Forks

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A fork occurs when the network's participants cease to agree on a single history. A soft fork tightens the rules in a way older software still accepts. A hard fork changes the rules so that two incompatible chains continue from a common point. The Ethereum and Ethereum Classic split of 2016 and the Bitcoin and Bitcoin Cash split of 2017 are the leading examples. After a hard fork, every holder of the original token holds an equal quantity of the new token on the second chain, because both chains share the pre-fork history.

The legal consequences cluster in three places. For tax, a fork creates a new asset in the holder's hands. The FTA treats the new coins as acquired at zero cost at the moment of the fork for wealth-tax purposes, with the income question depending on whether the holder is a private investor or a professional trader.[1] For custody, a custodian who held client tokens at the moment of the fork now holds two assets and must decide, under its terms, whether the client is entitled to both. Litigation over forked coins withheld by exchanges has occurred in several jurisdictions and the question should be settled in the custody agreement. For ledger-based securities under Swiss law, a fork of the underlying chain raises the question which chain is "the ledger" referred to in the registration agreement, a point the agreement must address under Art. 973d para. 2 CO if it is to survive the event.

Notes

1. FTA working paper of 14 December 2021, section 3.4 (hard forks and airdrops). The Singapore position under the IRAS e-Tax Guide is discussed in Part M, Chapter I.

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