

Conference organized by the
Institute for Austrian and International Tax Law, Vienna

Crypto Assets: Tax Law and Policy

Rust Conference 2023
Questionnaire

Crypto Assets: Tax Law and Policy

Crypto assets are a **digital representation of value** that users can transfer, store or trade electronically. The emergence of crypto assets, and specifically virtual currencies, and their implication for taxation puts a bright spotlight on existing tax measures and perhaps the need to develop new tax policies. In recent years, many jurisdictions have issued specific guidance or created targeted legislation to deal with certain crypto-asset transactions. These measures are sometimes limited to **virtual currencies** (i.e. so-called “payment tokens” or “exchange tokens”). Some of these virtual currencies may be “asset-referenced tokens” in that they purport to maintain a stable value by referring to, for example, the value of one or more fiat currencies that are legal tender or other assets. Some may be “electronic money tokens” (“e-money”) whose main purpose is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender.

However, complex issues also arise with regard to **“security tokens”** (representing a predefined share of the underlying asset) and **“utility tokens”** (intended to provide digital access to a good or service), which might require policy responses different from those applicable to “traditional” payment tokens. Also, the definition and delimitation of the various crypto assets is evolving and may depend on the particular regulatory framework (e.g. taxation, financial markets regulation, anti-money laundering etc.). Nevertheless, the distinguishing commonality of all crypto assets is that they rely on a (decentralised) **cryptographically secured distributed ledger technology** (DLT). DLT, such as blockchain, is a type of technology that supports the distributed recording of encrypted data and enables digital assets to be held and transferred in a decentralised manner, without the intervention of traditional financial intermediaries.

Crypto assets raise numerous legal issues, e.g. with regard to anti-money laundering and market regulation. The 2023 Rust Conference and the national reports will, however, largely focus on the **substantive tax issues raised by crypto assets**. National reporters will be asked to comment on core issues of income taxation but also to consider wealth taxation, inheritance and gift taxation, value added taxation, and related issues. More specifically, from an income tax perspective, the classical questions of taxation – Where to tax? What to tax? When to tax? – need specific considerations in the area of crypto assets. Together with analyses in literature, the 2020 Report by the OECD on “Taxing Virtual Currencies: An Overview Of Tax Treatments And Emerging Tax Policy Issues” provides useful definitions references and first insights into country practice and policy issues. Since then, however, many jurisdictions have amended their legislation or guidance, and the relevant questions have become clearer and more sophisticated.

While country practice on the taxation of crypto-asset transactions may vary widely, some issues are common for many jurisdictions. We therefore call for **three general reports** on issues of general importance:

- First, it is of vital importance to understand the regulatory framework and latest thinking on a global governance framework for crypto assets (especially cryptocurrencies) in the non-tax area. We are, therefore, calling for a general report for the 2023 Rust Conference on the **regulatory and governance framework for crypto assets**.
- Second, given the importance of crypto assets in terms of global tax transparency and ensuring taxpayer compliance, the automatic exchange of relevant information on crypto-asset transactions (e.g. exchanges between crypto assets and fiat currencies, between different crypto assets, payment transactions etc.) is of vital importance. Both the OECD and the EU have announced work in this area (specifically on the Crypto-Asset Reporting Framework, CARF), building on new regulatory frameworks. We are, hence, seeking a general report for the 2023 Rust Conference on the **transparency and reporting framework for crypto assets** and the international exchange of information of relevant data.
- Third, Central Bank Digital Currencies (CBDC) have received increased attention over the past few years. A CBDC is the digital form of a country's fiat currency, issued and regulated by a nation's monetary authority or central bank. This is exemplified by the ongoing work on a CBDC in many jurisdictions, including China, the Eurozone, the UK and the US. A CBDC, however, raises numerous tax-related issues. It can, for example, support the tax authorities' attempts to counter tax evasion and fraud (e.g. by monitoring transactions or by moving activities from the informal to the formal economy), but likewise it creates concerns regarding data protection and taxpayers' rights. We are, hence, seeking a general report for the 2023 Rust Conference on current status of **Central Bank Digital Currencies, the main drivers and considerations in the current discussion, and the tax implications of CBDCs**.

National reporters are invited to report about the legislative framework, administrative practice and case law in respect of the issues presented below in their country, but should also feel free to critically comment on the positions taken by the tax administration and by courts in their country. The reports should follow the structure below and contain the eight chapters outlined in this questionnaire. The issues raised here, however, should serve to just inspire authors as to which topics should be discussed, and further inspiration for your specific country might be drawn from the 2020 Report by the OECD on "Taxing Virtual Currencies: An Overview Of Tax Treatments And Emerging Tax Policy Issues". Authors should not feel prevented from discussing additional issues not explicitly raised here but which are relevant, under one of the eight chapters, to their country's experience. Insofar as possible, please distinguish between the various types and sub-types of crypto assets (i.e. exchange, security and utility tokens), highlighting any issues your country treats differently, e.g. the various types of virtual currencies such as stablecoins vis-à-vis other non-pegged tokens. While the focus of the 2023 Rust Conference is on fungible tokens, you are welcome to address non-fungible tokens (NFTs) if your country has specific guidance on them.

The reports should be readable without having the questionnaire in mind.

1. General Framework and Domestic Tax Guidance

Crypto assets are relevant for several fields of a country's legal framework, many of which may be relevant for tax treatment. This section of the chapter should explore the **legal status of crypto assets** and how the various crypto assets are generally **characterised for legal purposes**, e.g. in commercial law and accounting. The section should further explore how this general characterisation is reflected in your country's domestic tax system, especially how crypto assets are **classified for income and capital gains tax purposes**. Please elaborate on the laws, regulations, administrative guidance and case law dealing with crypto assets in your country, both in the non-tax and the tax area (except for issues of transparency and reporting).

2. Income and Capital Gains Taxes: Origination ("Creation") and Extinction ("Loss")

Crypto assets may be **created or acquired** in various ways ("origination events"). These may include the purchase of crypto assets for fiat currency, the sale of crypto-asset tokens by originators (e.g. "initial token offerings", ITOs), receipt of a crypto asset as remuneration or incentive (e.g. "mining", "staking"), chain splits ("forks"), or fortuitous issuances and receipts of crypto asset (e.g. "airdrops"). Please elaborate on how "origination events" are treated for income and capital gains purposes, both for the "creators" (if any) and the "recipient". This should include issues regarding the treatment as and amount of taxable income (e.g. mining, airdrops, even if the latter is unwanted), the valuation of tokens, and whether activities regarding crypto assets (e.g. mining) can lead to a trade or business.

Conversely, there are several events through which crypto assets can be "extinct". These include the **redemption, loss of access to a wallet, theft** etc. Please elaborate on the tax treatment of these "extinction events", both in a business and a non-business context.

3. Income and Capital Gains Taxes: Post-Origination Events ("Use") in Investment Transactions

Once "originated", crypto assets can be **used** for a variety of purposes. They can, for example, be used as a medium of exchange for fiat currency or for other virtual currencies or crypto assets, in payment for goods and services, or wages, as donations, or for speculation and investment.

Section 3 should focus on the tax consequences of **selling crypto assets against fiat currency or other crypto assets**. Here, several valuation and timing issues are relevant, and a comparison may be drawn to how your country deals with barter transactions and/or

currency gains/losses. Finally, and especially for cases where crypto assets are held for speculation and investment, please discuss if there exists a special tax rate and/or a specific collection mechanism regarding gains or borrowing transactions (e.g. a withholding tax collected by the crypto exchange).

4. Income and Capital Gains Taxes: Post-Origination Events (“Use”) in Business Transactions

Section 4 should deal with the **use of crypto assets in a business context**, especially with regard to the use of crypto assets in payment for goods and services, or wages. Please explore the tax treatment on both sides of the relevant transaction, e.g. the employer paying a wage and the employee receiving it in the form of a crypto asset, or the merchant selling and the customer paying with a virtual currency. Please also address issues of valuation, the impact on the treatment of subsequent transactions (LIFO, FIFO etc.), and subsequent decreases and increases in value of crypto assets held in a trade or business.

5. Income and Capital Gains Taxes: International Aspects

While all jurisdictions tax their taxpayers on a residence basis, crypto asset transactions pose a particular challenge with regard to the **determination of nexus and corresponding source taxation**. It is, for example, exceptional for a specific non-residence State to claim that it is the source State (and levy tax) for gains from the sale of a crypto currency that was held as an investment asset. However, especially where business transactions are at issue or where “security tokens” or “utility tokens” are involved, countries might have specific rules on sourcing and source-based taxation. Please elaborate if your country has specific legislation or guidance on sourcing of crypto-asset related income, and how those transactions would be treated under tax treaty law. Also, are there specific problems arising from the lack of an agreed characterisation of crypto currencies? In this section, you could also discuss how your jurisdiction deals with crypto assets under your exit taxation regime.

6. Wealth Taxes, Inheritance and Gift Taxes, and Other Taxes

Please explore how crypto assets are dealt with under your respective **wealth, inheritance, and gift taxation regimes**. Relevant other issues could relate to whether transactions with crypto assets might trigger any **transfer taxes**, either because of the transfer of the crypto assets itself or because of the indirect transfer of the underlying asset in the case of “security tokens”. Finally, you might explore how “mining” or fortuitous origination events are treated from the perspective of **gambling taxes**.

7. Value Added Taxation

Crypto-asset transactions raise a number of issues under **VAT rules**. Much of the discussion focuses on the use of virtual currencies in business transactions, e.g. the exchange of a virtual currency against fiat currencies, other virtual currencies, or goods or services. In the European Union, the Court of Justice has held in *Hedquist* that buying and selling Bitcoin is exempt from VAT, also implying that the exchange of Bitcoin for goods or services would not lead to a barter transaction. However, many issues are still unresolved in the EU as well as in non-EU countries. Please briefly provide information if there is legislation or guidance in your country on the VAT treatment of crypto-asset transactions, especially regarding virtual currencies. It would be particularly interesting to explore the VAT treatment of origination events (e.g. mining) and perhaps crypto-related services (e.g. provision of wallets).

8. Policy Outlook

Crypto assets, blockchain technology and “tokenization” raise numerous issues outside the traditional issues of substantive taxation. The policy outlook section of the national reports should provide a space to explain **current debates, ongoing projects and policy ideas** in these areas. For example, is your tax administration working on a blockchain-based withholding tax system? Are there other use cases of blockchain technology in the tax administration? Are there discussions with regard to the use and proliferation of tokens and the growth of the Metaverse? What do you see as the emerging issues in this area over the next five years?

Paper length: 20 pages, Times New Roman 12 pt.

Format: preferably Microsoft Word

Bibliographic references (footnotes) and quotations: Follow the IBFD guidelines, for download under <https://www.ibfd.org/sites/default/files/2021-06/IBFD-Author-Instructions-v1.pdf>

The questionnaire does not necessarily have to be followed question by question (e.g. when there is nothing to report from your jurisdiction). Rather, it should stimulate your thinking about the various topics that are outlined. However, your report should be structured in accordance with the eight-section-structure of this questionnaire.

Deadline for delivery of the national reports and general reports: May 15, 2023

Provide a **brief biographical statement** (3-5 lines) for the List of Contributors in the book by the deadline mentioned above. Ensure that graphics and charts in the final version are black-and-white or greyscale only (No colour graphics are allowed for the book!), and email them as separate files in xlsx, docx, pptx, jpg or tif format. The resolution of images must be at least 300 DPI to ensure good quality for printing.

The national reports and general reports (papers) will be made available for download on a password-protected conference website so that the conference participants can be well prepared for the discussions.

On the basis of the national reports, we will identify the most relevant topics and select speakers who will present selected issues in a three-minute input statement to stimulate public debate and discussion. We will include the topics from the three general reports – governance/regulation, transparency/reporting and CBDCs – to complement this discussion.

After the conference, there will be a short period of time granted for authors to include the findings of the conference in their respective papers. The general reports as well as the national reports will be published as a book. We will organise quality checks and linguistic editing of the final reports.

If you have any questions or concerns, do not hesitate to contact us at taxlawconference@wu.ac.at. We will be happy to assist you.