

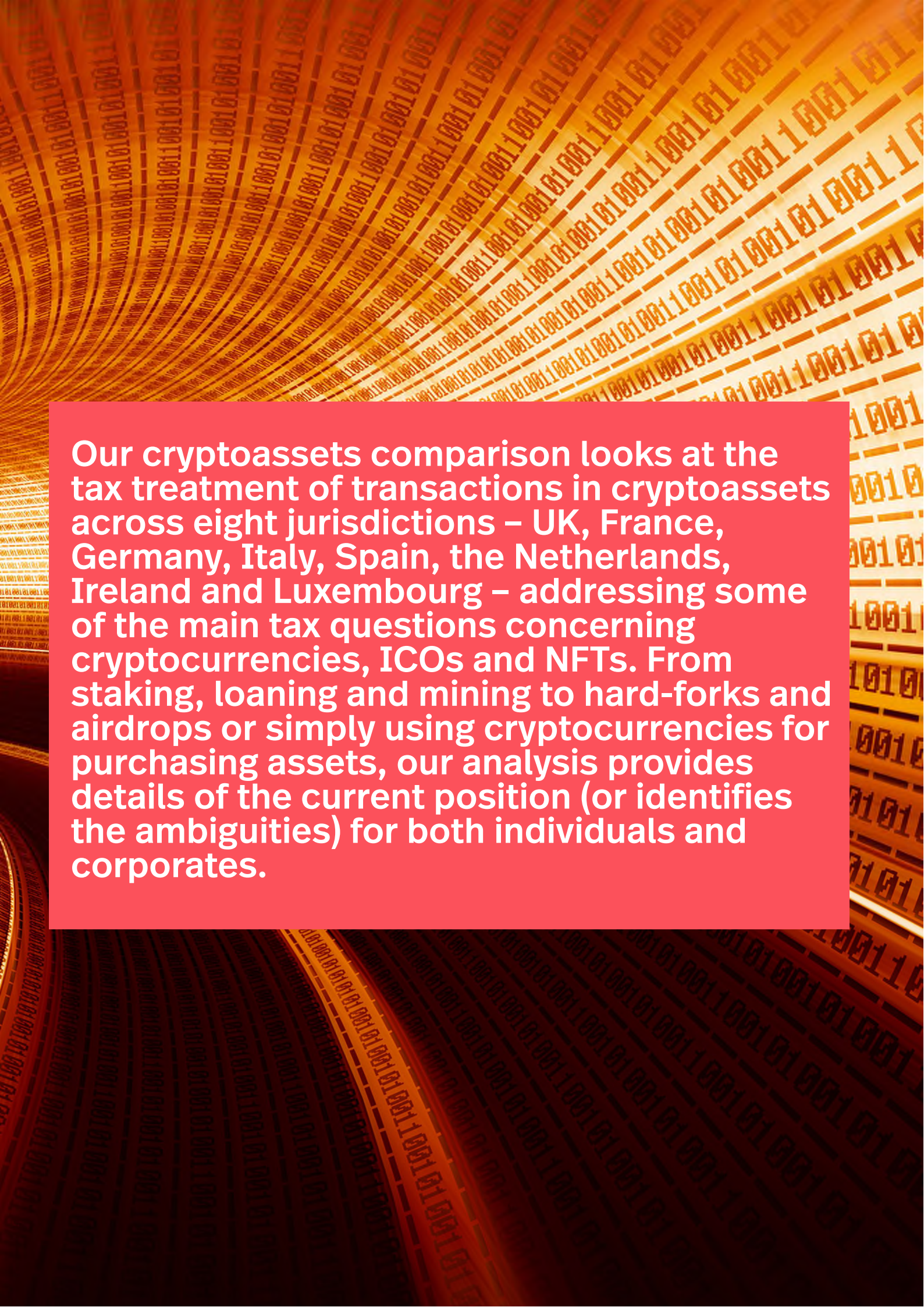
# Crypto Compare

## European tax overview

WINTER 2022







**Our cryptoassets comparison looks at the tax treatment of transactions in cryptoassets across eight jurisdictions – UK, France, Germany, Italy, Spain, the Netherlands, Ireland and Luxembourg – addressing some of the main tax questions concerning cryptocurrencies, ICOs and NFTs. From staking, loaning and mining to hard-forks and airdrops or simply using cryptocurrencies for purchasing assets, our analysis provides details of the current position (or identifies the ambiguities) for both individuals and corporates.**

## Contents

Introduction	4
Transactions in cryptocurrencies	5
Initial Coin Offerings or ICOs	39
Transactions in NFTs	47
Contacts	62



## Introduction

The growth of digital or cryptoassets and distributed ledger technology (DLT) over the last decade has been remarkable. It is now estimated that the 'crypto economy' has a market value of US\$1tn and there are over 10,000 cryptocurrencies in existence. Investors are attracted, in part, by the fact that DLT bypasses the use of conventional intermediaries and financial systems. For example, decentralisation has been posited as a solution to reducing the cost of carrying out transactions through greater efficiency (by reducing administration and the involvement of intermediaries).

These factors have led to an explosion of new and innovative financial products based on DLT, with the "original" cryptocurrencies acting as a precursor to more exotic cryptoassets such as utility tokens, security tokens, non-fungible tokens (NFTs) and stablecoins.

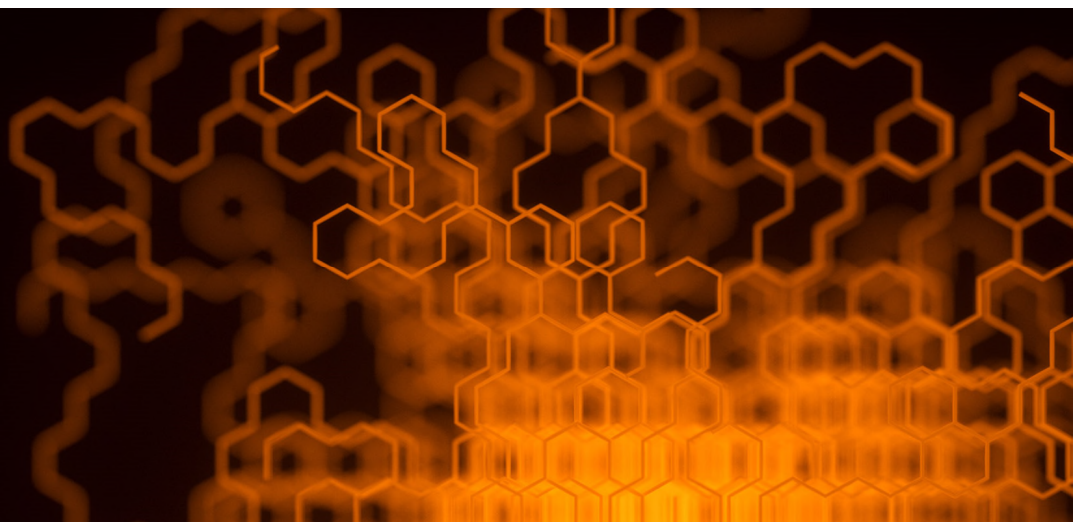
The industry continues to develop and evolve, and as the types and features of cryptoassets multiply, so do questions about their correct tax treatment. Tax authorities (and taxpayers) struggle to apply existing tax provisions and rules designed to deal with tangible and intangible assets which are often unsuitable for transactions in cryptoassets.

In addition, the factors that make cryptoassets attractive to investors and businesses are the same

factors that make them a challenge for tax authorities. For example, through 'decentralisation', cryptoasset transactions can bypass existing financial intermediaries and can therefore bypass existing tax reporting obligations which apply to more conventional financial products. For decentralised products, there are also significant questions over the location and the nature of such products for tax purposes.

As a result, tax authorities are struggling to determine the tax treatment of cryptoassets and transactions in them. There has been a lack of international consensus about how cryptoassets should be treated, leading to variations in the tax implications of ownership and transfers of cryptocurrencies between jurisdictions. However, there is recognition that tax authorities must address these issues now, both to provide certainty for taxpayers but also to deal with the tax risk for governments. The UK, for example, has published extensive guidance on the taxation of transactions in cryptoassets (whilst also leaving significant areas of ambiguity).

Against this background, taxpayers and businesses need to monitor developments across jurisdictions in order to limit their tax risks involved with cryptoassets but also spot opportunities.



# 1

## Transactions in cryptocurrencies

## 1.1 Individual investors (tax resident in your jurisdiction)

### 1. Are individuals taxed on gains on the sale of cryptocurrencies?

#### United Kingdom

Whether any profit or gain is chargeable or any loss is allowable will be considered by HMRC on a case-by-case basis and will depend on the activities and the parties involved and the investor's intentions.

HMRC's guidance on the tax treatment of individuals on transactions involving cryptocurrencies was originally set out in their policy paper entitled, "Cryptoassets: tax for individuals" and is now in the Cryptoassets Manual. The guidance recognises two possible types of transactions in cryptocurrencies:

- Trading in cryptocurrencies.
- Investing in cryptocurrencies.

Where an individual regularly buys and sells Bitcoin and other similar cryptocurrencies with a view to profit, this may amount to a trading activity if it has the necessary frequency, organisation and sophistication to amount to a financial trade. Though in the case of individuals, HMRC would regard trading in cryptocurrencies as an "exceptional" case.

Where an individual is trading, they will be subject to income tax on trading profits (or may accrue trading losses). Where losses arise, HMRC is likely to carefully consider whether the individual is in fact trading before allowing loss relief. HMRC has stated that they do not consider the buying and selling of cryptocurrencies to amount to "gambling".

Where an individual buys and sells Bitcoin or other similar cryptocurrencies in circumstances where it does not amount to a trade, they will be investing in Bitcoin or other similar cryptocurrencies. Any gains or losses incurred are chargeable to or allowable for capital gains tax. HMRC would expect buying and selling cryptocurrencies to normally amount to an investment activity. HMRC does not consider cryptoassets to be currency or money for tax purposes.

## 1. Are individuals taxed on gains on the sale of cryptocurrencies?

### France

Subject to the tax deferral regime (see question 12 below), when an individual acts as an investor (assuming that the total annual sales of cryptocurrencies exceeds € 305), any gains will be liable to a 30 per cent flat tax (including 17.2 per cent social security contributions); any losses may only be used against gains in the same year without any right to carry forward; from 2023, an individual may elect to be liable to the progressive income tax rates for all of his/her cryptocurrency gains.

When an individual acts as a trader (as defined by the relevant rules), any gains will be liable to the progressive income tax rates (from 0 per cent to 45 per cent), plus social security contributions of 17.2 per cent, plus, potentially, an additional contribution in the case of high income individuals.

### Germany

Transactions involving the acquisition and disposal of cryptocurrencies are generally subject to income tax as "other income from private sales transactions" at progressive income tax rates, provided that the period between purchase and sale does not exceed one year. If the one year holding period is exceeded, the disposal proceeds do not come within the scope of income tax, ie any profits are not taxable at all. A further prerequisite is that the cryptocurrency was not generated itself, because the "acquisition" is then missing.

When determining the taxable profit, the acquisition costs must be deducted from the selling price. With regard to acquisition cost, the "FIFO method" (first in, first out) is applied if several acquisitions and disposals are made at different times in the same cryptocurrency. If the total of all taxable private sales (including the sale of real estate and similar rights) does not exceed the exemption limit of €600 in the respective calendar year, these are tax-free. As soon as this exemption limit has been exceeded, all profits from private sales are taxable.

Losses arising from the acquisitions and disposals of cryptocurrencies may be offset against profits from other private sales transactions in the same calendar year. If it is not possible to offset the losses in the same calendar year, the losses can be offset against profits from disposals of cryptocurrencies or from other private sales transactions in subsequent years. However, there is no possibility to carry back losses on the sale of cryptocurrencies to years preceding the year in which the crypto losses occurred.

If individual investors trade in cryptocurrencies on a commercial basis, any income is subject to income tax as "income from a trade or business". Income arises from a trade or business if an independent, sustainable activity is carried out with the intention of making a profit, which also includes carrying out general economic transactions.

"Income from a trade or business" is taxable regardless of the holding period.

## 1. Are individuals taxed on gains on the sale of cryptocurrencies?

### Ireland

A cryptocurrency is an asset for Irish tax purposes. It is not considered to be money or a currency. A gain on the sale of a cryptocurrency is a capital gain and taxable at 33 per cent. The Irish Revenue do not consider investment in cryptocurrency by individuals as being in the nature of a trade. The Irish Revenue circulated a Paper Titled "Taxation of cryptoassets transactions Part 02-01-03" (hereinafter Manual) which was last updated in April 2022. This paper deals with direct tax treatment of cryptoassets.

The question of whether dealing in cryptoassets is a trade subject to income tax or an investment subject to capital gains tax (CGT) depends on several factors and the individual circumstances. Whether an individual is engaged in a financial trade of buying and selling cryptoassets will ultimately be a question of fact. A trade in cryptoassets would be similar in nature to a trade in shares, securities, or other assets. The Revenue has published guidance on trading in shares, securities, or other assets drawn from existing case law. Where a non-incorporated business makes a trading profit or loss on cryptoasset transactions this must be reflected in their accounts and will be taxable in accordance with normal Income Tax rules.

### Netherlands

**Investor:** Profits from investing and holding cryptoassets (passively) (including small scale/hobby margin trading, futures, trading etc.) are annually taxed as income from savings and investments (Box 3 taxation). Capital gains in respect of cryptoassets, as such, are not subject to Dutch personal income tax in Box 3. Box 3 taxation means that a deemed return of 1.837 per cent - 5.53 per cent of the total of net assets (valued at fair market value) on 1 January – including cryptoassets – exceeding EUR 50,650 must be reported as income. The deemed return is taxed at 31 per cent. The system of Box 3 taxation is under scrutiny following a landmark High Court case of 24 December 2021.

**Trader:** When an individual carries on a business in the context of crypto (investing and actively trading beyond a mere hobby) and objectively may expect to derive a profit from that business, the individual is taxed on income (gains) at ordinary rates (9.42 per cent - 49.50 per cent) (Box 1 taxation).

### Spain

Where cryptocurrencies are sold by individuals acting as private investors, any gain or loss would be subject to Personal Income Tax (PIT) as a capital gain taxable at the same PIT rates for financial income, ie ranging from 19 per cent up to 26 per cent for taxable income exceeding €200,000.

Individuals acting in the context of a business activity (not as investors) are subject to different rates and business taxes as well as social security contributions. In particular, any gain on the sale of cryptocurrencies in the context of a business activity would be subject to the general business income tax rates which vary depending on each Spanish region (with the highest marginal rates ranging from 45 per cent up to 54 per cent depending on the region of residence of the individual). Such rates are levied on net profits derived from the business activity.



## 1. Are individuals taxed on gains on the sale of cryptocurrencies?

### Italy

According to the interpretation of the Italian Tax Authority, when an individual acts as an investor, any gain on the sale of cryptocurrencies will be liable to a 26 per cent flat tax, to the extent that the value of his/her stock of cryptocurrencies is higher than €5,1645 for at least seven continuous business days in the same calendar year. As, according to the interpretation of the Italian Tax Authority, cryptocurrencies are treated as foreign currencies for Italian tax purposes, the computation of this threshold must include all foreign currencies held by the individual. Any losses may be offset against gains realised in the same fiscal year. If losses exceed gains, they can be carried forward in the subsequent four years.

When an individual acts as a trader, subject to the individual business income tax regime, any gain on the sale of cryptocurrencies will be subject to the applicable progressive rates from 23 per cent to 43 per cent.

Draft legislation, including a tax regime for cryptocurrency, is currently being discussed in the Italian Parliament.

### Luxembourg

When an individual acts as an investor, any gain would only be taxed in Luxembourg if it is a speculative gain, ie the sale of the cryptocurrency would occur within six months of its acquisition and if the total profit is at least €500. In this case, the gain would be subject to the standard rates of individual income tax, up to a maximum of 45.78 per cent. In other cases, the gain would not be taxable in Luxembourg. When an individual acts as a trader, any gains will be liable to the standard individual income tax rates up to a maximum of 45.78 per cent.



## 1.2 Corporate investors (tax resident of your jurisdiction)

### 2. Is holding cryptocurrency subject to yearly mark to market valuation?

#### United Kingdom

There are no specific rules requiring yearly mark to market valuation of cryptocurrencies. However, where cryptoassets are held as part of a financial trade, these would normally be taxed on a mark to market basis under normal UK tax rules.

#### France

No, as it is not treated as currency for corporate tax purposes.

#### Germany

Cryptocurrencies are valued at their acquisition cost based on the fair market value of the exchanged currency (eg Euro). Any subsequent valuation of cryptocurrencies depends on whether the cryptocurrencies qualify as fixed assets or current assets. However, the upper valuation limit remains the acquisition cost. However, banks holding cryptocurrencies in their trading book must report the cryptocurrencies at fair value less a risk discount.

#### Ireland

Not specifically, it depends on the accounting standards adopted and the nature of the holding of the cryptocurrencies, whether held for investment or for resale.

#### Netherlands

No since cryptocurrencies are not treated as a currency for tax purposes.

#### Spain

Following a recent ruling issued by the Spanish accounting regulator (the Institute of Accounting and Auditing), cryptocurrencies may be accounted for as stock if these are held for sale in the ordinary course of business, otherwise these should be accounted for as intangible assets. Accordingly, in both cases, the holding of cryptocurrencies should not be subject to yearly mark to market valuation for Corporate Income Tax (CIT) purposes.

#### Italy

Where, based on the position of the Italian Tax Authority, cryptocurrencies are regarded as “foreign currency”, Italian GAAP requires taxpayers to value such “currency” at their fair market value at the end of the fiscal year and report any exchange gains/losses in the profit and loss account.

#### Luxembourg

No.

### 3. Are corporates taxed on gains on the sale of cryptocurrencies?

#### United Kingdom

Whether any profit or gain is chargeable or any loss is allowable will be considered by HMRC on a case-by-case basis and will depend on the activities and the parties involved and the company's intentions.

Similar principles will apply for corporate investors as for individual investors to determine if the company is investing or trading in the cryptocurrency (see Answer 1).

HMRC's guidance on the tax treatment of businesses on transactions involving cryptocurrencies was originally set out in their policy paper entitled, "Cryptoassets: tax for businesses" and is now contained in the Cryptoasset Manual.

The profits and losses of a company entering into transactions involving Bitcoin and other similar cryptocurrencies in the course of a trade would be reflected in the company's accounts and taxable under normal corporation tax rules. If a company holds cryptoassets as an investment, they are liable to pay corporation tax on any gains they realise when they dispose of it.

HMRC takes the view that cryptocurrencies will not represent loan relationships nor money. As such, profits from disposals of cryptocurrencies which do not involve trading will normally be taxed as a chargeable gain subject to corporation tax. HMRC does recognise, however, that in certain cases the rules for taxing intangible fixed assets as income may apply (though cryptocurrencies which are simply held by a company, rather than created or acquired for use on a continuing basis, will not fall within this definition).

#### France

Liable to corporate tax upon disposal.

#### Germany

Acquisitions and disposals of cryptocurrencies as part of a corporate investor's business assets are subject to the general valuation and accounting principles of German commercial and tax law. Therefore, gains and losses must be taken into account as taxable income for corporation tax and trade tax purposes.

Profits from trading in cryptocurrencies is taxable as income for corporate income tax (15 per cent plus 5.5 per cent solidarity surcharge thereon) and trade tax purposes at the level of a corporate investor if the activity is carried out by a corporation (eg GmbH). The acquisition costs of the cryptocurrencies are deductible as business expenses.



### 3. Are corporates taxed on gains on the sale of cryptocurrencies?

#### Ireland

The profits and losses of a company entering into transactions involving cryptoassets would be reflected in accounts and, where they arise from a trade, will be taxable under normal CT rules. Section 402(1) TCA 1997 defines a company's functional currency and recognises that companies can prepare their accounts in a currency other than the Euro where that other currency is their functional currency. As cryptocurrencies are not a functional currency as defined, accounts, for tax purposes, cannot be prepared in cryptocurrencies: Euro or functional currency accounts must be prepared.

Where the company is engaged in a trade that includes dealing in cryptocurrencies, then profits would be taxable at 12.5 per cent. Otherwise it would be a capital gain and liable to an effective tax rate of 33 per cent.

#### Netherlands

All income (gains) is included in the taxable profit calculation. This includes any type of income (investing, trading, mining, staking, block rewards). The tax rate is 25.8 per cent (15 per cent on profits up to €395,000).

#### Spain

Gains/losses deriving from the sale of cryptocurrencies must be included as taxable income of Spanish corporate investors, being typically subject to the standard CIT rate of 25 per cent with lower or higher rates applicable to certain categories of taxpayers (eg 1 per cent for collective investment funds).

#### Italy

According to the interpretation of the Italian Tax Authority, any gains on the sale of cryptocurrencies should be included in the taxable base for Italian corporate income tax purposes. Any tax loss may be offset against gains realised in the same fiscal year. If the tax losses exceed gains, they can be carried forward in subsequent years, subject to a limit of 80 per cent of the related income.

#### Luxembourg

The gains/losses on the sale of cryptocurrencies are liable to corporate tax upon disposal.

## 1.3 Common questions around cryptocurrency and tax

### 4. Is the payment for goods/services in cryptocurrencies a taxable event?

#### United Kingdom

Yes, the use of cryptocurrencies as payment for goods or services involves their disposal so as to give rise to a taxable event

#### France

Yes

#### Germany

Yes

#### Ireland

Yes

#### Netherlands

In the case of Box 3 taxation, a payment is not a relevant event.

Yes in the case of Box 1 taxation and in the case of corporate taxpayers.

#### Spain

Yes

#### Italy

Yes

#### Luxembourg

Yes

## 5. What is the tax treatment of cryptocurrencies received from mining?

### United Kingdom

Cryptocurrency may be awarded to “miners” in return for verifying additions to the ledger. Whether such activity amounts to a trade will depend on the particular facts using the same factors described above. Simply using a home computer to mine tokens would not normally amount to a trade. Where it does not amount to a trade, then any cryptocurrency awarded for successful mining would generally be taxable as miscellaneous income. Where it does amount to a trade, then any cryptocurrency awarded for successful mining would generally be taxable as trading profits.

### France

There are uncertainties as to the correct tax treatment.

There is no tax liability at the time the individual receives the cryptocurrencies.

Upon any subsequent disposal of the cryptocurrencies : (i) their market value on the date of receipt would be liable to the progressive income tax rates plus social security contributions (as income generated from mining activities), and (ii) any gain (ie the excess of their market value on the date of the disposal over the amount in (i)) would be treated as described in question 1 above.

For corporates, cryptocurrency received from mining activities will be subject to corporate tax based on the market value upon receipt.





## 5. What is the tax treatment of cryptocurrencies received from mining?

### Germany

For individual investors it should be noted that mining can be a private or a commercial activity, depending on the circumstances of the individual case. The income includes both the block reward and any transaction fees received.

The mere mining of cryptocurrencies is not taxable, but the tax administration seems to assume that mining amounts to a taxable commercial business (due to the expected investment volume). Whether the proceeds of mining is classified as trading income depends on whether the requirements of a trade or business under the relevant German tax rules are met.

Mining is sustainable if it is intended to be repeated. It must be capable of generating a profit from this activity in the long term. The block creators already participate in general economic transactions by making their computer resources available to the network participants for the verification of the transaction data and its inclusion in a new block of the blockchain. The fact that the fee depends on the successful creation of the block does not prevent such transactions amounting to a participation in general economic transactions.

Block creation does not constitute private asset management, but a commercial activity. When mining, block creators receive the block reward and the transaction fees in exchange for the creation of new blocks and therefore this income, equal to the fair market value of the cryptocurrencies received, is subject to German income taxation. The activity thus corresponds to the one of a service provider.

Cryptocurrencies received by corporate investors from mining qualify as fully taxable income valued at fair market value of the cryptocurrencies received which forms also the initial acquisition costs. For corporates, profits and losses generated by mining or trading of cryptocurrencies is subject to corporation tax (15 per cent plus 5.5 per cent solidarity surcharge thereon) and trade tax at fair market value. The costs of mining the cryptocurrencies are deductible as business expenses.

### Ireland

The Revenue has not stipulated that there is a specific tax treatment for the mining of cryptocurrency. The receipt is unlikely to trigger a tax event. On a subsequent disposal there will be no base cost for the asset, so the tax will be captured on the sale.

## 5. What is the tax treatment of cryptocurrencies received from mining?

### Netherlands

Whether mining is a taxable event for income tax purposes depends on whether it forms part of a business activity. If not, the proceeds from the mining are assets that will be added to the asset base of Box 3. If it is foreseeable that the mining will not be loss-making in the long run, typically it's treated as income from other activities, and taxed as Box 1 income (see question 1).

For corporates, cryptocurrency received from mining is subject to corporate income tax based on their market value upon receipt.

### Spain

Despite no official administrative guidance on the matter, income derived from mining is likely to be treated as business income, with the amount of income being the net profits derived from such activity which will be subject to the PIT progressive rates for general business income (highest marginal rates ranging from 45 per cent up to 54 per cent depending on the region of residence of the individual). The Spanish tax authorities (STA) have however expressly confirmed that it is a business activity for Business Activity Tax purposes (a different tax levied by each municipality). More generally, carrying out the activity of mining cryptocurrencies as a self-employed individual will involve a number of tax related obligations, including registration for Social Security, filing periodic tax returns, etc.

For corporates, the market value of cryptocurrencies received from mining should be taxable income for CIT purposes. Corporate investors must also register for Business Activity Tax purposes (where annual revenue is of at least €1m) in connection with this activity, following STA guidance.

### Italy

There is no official interpretation on cryptocurrencies received from mining. No taxation would take place at the time the individual receives the cryptocurrencies.

If mining is deemed to be a business activity, on the sale of the crypto received from mining the tax regime applicable to trading individuals should apply (see Q1).

For corporates, although there is no official interpretation, cryptocurrencies received from mining should be subject to 24 per cent corporate tax on their market value upon receipt.

### Luxembourg

The mining of cryptocurrencies can be classified as a commercial activity, and hence taxable, if it goes beyond the mere management of one's private assets. The Luxembourg tax administration has given criteria which can be used to determine the existence of a commercial activity, such as financing through debt capital, trading on behalf of third parties, frequent rotation of the stock of cryptocurrencies.

For corporates, cryptocurrencies received from mining are liable to corporate tax based on their market value upon receipt.

## 6. What is the tax treatment of cryptocurrencies received by airdrop?

### United Kingdom

Where someone receives an allocation of cryptocurrency as part of, for example, an advertising campaign, no income tax will be due if it is received without the individual doing anything in return and where it is not received as part of a business. Where the individual provides some service for the airdrop, then it will normally be taxable as miscellaneous income.

Where a business receives an allocation of cryptocurrency as part of an advertising campaign (for example) without providing any service for the receipt, then it will be treated as a separate business asset but (most likely) without any allowable cost for chargeable gains purposes.

### France

There are uncertainties as to the correct tax treatment. Assuming the airdrop is not a consideration for any activity or service provided by the individual, then no taxation would take place at the time the individual receives the cryptocurrencies (which would have a zero tax basis for the purpose of a subsequent disposal).

For corporates, cryptocurrency received by way of airdrop will be subject to corporate tax based on the market value upon receipt.

### Germany

For individual investors it should be noted that the receipt of additional units of cryptocurrency and other tokens as a reward for any kind of performance may be treated as other income from a service within the meaning of the relevant German tax rules or as business income depending on whether the taxpayer acts as a private investor or within its commercial activity.

If the aim of the airdrop is that, in addition to performance, "chance" also determines the receipt of units of a cryptocurrency or other tokens, then the attribution of performance and consideration is broken by the "element of chance".

Cryptocurrency and other tokens must be recognised at the market value at the time of acquisition. If the market value cannot be determined at the time of acquisition, it may be possible to value the cryptocurrency or other tokens received in an airdrop at €0.

If the allocation of units of a virtual currency or other tokens does not take place in a commercial context (eg by chance), gift tax may become relevant (see question "How are cryptocurrency gifts taxed, including in-game rewards").

For corporates, income in the form of the transfer of units of a cryptocurrency and other tokens constitute fully taxable income. Units of a cryptocurrency and other tokens received are valued at their market value at the time of receipt.



## 6. What is the tax treatment of cryptocurrencies received by airdrop?

### Ireland

Ireland has not yet specifically addressed the tax treatment of cryptocurrencies received by airdrop. When cryptocurrency is received by airdrop it is an acquisition of an asset and the basic principles of Irish Taxation will apply, making the transfer subject to CGT. However, when cryptocurrency is received by airdrop there is no document of transfer and therefore it would not be liable to stamp duty under the current legislative framework.

### Netherlands

Box 3 taxation, unless the taxpayer is a trader, see question 1 above.

For corporates, subject to corporate income tax based on their market value upon receipt.

### Spain

There is currently no official administrative guidance on this matter. Though not a clear cut issue, our understanding is that cryptocurrency airdrops might be considered as capital gains not derived from the transfer of assets.

Capital gains and losses that do not derive from the transfer of assets must be included in the general PIT tax base (at rates applicable to business or employment income, rather than financial income or gains which are taxed at lower rates), with highest marginal tax rates from 45 per cent up to 54 per cent depending on the region of residence of the individual.

For corporates, our understanding is that any gain derived from an airdrop would be considered as any other taxable corporate income or gain (hard forks, staking, remuneration obtained from lending cryptocurrencies, etc.) derived from cryptocurrencies. From a CIT perspective there should not be material differences in the tax treatment for different sources of income or gain (eg gains not derived from the transfers of assets, gains derived from the transfer of assets, interest, remuneration, etc.) in relation to taxable events on cryptocurrencies other than the specific accounting or valuation rules applicable to each transaction, being typically subject to the standard rate of 25 per cent, with lower or higher rates applicable to certain categories of taxpayers.

### Italy

There is no official interpretation on cryptocurrencies received by airdrop. No taxation would take place at the time the individual receives the cryptocurrencies.

For corporates, although there is no official interpretation, they should be subject to 24 per cent corporate tax on their market value upon receipt.

### Luxembourg

Receiving cryptocurrencies for free should not give rise to income taxation at the level of the individual. Registration duties may apply. Any gain derived from any subsequent disposal of the cryptocurrencies would be subject to the tax treatment described in above. For corporates, cryptocurrencies received by airdrop should be liable to corporate tax based on their market value upon receipt.

## 7. What is the tax treatment of cryptocurrencies received from staking?

### United Kingdom

HMRC recently included guidance in its Cryptoasset Manual setting out HMRC's view on the taxation of cryptoassets used in decentralised finance (DeFi) transactions. The new guidance covers a number of important tax questions concerned with DeFi transactions, including HMRC's view on the nature of returns from these activities and when taxable events occur where cryptoassets are lent or staked. In particular, HMRC's guidance indicates that the lending or staking of cryptoassets to a DeFi platform in return for other tokens received from the DeFi platform will generally give rise to a disposal for tax purposes where the lender/transferor has transferred beneficial interest in their tokens. The same analysis would apply to a borrower who provides tokens as collateral for a loan. This analysis is fact specific and will depend on particular terms of any arrangement as well as factors including the nature of smart contracts deployed and the underlying technology of the tokens lent/staked. However, this analysis potentially leads to a tax charge in circumstances where the lender/transferor does not receive any return at the time of the disposal.

HMRC does not consider the return earned by the lender/staker to be interest for tax purposes. Consequently, any provisions which apply to interest specifically will not apply to the return. How the return is taxed will depend on whether the receipt has the nature of capital or revenue.

In an effort to make the UK more attractive to crypto related business, the UK government has recently announced that it will review how DeFi lending and staking activities are treated for tax purposes.

### France

There are uncertainties as to the correct tax treatment and various alternatives may be envisaged.

Under one alternative, cryptocurrencies received from staking would be treated as interest income, in which case (i) they would be subject to tax at the 30 per cent flat rate upon receipt, and (ii) any gain on any subsequent sale (ie the excess of market value upon disposal over the amount in (i)) would be treated as described in question 1 above.

Alternatively, no taxation would take place at the time the individual receives the cryptocurrencies (which would have a zero tax basis for the purpose of a subsequent disposal). Upon any subsequent disposal of the cryptocurrencies either the disposal will attract the tax treatment described in question 1 above or, alternatively, (i) the market value on the date of receipt would be liable to the progressive income tax rates plus social security contributions (as income generated from staking), and (ii) the excess of their market value on the date of the disposal over the amount in (i) would be treated as described in question 1 above.

For corporates, cryptocurrency received from staking will be subject to corporate tax based on the market value upon receipt.

## 7. What is the tax treatment of cryptocurrencies received from staking?

### Germany

Income from staking (participation in a staking pool, platform staking) generated by individual investors is generally subject to taxation under the relevant German tax rules as private asset management. The taxpayers receive consideration in the form of additional units of cryptocurrency which should be recognised at the market value at the time of acquisition.

For corporates, the consideration for the provision of stakes constitutes operating income and is fully taxable. Cryptocurrency units received for staking are to be recognised in the balance sheet at the time of the acquisition at market value.

### Ireland

The Revenue have not yet addressed the tax treatment of cryptocurrencies received from staking. The receipt of cryptocurrencies from staking is like receiving a fee for making the stake. An individual is likely to be taxed on the market value of the coins received. A corporate is likely to be taxed on the market value of the coins received.

### Netherlands

Box 3 taxation, unless the taxpayer is a trader, see question 1 above.

For corporates, subject to corporate income tax based on their market value upon receipt.

### Spain

The STA will generally consider any income obtained from “staking” as interest, subject to the lower PIT rates for financial income, ranging from 19 per cent up to 26 per cent for taxable income exceeding €200,000. This view may change in certain scenarios where there are sufficient human or material resources to amount to a business activity, when the receipt would be subject to the PIT progressive rates for general business income (highest marginal rates ranging from 45 per cent up to 54 per cent depending on the region of residence of the individual).

For CIT, see question 6.

## 7. What is the tax treatment of cryptocurrencies received from staking?

### Italy

There is no official interpretation on cryptocurrencies received from staking. However, the current draft legislation would provide that staking is not a taxable event.

As to the tax treatment of the cryptocurrencies received from staking, the Italian tax authority has recently issued a tax ruling stating that such currencies may be regarded as income from capital (at its value on the day the individual receives such income) and would be subject to the applicable progressive rates from 23 per cent to 43 per cent.

For corporates, although there is no official interpretation, they should be subject to 24 per cent corporate tax on their market value upon receipt.

### Luxembourg

As there is no clear guidance, income from staking should be analysed on a case by case basis. An individual taxpayer will have to determine whether its income could be seen as interest or reward. Depending on the answer, the respective tax treatment of the receipt of interest or a gift could be applicable.

For corporates, cryptocurrencies received from staking should be liable to corporate tax based on their market value upon receipt.





## 8. What is the tax treatment of lending in cryptocurrencies?

### United Kingdom

See question 7.

### France

There are uncertainties as to the correct tax treatment and various alternatives may be envisaged.

Under one alternative, cryptocurrencies received from lending would be treated as interest income, in which case (i) they would be subject to tax at the 30 per cent flat rate upon receipt, and (ii) any gain on any subsequent sale (ie the excess of market value upon disposal over the amount in (i)) would be treated as described in question 1 above.

Alternatively, no taxation would take place at the time the individual receives the cryptocurrencies (which would have a zero tax basis for the purpose of a subsequent disposal). Upon any subsequent disposal of the cryptocurrencies either the disposal will attract the tax treatment described in question 1 above or, alternatively, (i) their market value on the date of receipt would be liable to the progressive income tax rates plus social security contributions (as income generated from lending), and (ii) any excess of their market value on the date of the disposal over the amount in (i) would be treated as described in question 1 above.

For corporates, the lending of cryptocurrency will be treated as a taxable disposal and cryptocurrency received from such lending activities will be subject to corporate tax based on the market value upon receipt.

### Germany

Income from lending is taxable at the level of individual investors. Units of cryptocurrencies and other tokens received for lending are valued at the market value at the time of the acquisition.

For corporates, income from lending of cryptocurrencies and other tokens constitute operating income and is fully taxable. Units of a cryptocurrency and other tokens received for the lending are valued at the market value at the time of receipt.

### Ireland

The Revenue has not yet addressed the tax treatment of the lending of the cryptocurrencies and of the remuneration thereof. However, the remuneration is likely to be taxable as income.

## 8. What is the tax treatment of lending in cryptocurrencies?

### Netherlands

Lending of cryptocurrencies follows the treatment of an ordinary loan. Either the loan is an asset subject to Box 3 taxation (and the interest is not taxed separately), or subject to Box 1 taxation, in which case the interest is taxed, see question 1 above.

For corporates, arguably lending cryptocurrencies is not treated as a taxable disposal. Remuneration from such lending will be treated as income in the same way any other loan and recognised on an accruals basis.

### Spain

Remuneration obtained for lending cryptocurrencies (not in the context of an economic activity) should be treated as interest, subject to the lower PIT rates for financial income, ranging from 19 per cent up to 26 per cent for taxable income exceeding €200,000.

For CIT, see question 6.

### Italy

There is no official interpretation on lending of cryptocurrencies.

Cryptocurrency received as interest may be included in the individual taxable base (at its value on the day the individual receives such interest) and would be subject to the applicable progressive rates from 23 per cent to 43 per cent.

For corporates, although there is no official interpretation, they should be subject to 24 per cent corporate tax on their market value upon receipt.

### Luxembourg

The tax treatment of the lending of cryptocurrencies and remuneration thereof has not been clarified by the tax administration. It could be seen as capital income.

For corporates, the lending of cryptocurrencies should be viewed as a taxable disposal. The remuneration should be liable to corporate tax based on its market value upon receipt.

## 9. What is the tax treatment of a hard fork?

### United Kingdom

HMRC has stated that where there is a hard fork, creating a new cryptocurrency, that will not amount to a disposal of itself and any allowable costs for the original cryptocurrency will need to be allocated between the original and new cryptocurrencies.

### France

There are uncertainties as to the correct tax treatment.

A hard fork should benefit from tax deferral only in the case of the individuals acting as investors. Individuals acting as traders should be treated as described in question 1 above in respect of any gains.

For corporates, a hard fork will give rise to a taxable disposal.

### Germany

A hard fork does not give rise to income for German tax purposes. The acquisition costs of the units of the cryptocurrency that existed prior to the hard fork are allocated to the new cryptocurrency units. The allocation is based on the ratio of the market values of the units of the different cryptocurrencies at the time of the hard fork. If, after a hard fork, no value is attributed to the units of the newly created cryptocurrency, the acquisition costs remain with the units of the cryptocurrency existing prior to the hard fork.

For individual investors, the acquisition date of the units of the new cryptocurrency is treated as the same as the acquisition date of the units of the existing cryptocurrency for purposes of calculating the one year holding period (see question 1).

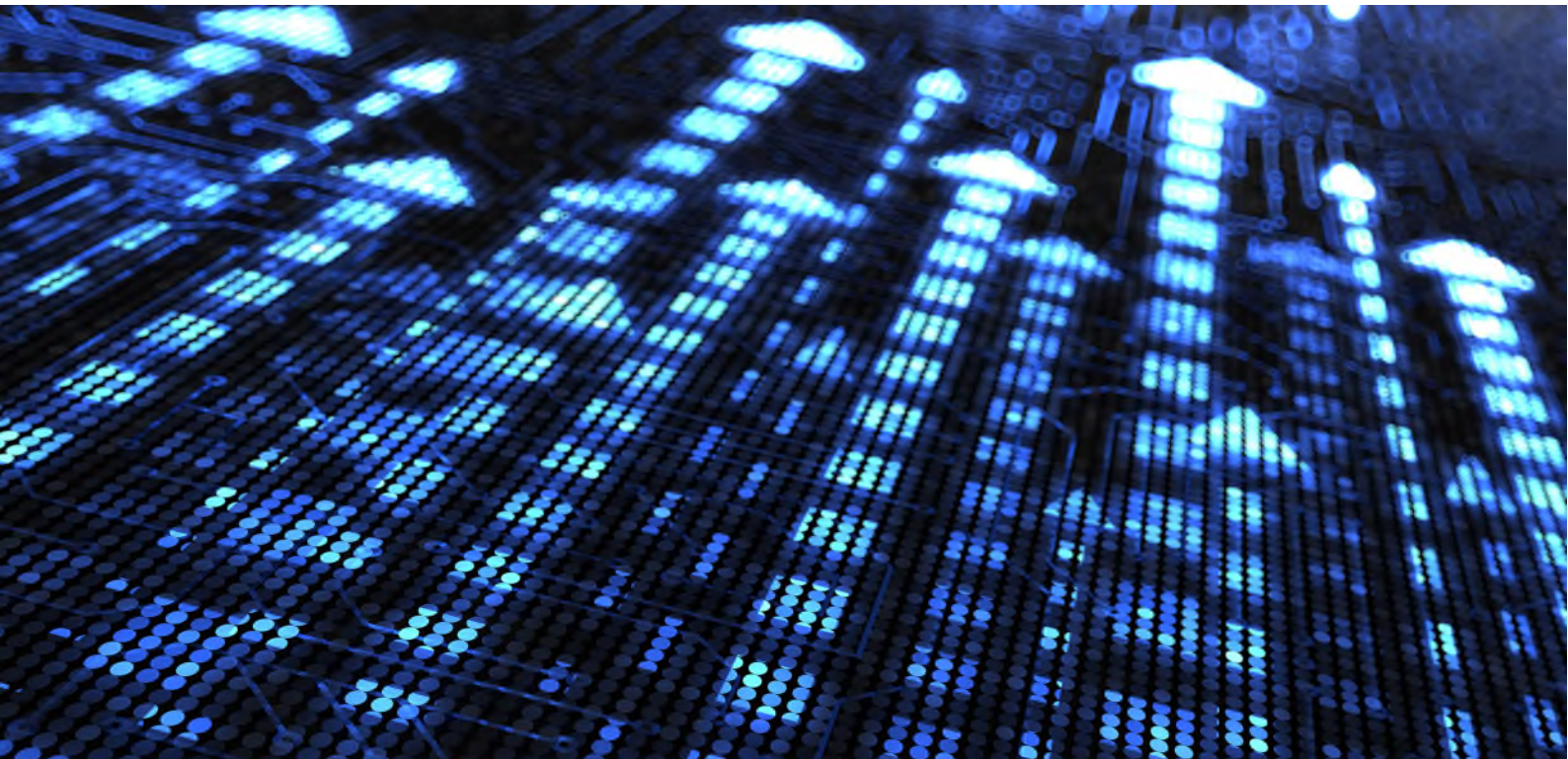
### Ireland

The Revenue have not yet addressed the tax treatment of a hard fork. It is worth considering that where there is a hard fork, creating a new cryptocurrency, that will not amount to a disposal of itself and any allowable costs for the original cryptocurrency may be likely to be allocated between the original and new cryptocurrencies.

### Netherlands

Box 3 taxation, unless the taxpayer is a trader, see question 1 above.

For corporates, a hard fork should be treated as a taxable disposal.



## 9. What is the tax treatment of a hard fork?

### Spain

Currently there is no official guidance on the tax treatment of a hard fork.

Despite being a far from clear cut issue, our current (and provisional) view is that a hard fork could potentially give rise to a capital gain in certain scenarios. Depending on whether a new or different cryptocurrency was deemed to be obtained as consequence of the hard fork, there may be a capital gain (i) derived from the transfer of assets (eg if the hard fork was considered equivalent to an exchange of cryptocurrencies) or alternatively (ii) not derived from the transfer of assets (eg if it was treated in the same way as an airdrop or similar transactions).

For CIT, see question 6.

### Italy

There is no official interpretation on the tax treatment of a hard fork. However, according to some commentaries, the expectation is that a hard fork should benefit from tax-deferral where an individual acts as an investor. In other cases, including corporates, it is likely to result in a taxable transaction.

### Luxembourg

A hard fork should be treated as a taxable disposal.



## 10. What is the tax treatment of employee remuneration in cryptocurrency?

### United Kingdom

Where cryptoassets are received as earnings for employment they will count as “money’s worth” and will be subject to income tax and NICs on their value.

An employer’s obligation in relation to cryptoassets provided as earnings will depend on whether they amount to “readily convertible assets” (RCAs). This in turn depends on whether there are “trading arrangements” in existence. Where there are trading arrangements (such as with Bitcoin), then employers must deduct and account to HMRC for PAYE and NICs, based on a best estimate of the cryptoassets’ value.

Where cryptoassets are not RCAs, no PAYE obligation arises on the employer. Instead, the individual employee must report and pay income tax under self-assessment, and the employer must treat the award as a payment in kind and pay Class 1A NICs to HMRC.

### France

There is uncertainty as to the legal validity of any employment remuneration paid in the form of cryptocurrencies.

No specific tax treatment should apply: individuals should be liable, in respect of the value of the cryptocurrencies on the date of their receipt, to the progressive income tax rates, plus social security contributions plus, potentially, an additional contribution for high income individuals. The employer should proceed with its withholding tax obligation on the basis of the market value of the cryptocurrencies upon payment.

### Germany

If tokens are provided to an employee the tax treatment depends on whether a cash benefit or a benefit in kind is given. The valuation of a benefit in kind shall be carried out at market value at time of receipt. A benefit in kind is not taxable if it does not exceed a total of € 50 per month.

Tokens that are classified as non-cash benefits accrue to the employee at the time they are transferred into the wallet. The receipt of tokens takes place at the earliest when the tokens can be traded, as the employee only then has the possibility to dispose of the tokens economically. Cryptocurrency is not received by an employee therefore at the time the employer merely promises a transfer of tokens.

### Ireland

There is no specific treatment, it would be taxable at the market value of the coins paid.

**10. What is the tax treatment of employee remuneration in cryptocurrency?****Netherlands**

No. This is treated as any form of remuneration ie the taxable income for the individual equal the value of the cryptocurrencies on the day of the receipt.

**Spain**

There is currently no specific guidance for employment remuneration paid in cryptocurrencies. Our preliminary understanding is that it should be considered as a remuneration in kind.

**Italy**

No specific tax treatment should apply. In accordance with Italian tax law, income from employment consists of all compensation, in cash or in kind, received during the tax year in connection with the employment. Any cryptocurrency received may be included in the individual taxable base at its value on the day the individual receives it.

**Luxembourg**

No. Employment income should be subject to the normal progressive rate applicable.



## 11. How are gifts of cryptocurrency taxed, including in-game rewards?

### United Kingdom

If tokens are given away to another person (who is not a spouse or civil partner), the individual making the gift is treated as having received an amount equal to the pound sterling value of what has been given away for CGT purposes, even if they did not actually receive anything. However, if an individual donates tokens to charity, they will not have to pay CGT on them.

### France

In case of a reward in a game, no taxation would take place at the time the individual receives the cryptocurrencies (which would have a nil tax basis for the purposes of subsequent disposals).

In the case of a gift, it should be liable to gift duties (subject to the availability of any applicable exemption) based on the value of the cryptocurrencies on the date of their receipt.

### Germany

Should the receipt of cryptocurrencies result from a voluntary donation by the person who rewards the cryptocurrency and not as consideration for a service, there may be a charge to gift tax. No specific tax regulations apply to a gift of cryptocurrencies. Therefore, a gift of cryptocurrencies (including as a reward in a game) should be subject to the general principles of the German Gift Tax Act. The gift tax base should be the fair value of the cryptocurrencies. Applicable exemptions from gift tax and tax rates depend on the relationship of the donor to the recipient and the value of the gift.

### Ireland

The Revenue makes the point that “receipt of cryptoassets by way of gifts or inheritance may need to be considered in relation to a liability to Capital Acquisitions Tax (CAT). The valuation of the cryptoasset received for CAT purposes is the Euro equivalent at the time of the gift or inheritance.”

Generally, any gift is taxable at 33 per cent subject to small exemptions. A reward in a game may not be taxable as generally wagers are tax exempt.

## 11. How are gifts of cryptocurrency taxed, including in-game rewards?

### Netherlands

Gifts of cryptocurrencies made by a resident (or deemed resident) of the Netherlands are subject to gift tax at rates between 10 per cent - 40 per cent of the value of the cryptocurrencies received on the date of the gift. The actual rate depends on the level of connection between the donor and the donee and is subject to certain exemptions.

A reward in a game is not taxed, unless it is done professionally in which case it is taxed under Box 1 (see question 1 above).

### Spain

Any gift or reward obtained by individuals would be considered as a capital gain that does not derive from the transfer of assets. It would therefore be included in the general PIT tax base, with highest marginal tax rates from 45 per cent up to 54 per cent depending on the region of residence of the individual.

For CIT, see the previous question on airdrops.

### Italy

No taxation should take place at the time the individual receives the cryptocurrencies in cases when the individual does not act as trader or in his/her capacity of employee.

The value of the cryptocurrencies may be included in the taxable basis of inheritance and gift duties (at its value on the day the individual receives it).

### Luxembourg

No tax should be applicable to the gift of cryptocurrencies. Stamp duties and registration fees are applicable only when a registration is made with the notary on a voluntary basis.



**12. Is there a tax-deferral regime when exchanging cryptocurrency/assets?****United Kingdom**

There is no express deferral regime under UK law for an exchange of cryptocurrencies against other cryptocurrencies or against other crypto assets.

**France**

Tax deferral is available where cryptocurrencies are exchanged for other digital assets (as defined by the relevant rules), but only for the individuals acting as investors (assuming the exchange does not include any non-digital asset elements).

**Germany**

No.

**Ireland**

No.

**Netherlands**

For a non-trading investor, tax deferral is not relevant (Box 3 taxation). For a trader, there are uncertainties as to the applicable tax treatment, although, generally, no deferral would be available if the cryptocurrencies serve as cash or similar assets.

**Spain**

No.

**Italy**

No.

**Luxembourg**

No.

### 13. Is there any transfer tax on the acquisition of cryptocurrencies?

#### United Kingdom

No, there are no transfer taxes applicable to the acquisition of cryptocurrencies. HMRC's view is that existing exchange tokens would not be likely to meet the definition of "stock or marketable securities" or "chargeable securities" for these purposes. For other types of cryptoasset, this will be considered on a case-by-case basis, dependent on the characteristics and nature of the cryptoassets, rather than any labels attached to them.

#### France

No.

#### Germany

No.

#### Ireland

Generally there are no transfer taxes applicable to the acquisition of cryptocurrencies. The exchange of tokens is not likely to meet the definition of stock or marketable securities or even chargeable securities. However, if the acquisition involves any written instrument executed in Ireland, or any matter or thing done or to be done in Ireland, then that written instrument could be liable to stamp duty.

#### Netherlands

No.

#### Spain

No transfer taxes apply to the acquisition for consideration of cryptocurrencies.

#### Italy

According to the interpretation of Italian Tax Authority, the exchange of cryptocurrencies against other cryptocurrencies or against other cryptoassets is a taxable event.

However, under the draft legislation currently under discussion, a tax-deferral regime would be available in the case of crypto to crypto trades and transactions aimed at acquiring for free cryptocurrencies.

#### Luxembourg

No.

#### 14. Is it obligatory to declare cryptocurrencies to tax authorities?

##### United Kingdom

There is no specific obligation to declare the holding of cryptocurrencies to HMRC.

##### France

Individuals should declare, annually upon filing their tax return, any cryptocurrency accounts they may have outside of France; failure to make such declarations may lead to sanctions up to €10,000 per failure.

For corporates, there is no specific declaration obligation.

##### Germany

No.

##### Ireland

There is an obligation to return the acquisition of any asset that is within the charge of capital gains tax. Failing to return the acquisition of an asset could render you liable to penalties for making an incorrect tax return.

##### Netherlands

It is compulsory to declare the possession of crypto coins in the tax return, just like any other asset. The taxpayer may be subject to a fine of up to 300 per cent if incorrectly declaring the relevant income. In the case of a deliberate failure to declare, criminal prosecution may follow.

#### 14. Is it obligatory to declare cryptocurrencies to tax authorities?

##### Spain

Spanish individuals holding cryptocurrencies will be subject to the same reporting obligations applicable in relation to the holding of assets and rights or any income derived from them, including general Wealth Tax reporting obligations if the worldwide net worth exceeds €700,000. Tax penalties in case of non-declaration may generally vary from 50 per cent to 150 per cent of the unpaid taxes depending on the specific circumstances and subject to reductions in certain scenarios.

Corporate investors are subject to the general accounting and CIT reporting obligations. Tax penalties for accounting infringements generally vary between €150 and €6,000 whereas penalties for non-declaration generally vary from 50 per cent to 150 per cent of the unpaid taxes depending on the specific circumstances and subject to reductions in certain scenarios.

Certain disclosure obligations for cryptocurrencies held abroad as of 31 December are expected to come into force in 2022. A Form 721 should be filed on a yearly basis to the extent such offshore assets are worth more than €50,000. This obligation must be fulfilled between 1 January and 31 March of the year following the year to which the information to be provided refers. The filing of the Form in subsequent years will only be mandatory when the overall balance has increased by more than €20,000 with respect to the last filed Form. Non declaration penalties may amount to:

- a) €5,000 for each piece of information or set of information not declared or declared incompletely, inaccurately or falsely, with a minimum of €10,000.
- b) €100 for each item of data or set of data, with a minimum of €1,500, when the tax Form has been filed after the deadline without prior request from the STA.

Individuals and corporates which carry out a business activity and keep the cryptocurrencies in their accounts duly identified would be exempted from this obligation.

##### Italy

Yes. Individuals must declare, annually upon filing of their tax return the Euro value of any cryptocurrency held at 31 December for each fiscal year. In the absence of such declaration, a penalty of 3 per cent to 15 per cent of the value of cryptocurrencies applies. However, where the declaration is filed later than 90 days after expiry of the time limit, a flat penalty of €258 applies.

##### Luxembourg

None

**15. Are there tax reporting obligations for cryptocurrency transactions?****United Kingdom**

The tax reporting obligations for transactions in cryptocurrencies simply follow the normal tax reporting obligations applicable to other taxable transactions.

**France**

Individuals should declare any gains on the disposal of the cryptocurrencies on a specific form appended to their annual tax return. In practice, the actual computation of the gains/losses is burdensome.

For corporates, there is no specific tax reporting obligation, other than their inclusion in the annual tax filing.

**Germany**

None.

**Ireland**

There are no specific tax reporting obligations for cryptocurrency. On this point the Revenue states that where the records are stored in a wallet or vault on a device such as a personal computer, mobile phone or similar device, they must be made available to the Revenue upon request. These records must be retained for a period of 6 years. These provisions apply to all taxpayers, including PAYE only taxpayers.

**Netherlands**

There are no specific tax reporting obligations.



## 15. Are there tax reporting obligations for cryptocurrency transactions?

### Spain

Tax reporting obligations specific to the transactions in cryptocurrencies are expected to come into force in 2022. Businesses may be subject to tax reporting obligations if:

- a) they provide services on behalf of third parties to safeguard private cryptographic keys that enable the holding and use of cryptocurrencies, including providers of exchange services for cryptocurrencies if they also provide a holding service (Form 172), or
- b) they provide exchange services between cryptocurrencies and actual currencies or between different cryptocurrencies, intermediate in any way in the conduct of such transactions or provide services for safeguarding private cryptographic keys on behalf of third parties, for holding, storing and transferring virtual currencies (Form 173). The same Form 173 should be also filed by individuals making ICOs.

These obligations are not in force as yet and so their final form may be modified.

### Italy

No specific reporting obligations, other than the inclusion in the annual tax filing.

### Luxembourg

None, other than their inclusion in the annual tax filing.



## 16. How are cryptocurrency transactions treated for VAT purposes?

### United Kingdom

HMRC's guidance on the business tax treatment of transactions involving cryptoassets, such as Bitcoin, confirms that exchanges of cryptocurrencies for actual legal tender are treated as exempt from VAT. This follows the CJEU decision in Hedqvist (Case C-264/14) that Bitcoin and other cryptocurrencies should be treated in a similar way to other currencies for VAT purposes. Therefore, where a person pays consideration for the acquisition of Bitcoin, there is a supply that is exempt from VAT under VATA 1994 Schedule 9 Group 5. This exempts transactions, (including negotiations), concerning currency, bank notes and coins used as legal tender.

The guidance confirms the VAT treatment of a number of other transactions involving Bitcoin and other cryptocurrencies:

- cryptoassets received from "mining activities" will generally be outside the scope of VAT on the basis that the activity does not constitute an economic activity because there is an insufficient link between any services provided and any consideration received and there is no customer for the mining service;
- when cryptoassets are exchanged for goods and services, no VAT will be due on the supply of the cryptoasset (though VAT will be due in the normal way on the goods or services provided); and
- charges (in whatever form) made over and above the value of the cryptoasset for arranging or carrying out any transactions in cryptoassets will also be exempt from VAT.

### France

They should be treated either as outside the scope or as exempt for VAT purposes.

## 16. How are cryptocurrency transactions treated for VAT purposes?

### Germany

The Federal Ministry of Finance equates cryptocurrencies with legal tender insofar as these currencies have been accepted by the parties to the transaction as an alternative contractual and direct means of payment and do not serve any purpose other than use as a means of payment. The use of cryptocurrencies for the mere payment of goods/services is therefore not subject to VAT.

In the case of payment in cryptocurrencies (eg Bitcoin), valuation of the payment to the supplier is generally determined by the equivalent value in the currency of the EU Member State in which the service is provided. Conversion takes place at the last published selling rate (eg on corresponding conversion portals on the internet) and must be documented by the supplier. The exchange of conventional currencies into cryptocurrencies and vice versa is a service for VAT purposes which is, however, VAT exempt.

Lending transactions in relation to cryptocurrencies should be VAT exempt. Services provided by miners should not be VATable. Currently, there is no further guidance in relation to the VAT treatment of cryptocurrencies by the German tax authorities (eg in relation airdrop, hard fork, staking).

### Ireland

The Court of Justice of the European Union (CJEU) held in the Hedqvist case (C-264/14) that Bitcoin constitutes a currency for VAT purposes. In Ireland, where the cryptocurrency provides the holder with an interest in an underlying asset such as property, stamp duty may be payable on an assignment in order to be accounted for in a manner similar to the underlying asset. Generally however crypto currencies are exempt from VAT.

Financial services consisting of the exchange of bitcoins for traditional currency are exempt pursuant to Paragraph 6(1)(d) of the VAT Consolidation Act 2010, where the company performing the exchange acts as principal (ie buys and sells cryptoassets acting as the owner of the virtual asset).

VAT is due in the normal way from suppliers of any goods or services sold in exchange for bitcoin or other similar cryptocurrencies. The taxable amount for VAT purposes will be the Euro value of the cryptocurrencies at the time of the supply.

Income received from cryptocurrency mining activities will generally be outside the scope of VAT on the basis that the activity does not constitute an economic activity for VAT purposes.

### Netherlands

They should be treated as either outside the scope or exempt for VAT purposes.

## 16. How are cryptocurrency transactions treated for VAT purposes?

### Spain

The STA have confirmed that the exchange of a cryptocurrency for any other cryptocurrency, or for a currency that constitutes a legal means of payment, is a transaction excluded from the scope of VAT as long as the value of what is received is equal to the value exchanged, regardless of any additional services associated with such exchange.

Financial services related to cryptocurrencies should be exempt from VAT in accordance with article 20.1.18 of the VAT Law. However, the STA consider that services provided by platforms to cryptocurrency holders enabling them to engage in cryptocurrency investment (eg in staking activity) should be subject to and not exempt from VAT. Similarly, any service such as discretionary management, advisory, administrative or deposit services related to cryptocurrencies are not of a financial nature and therefore should not benefit from the VAT exemption.

The STA have confirmed that mining does not involve the making of any supplies for a consideration. In the absence of a direct link between the service provided and the consideration received, the mining activity should not lead to supplies of services subject to VAT.

### Italy

According to CJEU and the interpretation of the Italian Tax Authority, they should be treated as VAT exempt supplies.

### Luxembourg

The above transactions should be treated either as out of scope or exempt for VAT purposes.



# 2

Initial Coin Offerings or  
ICOs (by issuers tax  
residents in your  
jurisdiction)



## 17. What is the tax treatment of the ICOs for the issuers?

### United Kingdom

HMRC guidance does not currently cover the tax treatment of tokens or cryptoassets issued pursuant to an ICO and the tax treatment is currently unclear. The actual tax treatment may depend on the exact terms of the ICO.

Where the ICO is a capital raising exercise, it may be that the cryptoasset is treated as an asset in respect of which the company has no obvious base cost. If so, the company may be treated as disposing of an existing asset which it has created and subjected to corporation tax on the full proceeds. Alternatively, the company may be treated in an analogous way as an issuer of shares—where the share is treated as created rather than disposed of by virtue of the issuance—so that no tax charge arises.

If the company makes regular issues of cryptoassets, it may be arguable that it forms part of a trading activity so that the ICO proceeds are taxed as income in accordance with the accounts.

### France

There are no specific French corporate tax rules applicable to ICOs ; therefore the tax treatment follows the French GAAP guidance as follows.

If the tokens qualify as security tokens, their issue should have no impact for the issuer.

For other tokens, the treatment depends on the obligations of the issuer viz a viz the subscribers.

If there are no obligations viz a viz the subscribers, the issue's proceeds are immediately taxable.

If there are obligations viz a viz the subscribers, the issue's proceeds will be either treated as a liability (when the obligations are comparable to those of a debt issuer), or as pre-paid income, when the issue is consideration for future services or delivery of goods, which should become taxable when the services are provided or the goods delivered.

## 17. What is the tax treatment of the ICOs for the issuers?

### Germany

In an ICO, tokens are issued by the issuer which may - depending on the structure - represent equity or debt.

If the issued tokens qualify as equity, their issue should not have any tax impact for the issuer.

If the issued tokens qualify as debt, the amount should be reflected as a liability in the (tax) balance sheet and interest payments should generally be deductible as business expenses.

Tokens are assets produced by the issuer itself which are recognised in the balance sheet at cost.

### Ireland

The Revenue has not yet spoken on the tax treatment of tokens or cryptoassets issued pursuant to an ICO. Where the ICO is a capital raising exercise, it may be that the cryptoasset is treated as an asset in respect of which the company has no obvious base cost. If so, the company may be treated as disposing of an existing asset which it has created and subjected to corporation tax on the full proceeds. Alternatively, the company may be treated in the same way as an issuer of shares—where the share is treated as created rather than disposed of by virtue of the issuance—so that no tax charge arises. If the company makes regular issues of cryptoassets, it may be arguable that it forms part of a trading activity so that the ICO proceeds are taxed as income in accordance with the accounts.

### Netherlands

There are no specific Dutch corporate tax rules with respect to ICOs. Dutch (tax) accounting rules would generally determine their tax treatment.

If the tokens qualify as security tokens, the issue should have no direct tax consequences for the issuer. For other tokens, the treatment depends on the obligations of the issuer towards the subscribers. If there are no obligations, the issue proceeds are immediately taxable. If there are obligations towards the subscribers, the issuer would either need to record an obligation (equal to the proceeds) or would need to record a deferred liability (pre-paid income) when the issue price is the consideration for future services or the delivery of goods, which will become taxable when the services are provided or the goods are delivered.

## 17. What is the tax treatment of the ICOs for the issuers?

### Spain

This is not a clear cut issue and no official administrative guidance is available from the STA at the moment. However, following a ruling issued by the Spanish accounting regulator (the Institute of Accounting and Auditing), cryptocurrencies issued by a company which intends to use the sale of this cryptocurrency to obtain financing for its projects would be accounted for as stock if these are held for sale in the ordinary course of business, otherwise these should be accounted as intangible assets. In this context, our understanding is that ICOs should not have direct tax implications for the issuers until the sale.

Furthermore, the Spanish National Securities Market Commission ("*Comisión Nacional del Mercado de Valores*" or "*CNMV*") and the Bank of Spain ("*Banco de España*" or "*BE*") consider that many of the operations carried out as ICOs should be treated (for regulatory purposes) as issues or public offerings of negotiable securities (IPOs) if:

- a) the tokens grant rights or expectations of participation in the potential revaluation or profitability of businesses or projects or, in general, grant rights equivalent or similar to those of shares, debentures or other financial instruments; and
- b) in the case of tokens giving the right to access services or to receive goods or products, which are offered with explicit or implicit reference to the expectation that the purchaser or investor will obtain a benefit as a result of their revaluation or some remuneration associated with the instrument or mentioning their liquidity or possibility of trading on markets equivalent or purportedly similar to regulated securities markets.

Specific tax reporting obligations are expected to come into force in 2022 (Form 173).

### Italy

According to the interpretation of the Italian Tax Authority, the issuance of ICOs in the form of utility tokens does not constitute a taxable event. Corporate income tax will be due on the income deriving from the supply of good or services related to the token. There is no official interpretation of the tax treatment of security tokens.

### Luxembourg

Corporate tax should be due.

## 18. What is the VAT treatment of the ICOs including any applicability of the rules on vouchers (within the meaning of the relevant EU Directive)?

### United Kingdom

There is currently no guidance on the VAT treatment of an ICO. It seems likely, however, that the VAT position for an issuer in an ICO will depend on the nature of the tokens being issued:

- if the tokens are comparable to shares or securities, their issue should fall outside the scope of VAT (though note that HMRC take the view that existing exchange tokens would not be likely to meet the definition of “stock or marketable securities” or “chargeable securities” for stamp tax purposes);
- if the tokens are a new cryptocurrency, their issue should be exempt from VAT; or
- if the tokens do not equate to shares, securities or currency, their issue will give rise to a supply for consideration and is likely to be subject to VAT, unless the only right the tokens confer is a right to payment, in which case the supply should be exempt. For utility tokens (which resemble vouchers in that they can be redeemed for goods or services), it is possible that the special VAT rules for vouchers could apply. The VAT treatment of vouchers is complex and depends on whether a voucher is a single- or multi-purpose one.

As tokens are intangible, their issue would be a supply of services and is likely to be a supply of “electronically supplied services”. This means the supply is treated as being made in the country where the recipient belongs.

### France

According to the French tax authorities, the VAT treatment of the ICO will depend on the nature of the tokens issued.

Security tokens will not be in any case liable to VAT (treated as equivalent to shares).

If the tokens qualify as cryptocurrencies, their issue would be VAT exempt.

If there is no direct link between tokens issued and any services provided upon the ICO, no VAT will be chargeable (a direct link depends on whether it provides a benefit to the subscriber and whether the price is related to the benefit received).

The direct link analysis is also applied to the issue of utility tokens: when there is no direct link at the outset, VAT will only subsequently be chargeable when the tokens are traded for identifiable services or goods of the issuer. If there is a direct link between tokens issued and any services provided upon the ICO, VAT would be chargeable upfront.

## 18. What is the VAT treatment of the ICOs including any applicability of the rules on vouchers (within the meaning of the relevant EU Directive)?

### Germany

Depending on their specific design, utility tokens may come within the scope of the European Voucher Directive (EU 2016/1065).

Their VAT treatment will depend on whether they amount to single-purpose or multi-purpose vouchers. If the voucher specifies the service so that the use of the voucher is clear at the time of issue, it is a single-purpose voucher. In the case of such vouchers, the issue itself is subject to VAT.

However, if the use of the voucher is not specified, but it can be used as a means of payment for various products, services or applications, it is a multi-purpose voucher. If it is a multi-purpose voucher, it is only subject to VAT when it is used as consideration.

Thus, if a utility token is issued that amounts to consideration for a specific transaction and is also consumed in the course of that transaction, it would be classified as a single-purpose voucher and be subject to VAT when issued. However, this would require that the right of the acquirer to the specific transaction is established and specified upon issue. This should rarely be the case in practice. In other cases, where the use of the token is not specified but can be used as a means of payment for various transactions, it will be treated as a multi-purpose voucher.

### Ireland

The issue is VAT exempt in Ireland. If the tokens are comparable to shares or securities their issue should fall outside the scope of VAT. If the tokens are a new cryptocurrency, their issue should also be exempt from VAT. However, if the tokens do not equate to shares, securities or currency, their issue will give rise to a supply for consideration and would likely be subject to VAT, unless the only right the tokens confer is a right to payment, in which case the supply should be exempt.

### Netherlands

The issue of security tokens is not subject to VAT. Obtaining a voucher is not likely to be subject to VAT itself. Only when the tokens/voucher are exchanged for goods or services, will VAT become due.



**18. What is the VAT treatment of the ICOs including any applicability of the rules on vouchers (within the meaning of the relevant EU Directive)?**

**Spain**

There is no official guidance from the STA on this matter to date. However, we understand that it is likely that ICOs should be either VAT exempt or not subject to VAT.

**Italy**

According to the interpretation of the Italian Tax Authority, ICOs are subject to the same VAT treatment applicable to vouchers. As a consequence, the issuance of tokens under an ICO is not relevant for VAT purposes and any VAT will be due upon the utilisation of the token.

**Luxembourg**

No VAT applicable.



**19. Are ICOs liable to any stamp duty?****United Kingdom**

No, there are no transfer taxes applicable to the issue or acquisition of cryptocurrencies. HMRC's view is that existing exchange tokens would not be likely to meet the definition of "stock or marketable securities" or "chargeable securities" for these purposes. Other cryptoassets will be considered on a case-by-case basis, dependent on the characteristics and nature of the cryptoassets, rather than any labels attached to them.

**France**

No.

**Germany**

No.

**Ireland**

On the basis that the ICO may be taxable as a disposal of an asset, we understand that the issue could therefore potentially be liable to stamp duty. However, the Revenue has not provided any defined rules on this matter to date.

**Netherlands**

No.

**Spain**

Although there is no official guidance from the STA to date, ICOs should not be liable to any stamp duty.

**Italy**

No.

**Luxembourg**

No.

# 3

## Transactions in NFTs

## 3.1 Individual investors (tax resident in your jurisdiction)

### 20. What is the tax treatment for individuals of the creation of NFTs?

#### United Kingdom

There are no specific rules regarding the creation of NFTs but generally their creation is unlikely to give rise to a taxable event. In respect of sale, generally NFTs are regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets.

More generally, the exact tax treatment of NFTs would depend on the specific characteristics, utility and nature of the NFT, rather than the labels attached to it, determined on a case-by-case basis. Provided that the NFT provides no ownership rights in underlying assets, then its tax treatment is likely to follow those of other comparable cryptoassets. Different consideration may arise should an NFT have different characteristics, such as ownership rights in underlying assets.

#### France

The costs of creating the NFTs may amount to the tax basis of the creator in the NFTs if he/she is acting in a professional capacity.

#### Germany

According to the tax administration, the creation of NFTs (“minten”) can take place in two different ways, each of which entails different tax consequences.

In the case of the production of items such as digital works of art, the creation of the NFT will give rise to income from an artistic activity taxed as self-employment income. The prerequisite for this is that the taxpayer performs a creative activity.

In addition, however, the creation of an NFT may give rise to commercial income. The tax administration will assume a commercial activity exists in the case of self-distribution of art in online trade, for example. However, such a classification is associated with several tax disadvantages for the taxpayer compared to income from self-employment; for example, trade tax must also be paid.

The correct classification will be a question of the fact based on the specific individual case. Since neither the courts have yet ruled on this issue, nor has there been a clarifying guidance from the Federal Ministry of Finance, there is currently uncertainty for creators of NFTs in many cases.

#### Ireland

There is no specific tax treatment. NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets. Usually, tokenisation of an asset would not create a tax charge.

## 20. What is the tax treatment for individuals of the creation of NFTs?

### Netherlands

For a Box 3 (passive) investor, the creation of an NFT would not be reportable. For a trader, development costs would be deductible or may have to be capitalised for the purposes of Box 1.

### Spain

Our preliminary view is that the creation of NFTs not in the context of a business activity should not be a taxable event and any gain or loss on sale should be subject to PIT as a capital gain taxable at the same PIT rates for financial income (ranging from 19 per cent up to 26 per cent for taxable income exceeding €200,000).

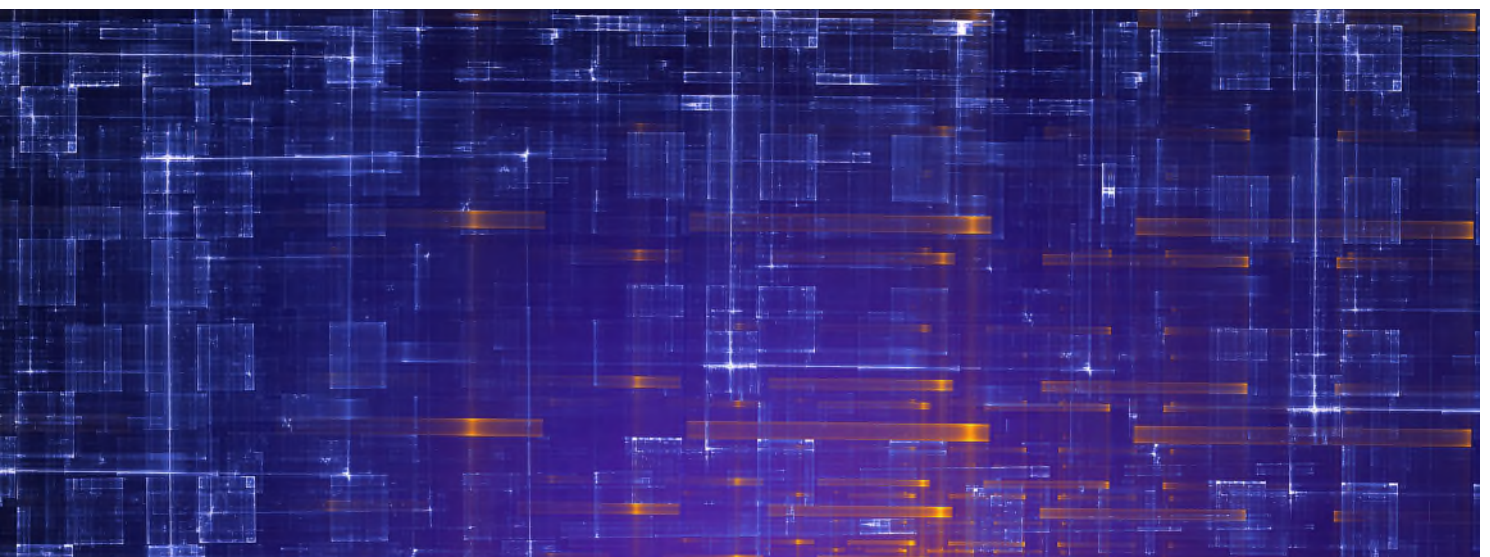
Individuals acting in the course of a business activity should not be subject to any taxation on the creation of NFTs, aside from Business Activities Tax if the net turnover is over €1m. Any gain or loss on the creation or purchase and sale of NFTs should be subject to the general PIT business income tax rates which may vary depending on the relevant Spanish region where the individual resides (with highest marginal rates ranging from 45 per cent up to 54 per cent depending on the region).

### Italy

No taxes are due upon creation of NFTs. The costs to create the NFT should be computed in the taxable basis of the creator qualifying as a professional.

### Luxembourg

Luxembourg does not yet have a tax framework in relation to the creation of NFTs. However, it is possible to classify NFT as an artistic activity. Hence, the creator of an NFT could be seen as a self-employed artist, taxable as a self-employment category.



## 3.2 Corporate investors (tax residents of your jurisdiction)

### 21. What is the tax treatment for corporates of the creation of NFTs?

#### United Kingdom

There are no specific rules regarding the creation of NFTs but their creation is unlikely to give rise to a taxable event. In respect of sale, NFTs are regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets.

More generally, the exact tax treatment of NFTs would depend on the specific characteristics, utility and nature of the NFT, rather than the labels attached to it, determined on a case-by-case basis. Provided that the NFT provides no ownership rights in underlying assets, then its tax treatment is likely to follow those of other comparable cryptoassets. Different consideration may arise should an NFT have different characteristics, such as ownership rights in underlying assets.

#### France

The costs of creating the NFTs should amount to the tax basis of the creator in the NFTs.

#### Germany

There is no official guidance available so far on the tax treatment of the creation of NFTs. However, according to general tax principles, the costs associated with obtaining the NFTs should be capitalised as a separate asset in the tax balance sheet.

#### Ireland

There is no specific tax treatment. NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets. Usually, tokenisation of an asset would not create a tax charge.

#### Netherlands

For a corporate, development costs would be deductible or may have to be capitalised.

#### Spain

The costs associated to the creation of the NFTs should form the tax basis of such assets (following accounting rules and where applicable any specific CIT rules), for the purposes of calculating the taxable profit on the sale of NFTs.

#### Italy

No taxes are due upon creation of NFTs. The costs to create the NFT should be computed in the taxable basis of the creator.

#### Luxembourg

The costs to create the NFTs should amount to the tax basis of the creator in the NFTs.



### 3.3 Common questions around NFTs and tax

#### 22. Are NFTs taxed differently to cryptocurrencies?

##### United Kingdom

No, NFTs are regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets.

More generally, the exact tax treatment of NFTs would depend on the specific characteristics, utility and nature of the NFT, rather than the labels attached to it, determined on a case-by-case basis. Provided that the NFT provides no ownership rights in underlying assets, then its tax treatment is likely to follow those of other comparable cryptoassets. Different consideration may arise should an NFT have different characteristics, such as ownership rights in underlying assets.

##### France

There are significant uncertainties regarding the legal nature of NFTs. We have not envisaged below the situation of a trader in NFTs.

If the NFTs are viewed as digital assets, they may be liable to tax at the 30 per cent flat rate.

Alternatively, if the NFTs are viewed as works of art, they may benefit from a flat rate of 6.5 per cent applied to the sale price (with an exemption if the sale price is less than €5000).

Alternatively, if the NFTs are viewed as intangible assets, a flat rate of tax at 36.2 per cent would apply (with a 5 per cent per year reduction of the taxable basis from the 2nd year of holding).

Currently there are no rules which provide that NFTs are deemed to represent any underlying assets (eg real estate), and that the individual income tax treatment should be the one applicable to the sale of such assets.

For corporates, disposals of NFTs will be liable to corporate tax.

##### Germany

No, the tax treatment of the gains/losses on the sale of NFTs is not different from that in respect of the gains/losses on the sale of cryptocurrencies. The tax treatment should not depend on the nature of the underlying assets.

##### Ireland

No.

## 22. Are NFTs taxed differently to cryptocurrencies?

### Netherlands

The asset that underlies the NFT would determine the tax treatment. Generally, assets must be taxed in Box 3 (see question 1). There is, however, an exemption for works of art, which do not have to be declared as taxable assets for Box 3 purposes (unless the taxpayer is an art dealer, which may entail that income derived in connection with the NFT is taxed in Box 1).

For corporates, all income (gains) is included in the taxable profit calculation. This includes any type of income (investing, trading, mining, staking, block rewards). The tax rate is 25.8 per cent (15 per cent on profits up to €395,000).

### Spain

The tax treatment of gains/losses on the sale of NFTs should not differ in general terms from the gains/losses on the sale of cryptocurrencies.

The STA have not clarified this point yet, but given that the transferred asset on the sale of an NFT is the digital file of the underlying asset and not the asset itself we are of the view that the tax treatment should not depend on the nature of the underlying asset.

### Italy

The treatment of NFTs for Italian tax purposes is still uncertain and currently there are no rules stating that NFTs are deemed to represent any underlying assets. However, it would be reasonable to believe that the tax treatment [for individuals] will depend on the nature of the underlying assets.

For corporates, any gains on the sale of NFTs should be included in the taxable base for Italian corporate income tax purposes. Any tax loss may be offset against gains realised in the same fiscal year. If the tax losses exceed gains, they can be carried forward in the subsequent years, subject to a limit of 80 per cent of the related income.

### Luxembourg

For individuals, the tax treatment of the NFT depends on the nature of the activity, whether it is of commercial nature, self-employment or miscellaneous income. The activity of trading NFTs should be seen as commercial activity.

For corporates, gains/losses on the sale of NFTs are liable to the corporate tax upon disposal. Currently, there are no rules which provide that the NFTs are deemed to represent any underlying assets (eg real estate), and that the corporate tax treatment should be the one applicable to the sale of such assets.

**23. Can tax be deferred when exchanging NFTs for other NFTs or for crypto?****United Kingdom**

No, there is no express tax deferral regime available for NFTs.

**France**

There are significant uncertainties regarding the legal nature of the NFTs.

If the NFTs are viewed as digital assets (as defined by the relevant rules), an exchange may benefit from tax deferral.

In all other cases envisaged under question 24 above, there should be no tax deferral.

**Germany**

No.

**Ireland**

No.

**Netherlands**

For a non-trading investor, this is not relevant (Box 3 taxation – see question 1). For an individual that owns and exchanges NFTs in the context of a business, profit realisation may be relevant. However, there are uncertainties as to the applicable tax treatment.

Whether a deferral is available depends on the nature of the NFT and the underlying asset respectively. A roll-over of the book value may be available if the exchanged item is replaced by another item that takes the same economic function as the exchanged item.

**Spain**

No. An exchange of NFTs for other crypto assets should be subject to CIT given that specific mark to market rules apply for CIT purposes on top of accounting principles applicable to the exchange of assets.

**Italy**

No.

**Luxembourg**

No.

## 24. What is the tax treatment of gifted NFTs (including in-game rewards)?

### United Kingdom

If tokens are given away to another person (who is not a spouse or civil partner), the individual making the gift is treated as having received an amount equal to the pound sterling value of what has been given away for CGT purposes, even if they did not actually receive anything. However, if an individual donates tokens to charity, they will not have to pay CGT on them.

### France

In case of a reward in a game, no taxation would take place at the time the individual receives the NFTs (which would have a nil tax basis for the purpose of a subsequent disposal).

In the case of a gift, it should be liable to gift duties (subject to the availability of any applicable exemption) based on the value of the NFTs on the date of their receipt.

### Germany

No specific tax regulations apply to a gift of cryptocurrencies. Therefore, a gift of cryptocurrencies (including as a reward in a game) should be subject to the general principles of the German Gift Tax Act. The gift tax base should be the fair market value of the NFTs. Applicable exemptions from gift tax and tax rates depend on the relationship of the donor to the recipient and the value of the gift.

Insofar as NFTs can be classified as a work of art, the tax exemption for cultural assets may apply, in principle.

### Ireland

NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets.

### Netherlands

Gifts of cryptoassets made by a resident (or deemed resident) of the Netherlands are subject to gift tax at rates between 10 per cent - 40 per cent of the value of the cryptoassets received on the date of the gift. The actual rate depends on the level of connection between the donor and the donee and is subject to certain exemptions.

A reward in a game is not taxed, unless it is done professionally in which case it is taxed under Box 1 (see question 1 above).

## 24. What is the tax treatment of gifted NFTs (including in-game rewards)?

### Spain

A gift (including as a reward in a game) should give rise to a capital gain not derived from the transfer of assets and therefore included in the general PIT tax base, with highest marginal tax rates from 45 per cent up to 54 per cent depending on the region of residence of the individual.

### Italy

No taxation should take place at the time an individual receives the NFTs, in cases where the individual does not act as a trader or in his/her capacity as an employee.

The value of NFTs may be included in the taxable basis of inheritance and gift duties (at its value on the day the individual receives it).

### Luxembourg

In the case of reward in a game, no taxation would take place at the time the individual receives the NFTs (which would have a nil tax basis); any gains derived from any subsequent disposal should be treated as described above.

No taxation should arise on the gift of NFTs. Stamp duties and registration fees are applicable only when a registration is made with the notary on a voluntary basis.



**25. What is the tax treatment of gifted NFTs (including in-game rewards)?****United Kingdom**

There are no specific transfer taxes applicable to cryptoassets. Whether any transfer taxes might apply to a transfer of NFTs would be considered on a case-by-case basis, dependent on the characteristics and nature of the assets, rather than any labels attached to them.

**France**

There should be no transfer tax. Currently there are no rules which provide that NFTs are deemed to represent any underlying assets (eg real estate), and that the transfer tax treatment should be the one applicable to the sale of such assets.

**Germany**

No.

**Ireland**

On one level, NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets (see question 13). However, the Revenue has not spoken with clarity on this topic to date. Therefore the NFT may be viewed as an intangible, and in the case of acquisition for consideration therefore, the taxable treatment may depend on the nature of the underlying asset. The tax treatment here will depend wholly on whether the Revenue will choose to view the NFT as an indivisible unit in terms of taxation, or whether, in the alternative, the Revenue will view the NFT as divisible between the intangible token and any tangible nature of the underlying assets.

**Netherlands**

No transfer tax is applicable to the acquisition for consideration of NFTs, unless the underlying asset is real estate (or certain rights in connection with real estate), in which case real property transfer tax is due on the value of the relevant real property. The rate of real property transfer tax is 2 per cent or 8 per cent (certain exemptions may apply).



## 25. What is the tax treatment of gifted NFTs (including in-game rewards)?

### Spain

The tax treatment of the sale of the NFT outside a business activity has not been confirmed as yet by the STA, though we understand that the sale of NFTs between private individuals should be subject to Transfer Tax, which may vary depending on the relevant Spanish region (eg 4 per cent in Madrid).

For corporates, we understand that the sale of NFTs by a company merely holding passively an NFT and not registered as a VAT taxpayer could potentially lead to the sale of such NFT being subject to Transfer Tax, which may vary depending on the relevant Spanish region.

### Italy

No

### Luxembourg

There should be no transfer tax. Currently, there are no rules which provide that NFTs are deemed to represent any underlying assets (eg real estate), and that the transfer tax treatment should be the one applicable to the sale of such assets.



**26. Is it obligatory to declare NFTs to tax authorities?****United Kingdom**

There is no specific obligation to declare the holding of cryptocurrencies to HMRC.

**France**

No.

**Germany**

No.

**Ireland**

NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets (See question 14).

**Netherlands**

If the NFT represents an underlying asset, it is compulsory to declare the possession of NFTs in the tax return, just like any other asset. For corporates, one would expect NFTs and/ or the underlying asset to be included in the taxpayer's accounts just like any other asset. There is no specific reporting line for NFTs in the tax return.

The taxpayer may be subject to a fine of up to 300 per cent in the event of an incorrect declaration. In the case of a deliberate failure to declare, criminal prosecution may follow.

**Spain**

The holding of NFTs will be subject to the same general tax reporting and subsequent payment obligations and sanctions explained in Q14 (except for the specific disclosure obligations under Form 721 only applicable to cryptocurrencies). However, it is uncertain if current disclosure obligations for the assets held abroad (Form 720) impact on NFTs. Further clarifications from the STA should be expected on this regard, though our current view is that there should be arguments to consider that, to date, NFTs may be outside the scope of such disclosure obligations.

**Italy**

Although the treatment of NFTs for Italian tax purposes is still uncertain, there is no obligation to declare to tax authorities the holding of NFTs.

**Luxembourg**

No.

**27. Are there tax reporting obligations specific to NFT transactions?****United Kingdom**

The tax reporting obligations for transactions in cryptocurrencies simply follow the normal tax reporting obligations applicable to other taxable transactions.

**France**

None, other than their inclusion in the annual tax filing.

**Germany**

None.

**Ireland**

NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets (see question 15).

**Netherlands**

None.

**Spain**

None.

**Italy**

No.

**Luxembourg**

None, other than their inclusion in the annual tax filing.

## 28. How are NFT transactions treated for VAT purposes?

### United Kingdom

There is no specific guidance on the VAT treatment of NFTs. However, as NFTs do not constitute tangible assets, they are treated as supplies of services for VAT purposes. It is likely that they will be treated as electronically supplied services so that the place of supply for VAT purposes is where the customer is located.

For the VAT treatment of supplies of cryptoassets more generally, see question 16.

### France

Currently there are no specific VAT rules regarding the NFTs and, given the absence of clarity regarding their legal characterisation, their VAT treatment is uncertain.

In contrast to cryptocurrencies, transactions in NFTs may not generally be viewed as outside the scope or exempt for VAT purposes. Also a sale of NFTs may not be viewed as a supply of goods.

Subject to the above uncertainty, there are some arguments to suggest that the sale of NFTs should be characterised as electronically supplied services with the consequence that it should be liable to VAT in the jurisdiction where the customer is located.

### Germany

At present, there are no reliable statements from the courts or the tax authorities as to whether the sale of an NFT is a supply of a good or a supply of service. The opinion in commentaries currently leans towards a supply of services. In the case of a supply to a business (and equivalent purchasers), the place of supply will be the place of such customer. In the case of a supply of service to a non-business customer, on the other hand, the place of supply will be the place of the supplier.

It is likely that the standard VAT rate of 19 per cent is applicable to such supplies, since the transfer of the token is a one-off transaction and it is therefore not relevant that possibly non-exclusive rights of use are transferred. Where the supply involves a supply of copyright or tangible works of art, the reduced VAT rate of 7 per cent would apply.

## 28. How are NFT transactions treated for VAT purposes?

### Ireland

On one level, NFTs are simply regarded as another form of cryptoasset for tax purposes and the tax treatment follows those of other cryptoassets. However, Revenue has not spoken with clarity on this topic to date. Therefore we think it is worth considering the fact that the NFT may be viewed as an intangible, and in the case of acquisition for consideration therefore, the taxable treatment may depend on the nature of the underlying asset. On the basis they are viewed as intangibles, NFTs would be treated as supplies of services for VAT purposes. It is likely that they will be treated as electronically supplied services so that the place of supply for VAT purposes is where the customer is located.

### Netherlands

There are no specific VAT rules regarding NFTs and, given the absence of clarity regarding their legal characterisation, the VAT treatment is not certain.

Except in the case of cryptocurrencies, transactions with respect to NFTs may not be outside the scope or exempt from VAT. A sale of NFTs may not be viewed as a supply of goods.

Arguably, the sale of NFTs should be characterised as electronically supplied services, with the consequence that the sale should be subject to VAT in the jurisdiction where the customer is located.

### Spain

Following a recent tax ruling issued by the STA, from a VAT perspective, NFTs cannot be considered as cryptocurrencies or other kinds of digital currencies, given inter alia their non-fungible character. Accordingly, the sale of a NFT in the context of a business activity should qualify as electronically supplied services which, if deemed to take place in Spain would be taxed at the general VAT rate of 21 per cent.

### Italy

Currently there are no specific VAT rules regarding NFTs. However, transaction in NFTs would most likely be treated as digital services for VAT purposes.

### Luxembourg

Currently, there are no specific VAT rules regarding NFTs and, given the absence of clarity regarding their legal characterisation, the VAT treatment thereof is uncertain.

In contrast to cryptocurrencies, transactions in NFTs may not be generally viewed as out of scope or exempt for VAT purposes. Also, the sale of NFTs may not be viewed as supply of goods.

Subject to the above uncertainty, there are some arguments that a sale of NFTs should be characterised as an electronically supplied service with the consequence that it should be liable to VAT in the jurisdiction where the customer is located.

# Contacts



**Siamak Mostafavi**

Partner, France

siamak.mostafavi@simmons-  
simmons.com



**Julie Carbiener**

Partner, Luxembourg

julie.carbiener@simmons-  
simmons.com



**Martin Shah**

Partner, United Kingdom

martin.shah@simmons-  
simmons.com



**Robert Jean Klopogge**

Partner, Netherlands

robertjean.klopogge@simmons-  
simmons.com



**Marco Palanca**

Partner, Italy

marco.palanca@simmons-  
simmons.com



**Martin Phelan**

Partner, Ireland

martin.phelan@simmons-  
simmons.com



**Juan Sosa Pons-Sorolla**

Partner, Spain

juan.sosa@simmons-  
simmons.com



**Bernulph von Crailsheim**

Partner, Germany

bernulph.voncrailsheim@simmon-  
s-simmons.com



**[simmons-simmons.com](https://www.simmons-simmons.com)**

© Simmons & Simmons LLP and its licensors. All rights asserted and reserved. This document is for general guidance only. It does not contain definitive advice.

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS, United Kingdom. It is authorised and regulated by the Solicitors Regulation Authority and its SRA ID number is 533587. The word "partner" refers to a member of Simmons & Simmons LLP or one of its affiliates, or an employee or consultant with equivalent standing and qualifications. A list of members and other partners together with their professional qualifications is available for inspection at the above address.