知識產權與庫藏資金

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程式碼歸屬何處

協議的程式碼通常是開源的，因此知識產權問題關乎那些並非開源的東西：商標、域名、專有工具、前端程式碼、數據及品牌。這些資產應由創造它們的實體擁有，或由按公平交易原則支付其創造費用的實體擁有。兩地稅務機關都對無形資產採用經濟合作與發展組織（OECD）《轉讓定價指引》的DEMPE分析，查問由哪個實體執行開發、提升、維護、保護及利用等功能。[1]聘用開發人員並擁有知識產權的瑞士GmbH站得住腳。擁有知識產權、但開發人員卻在蘇黎世的新加坡控股公司，只有在它出資進行開發、承擔風險，並有人員控制該風險時，才站得住腳。實務上，這意味著要有一份開發協議、一份預算，以及一名駐新加坡、負責審批工作的經理。

基金會途徑令情況更為複雜。協議基金會往往在管理協議的過程中持有商標及域名，同時透過向營運公司提供資助來資助開發。資助並非購買知識產權，因為成果以開源方式發布，而基金會另行取得商標。基金會如向營運公司支付開發費用，卻只取得開源程式碼，楚格稅務局可能將該筆款項視為推

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進目的之資助；對免稅基金會而言，這並無不妥。對須課稅的基金會而言，同一筆款項只有在服務於基金會業務時才可扣除。無論哪種情況，營運公司都會將之確認為收入。第G部分第IV章論述相關會計處理。

庫藏資金設於何處

庫藏資金是集團最大的資產，也是最大的風險。決定其所在地的考慮因素有四個。第一是破產隔離：由沒有擁有人的基金會持有的代幣，營運公司的債權人或創辦人的債權人都無法觸及，這是支持楚格基金會的主要論據。第二是變現時的稅項。瑞士基金會出售庫藏代幣時，除非獲得豁免，否則須就實現的應課稅利潤按楚格略低於12%的稅率繳稅。新加坡CLG實現的是資本收益：如代幣作為投資持有則毋須課稅，如出售屬交易性質則按17%課稅。[2]第三是控制權：簽署動用庫藏資金的董事會必須與實體同處一地，因此楚格基金會的私鑰應由其瑞士理事會持有或受其控制，新加坡實體的私鑰則應由其新加坡董事持有。第四是銀行業務。集團需要支付薪金時，庫藏資金必須能夠將代幣兌換為法定貨幣；就此而言，第IX章指出，瑞士銀行比新加坡銀行更願意接受來自庫藏錢包的大額資金流入。

實務提示

將庫藏資金放在楚格基金會、而營運團隊設於新加坡的集團，應以文件記錄由誰控制私鑰及憑何授權。採用五名簽署人中須有三人簽署的多重簽署安排，其中三人為瑞士理事會成員，另外兩人為新加坡行政人員，既可將控制權保留在瑞士，又可容許營運上的存取。基金會的庫藏資金政策應訂明法定人數、每宗交易及每月的限額、獲准用於兌換的交易所及保管人，以及向理事會匯報的安排。核數師、監管機關及銀行都會分別要求查看該政策。

註釋

1. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2022)，第VI章，第6.32至6.72段（DEMPE功能）；

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IRAS e-Tax Guide，"Transfer Pricing Guidelines"，第7版，2024年6月14日，第13節（無形資產）。 ↩

2. DFTA, SR 642.11，第57條及第58條（法人的應課稅淨利潤）；Income Tax Act 1947，第10(1)(a)條及第43條；IRAS e-Tax Guide，"Income Tax Treatment of Digital Tokens"，第8節（公司作為資本資產持有的代幣）。第G部分第IV章及第M部分第I章。 ↩

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