to control transfers in bitcoins” (at the beginning of 2014 the respective regulations changed and bitcoin trading was allowed). A total ban on using bitcoins occurs in **Iceland** and at the beginning of 2014 **China** also put a ban on BTC transactions [BBC News Technology 2013], even though prior to that (since 14 October 2013) Baidu search machine, i.e. the most frequently visited website in China (fifth worldwide), allowed making payments for services in bitcoins [Jankowski 2013].

#### 4. Bitcoin vs. regulations concerning criminal activity

Among bitcoin's important characteristics there is a possibility of anonymous property ownership and making anonymous transactions. It is a twofold anonymity – on the one hand, it is a positive feature and works to the advantage of a system which will keep attracting many people wishing to conceal information about how much they own and what they purchase online. On the other hand, this is considered bitcoin's weakness as a currency since, in the opinion of its opponents, this opens opportunities for illegal financing of goods and services exchange, trading in prohibited goods – drugs, weapons [Sprawozdanie z 16 listopada 2000], the method of ransom payment for hostages or transferring bribes. This also raises the risk of making money transfers by violating regulations preventing money laundering and terrorism financing [Ustawa z 16 listopada 2000]. It can also be used by criminals for financial embezzlement as well as cyber-criminal activities in their various forms. However, complete anonymity is possible only while making transactions directly

between the interested parties (without the participation of intermediaries such as stock exchange or *bureaus-de-change*) and thus there is no clear answer about the actual scale of performing such practices. It is not guaranteed, however, that bitcoin is not used for such purposes and the governments of many countries observe (if possible) the bitcoin system and try to develop regulations which allow identifying and monitor such transactions. It should also be emphasized that the cases of bitcoin unlawful usage are inevitable, but anonymous transactions and offences concerning money transfers also involve traditional currencies.

## 5. Conclusion

Bitcoin is accepted by a growing number of online services, platforms or stores. Exchange platforms try to maximally simplify bitcoin trading along with its marketing potential being taken advantage of by real world restaurants or shops. Even though bitcoin suffers valuation problems, millions of people worldwide use it and from such a perspective it is becoming the first global independent virtual currency. However, although bitcoin, as a system of alternative currency appeared in 2009, it still lacks an overall legal settlement and the interpretation of existing provisions does not allow explaining many issues related to its trading rules. In many countries worldwide responsible authorities are not even capable of defining their standpoint whether any protection and regulations covering BTC functioning are necessary on their part (by making real legislation more specific) or whether they should remain uninvolved. In the latter case, it is assumed that since the burden of real social and economic life slowly shifts to the network, there is also a need for digital money the functioning of which should not be disturbed by any authorities, because many virtual reality phenomena follow their own rules irrespective of the real life.

It is hard to recognize bitcoin as a “real” money until it can be used in paying taxes or repaying debts and although the attempts of its legal justifications are observed still, in the foreseeable future, one cannot expect it becoming a legal means of payment or electronic money substituting traditional money. Bitcoin can, however, turn out a revolutionary and innovative supranational digital currency suitable for the 21st century if its legal status becomes subject to comprehensive regulations, including the development of detailed provisions and guidelines suggesting adequate procedures to businesses about performing operations using bitcoin.

The problem of effective regulations covering bitcoin is a supranational one and therefore the provisions about its defining and taxing should be of complex nature and, in general, internationally harmonized (e.g. International Accounting Standards). Such a standpoint is necessary for the legislative possibilities of each country to keep pace with advancing technologies, the Internet and the development of cryptocurrencies, since in a more distant perspective bitcoin itself can become the “currency” presenting a great payment potential and an important enough innovation

to pave the way for the future of global money. And if it is not bitcoin, yet another and more perfect e-currency, based on a cryptographic mechanism, will be developed and take advantage of this potential; however, it will also require comprehensive regulations to be introduced.

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