

# PwC Annual Global Crypto Tax Report 2021



# Introduction

The pace, scale and level of development in the crypto space in the past year has been truly exciting to observe. We have seen Bitcoin prices skyrocket and, as 2021 draws to a close, Bitcoin and Ethereum are again reaching all-time heights due to a variety of factors, such as: increased interest of institutional investors, global uncertainties on inflation linked to the ongoing government responses to the COVID Pandemic, heightened public awareness/education, and expanded channels allowing mainstream use.

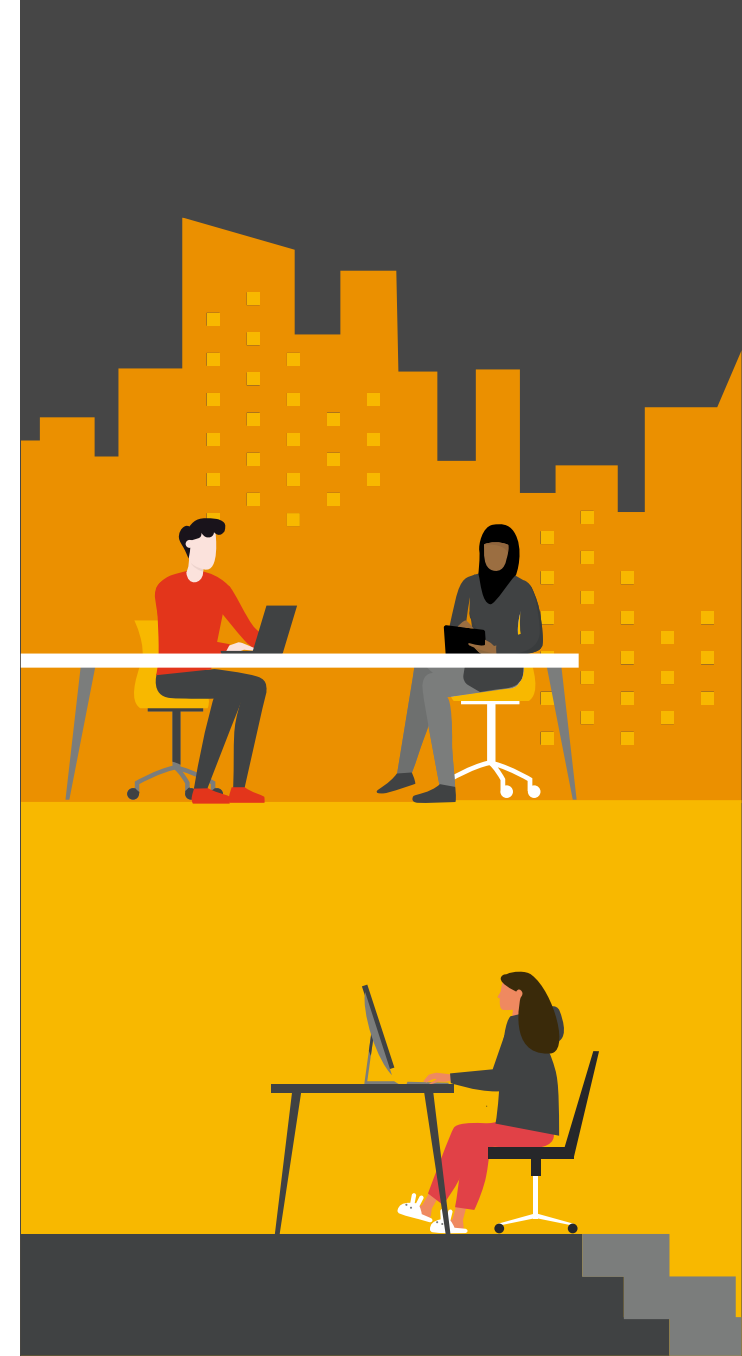
The market for non-fungible tokens (“NFTs”), unique digital assets stored on the blockchain, has exploded, resulting in multi-million sales and launches of multiple NFT marketplaces and digital exchanges, with the focus moving recently into the Metaverse and on Play-to Earn Games. Decentralised Finance (“DeFi”), financial applications operating on smart contracts via blockchain technology, has also seen significant growth, adoption and real-world application.

A similar level of pace and action has been taking place from a regulatory perspective. Notably, the European Parliament put forth an action plan for policy on preventing money laundering, which specifically cites and seeks to tighten the application of AML and CFT rules to the entire crypto sector. Regulatory focus has been placed on virtual asset exchanges, including the introduction

of new regulatory licensing frameworks. Furthermore, the OECD released an analysis of approaches and gaps to the taxation of crypto assets and virtual currencies across over 50 jurisdictions with rules on tax reporting for virtual asset service providers (“VASPs”), with the Common Reporting Standard (“CRS”) rules expected in early 2022.

In the US, major regulatory initiatives are finally taking shape starting with the recently signed into law Infrastructure bill which includes for the first time digital asset information reporting requirements. These new reporting requirements are estimated to generate \$28 billion in revenue over 10 years. The bill provides a new definition for “digital assets”, introduces obligations for “brokers” in the context of digital assets more broadly, and requires reporting on proceeds and basis for digital assets sales and transfers. It also requires new reporting similar to cash reporting over \$10,000 for business transactions of digital assets.

Amidst all the action, we are building on to the previous edition of the Crypto Tax Report by evaluating and reviewing the developments in digital assets tax guidance that have taken place in the past year. This year’s edition of the Crypto Tax Report includes insights from more countries and covers the tax implications of several key, newly emerging areas such as NFTs and DeFi.



## Objectives

This Report looks at the views of survey participants on the developments and existing tax guidance internationally. It covers the following areas:



**1** The PwC Crypto Tax Index and the evolution of tax guidance



**2** The taxation of staking



**3** The taxation of NFTs



**4** The taxation of DeFi



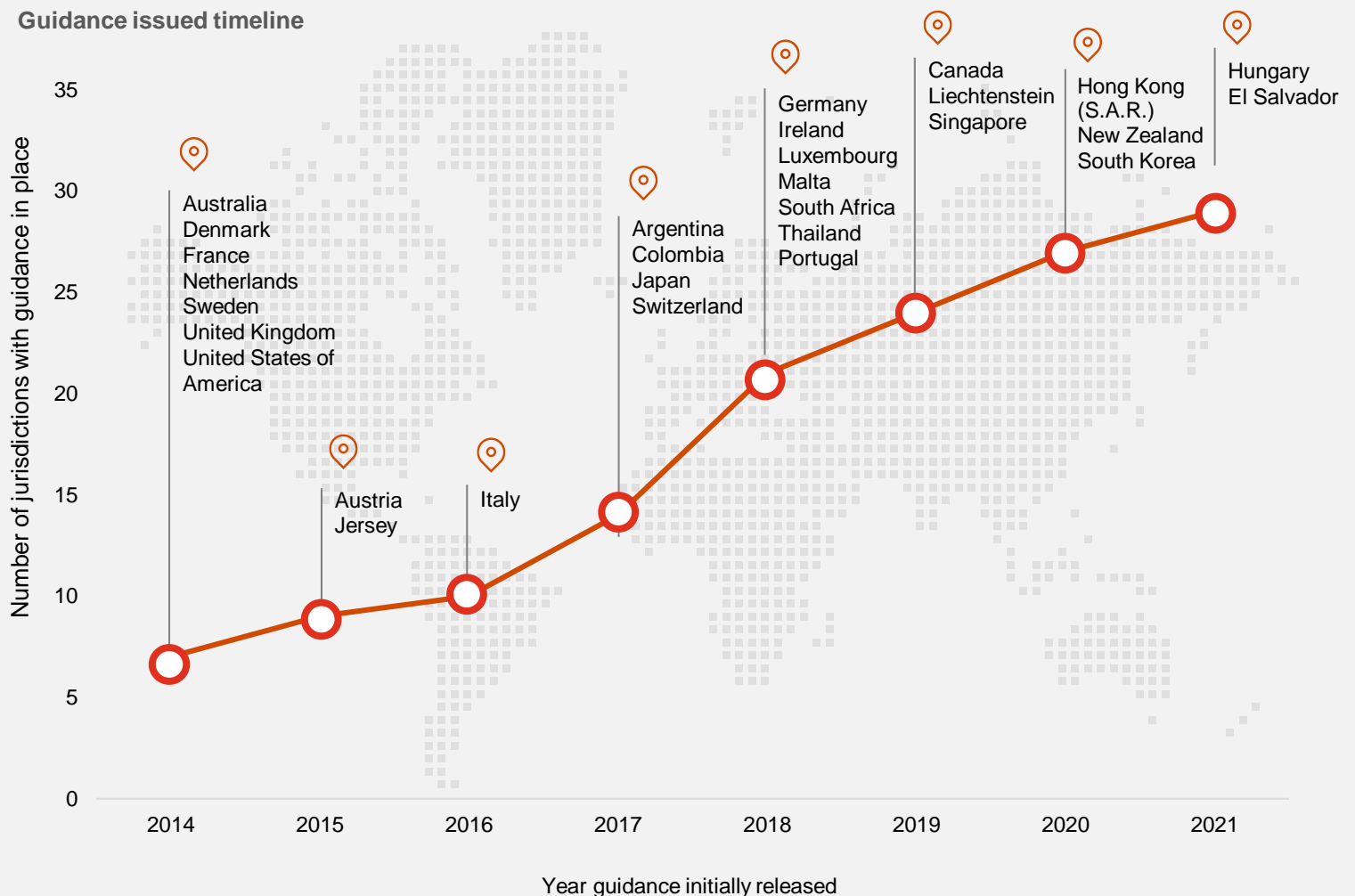
**5** Tax reporting standards

Input has been received from tax specialists working at over 40 international PwC member firms on the development of crypto tax regulations in their respective jurisdictions.



# Section 1 - The PwC Crypto Tax Index and the evolution of tax guidance

Unsurprisingly, the number of jurisdictions with crypto tax guidance issued has continued to rise as tax authorities realise that individuals and businesses alike need guidelines to be aware of how to meet their tax obligations. Although the upwards trend has slowed somewhat compared to the noticeable increase between 2017 to 2018, it is expected that notable events, such as the adoption of cryptocurrencies as legal tender in El Salvador, will require tax authorities that have previously been silent on the matter to issue guidelines or legislation.





## How do jurisdictions compare?

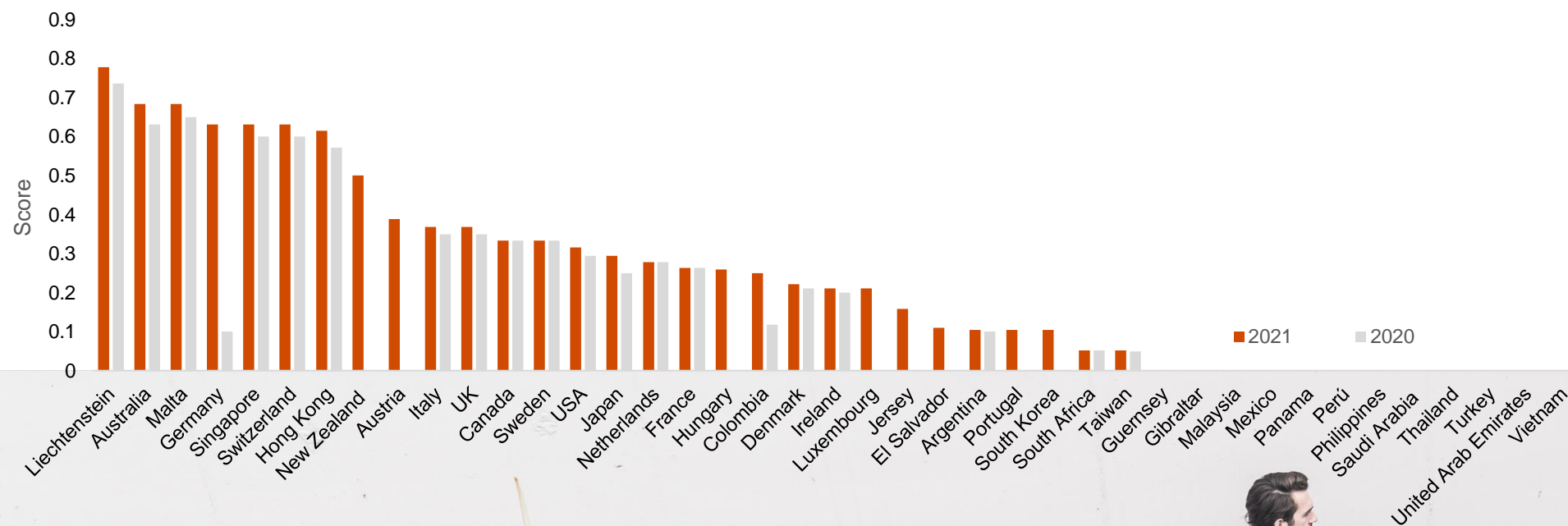
The PwC Crypto Tax Index was developed to help illustrate and compare the level of comprehensiveness of tax guidance between jurisdictions. Covering over 19 different areas relevant to the taxation of crypto assets, the Crypto Tax Index measures whether a particular issue is addressed by existing guidance of each jurisdiction. A score is derived based on the average of the areas that are relevant for the jurisdiction – for example, as Hong Kong does not charge any form of indirect tax such as VAT, GST or Sales Tax, questions on these areas are excluded in calculating its score.

Frontrunners from last year including Liechtenstein (1<sup>st</sup>), Malta and Australia (joint 2<sup>nd</sup>) and Switzerland and Singapore (joint 4<sup>th</sup>) still have a strong lead and increased scores, meaning that they continue to develop the comprehensiveness of their tax policy. Due to a draft decree on income tax treatment of virtual currencies and tokens released in July 2021, Germany has made a significant jump forward to also share joint 4th place up from 20th last year (note that this is a draft decree and the crypto tax index ranking is accurate subject to the decree being passed).

Several countries that are new additions to the scope of our worldwide coverage have also demonstrated strong scores, in particular New Zealand and Austria. Interestingly El Salvador, which legalized Bitcoin as legal tender in 2021, still does not actually have formal guidance on how digital assets should be taxed, but their Bitcoin Law did exclude Bitcoin / US\$ transactions from capital gains taxes.



## PwC Crypto Tax Index

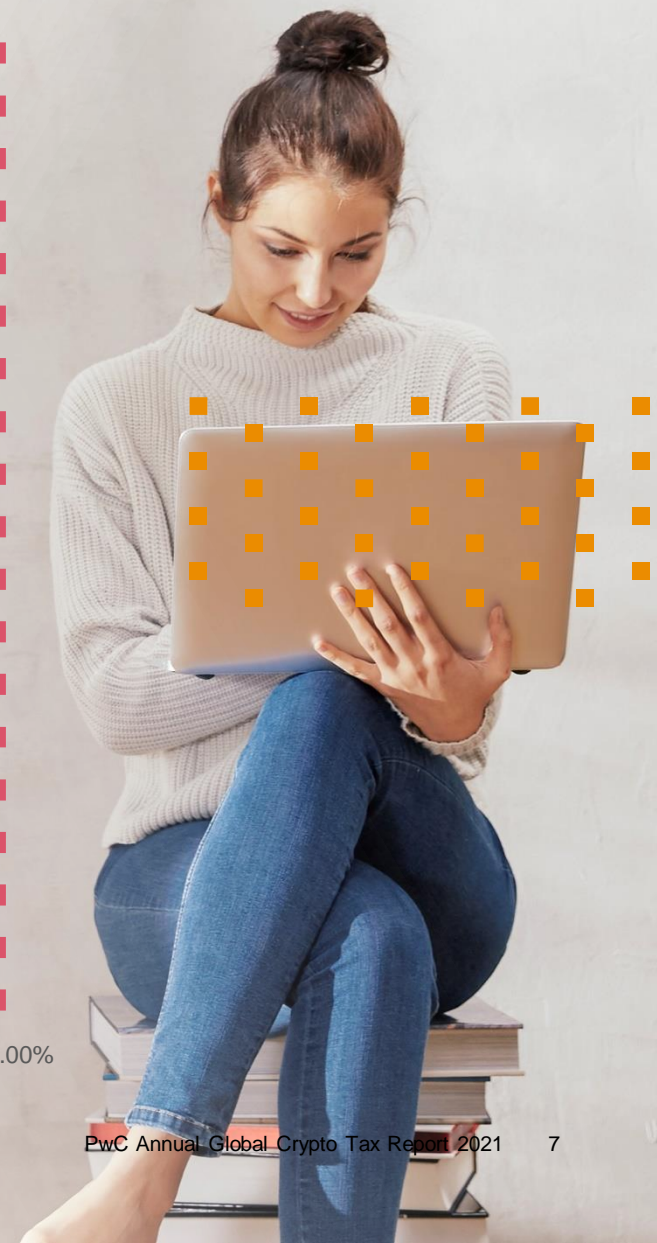
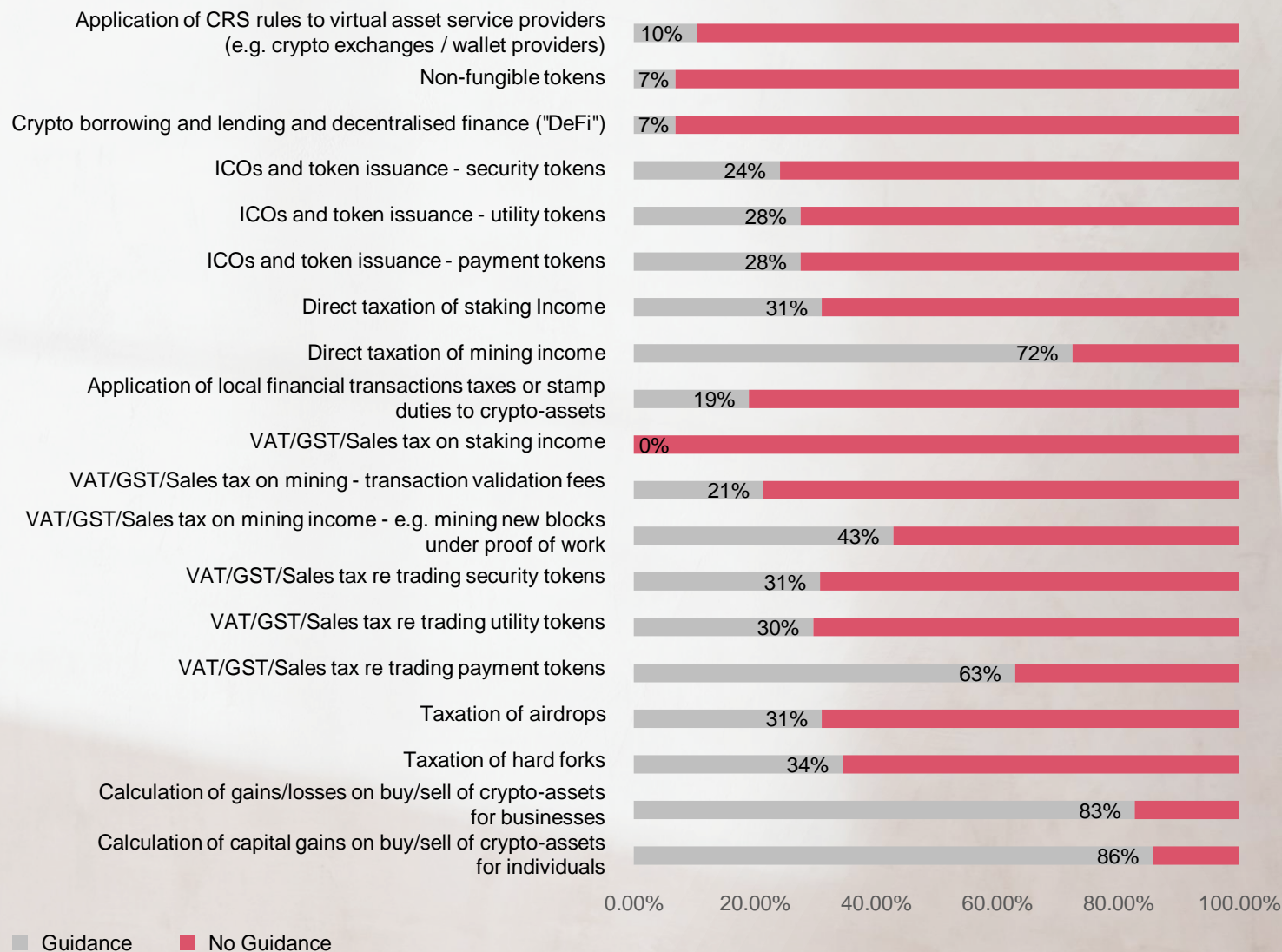


### Notes:

1. Australia and Germany have moved up in ranking
2. Austria, El Salvador, Hungary, Jersey, Luxembourg, New Zealand, Portugal and South Korea are new additions in the 2021 report and therefore no comparison is shown from 2020



## % of Jurisdictions with guidance issued by issue

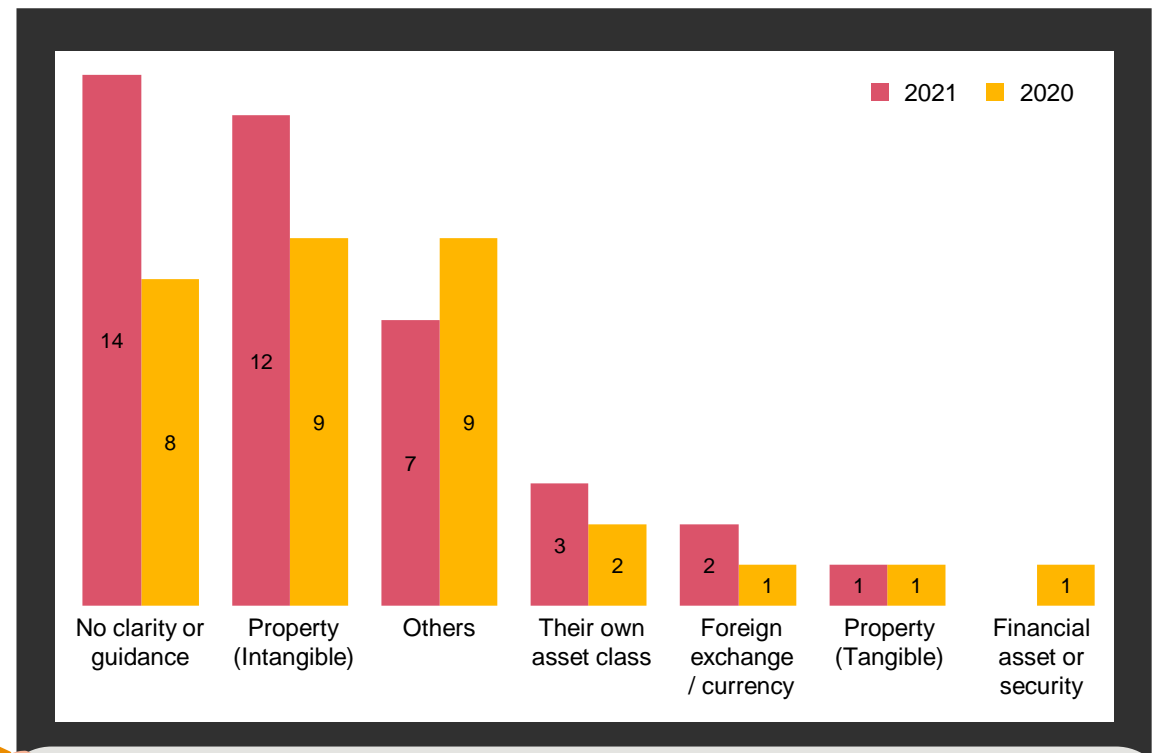


# Categorisation of digital assets for tax purposes

One of the most important factors in determining how tax rules are applied to cryptocurrencies is the way they are classified in local tax law. While there is some deviation, most tax jurisdictions have issued guidance treating them as a form of property.

Among those that classify digital assets as "others", Canada has taken a position that cryptocurrencies shall be treated as a commodity for the purposes of the income tax. We are even observing certain countries, such as Hungary, create an entirely new type of income classification specific to crypto income. The majority of respondents do note that there is no clear black and white answer, and each transaction should be assessed on a case-by-case basis. The classification question is important as it dictates how such assets are treated for capital gains tax purposes, as well as how questions such as the tax treatment of borrowing and lending of digital assets may be framed in the context of local laws.

How are crypto currencies classified for tax purposes in your jurisdiction?







## Section 2 - The taxation of staking

With the transition of Ethereum to a proof-of-stake consensus mechanism, and the exponential growth of other layer 1 proof-of-stake blockchains (like Cardano, Solana<sup>1</sup>, Polkadot, Avalanche, Algorand and Terra, among others) over the course 2021, the taxation of staking income has been increasingly on the radars of market participants.

The upcoming section of this tax report aims to address the latest tax questions related to staking.

### 1. Technical introduction

Blockchain, as a decentralised ledger, needs to ensure that each node on the network has the same copy of and can validate new transactions added to the ledger. The consensus mechanism is the term used for the process by which this validation occurs and is how consensus is reached between unconnected node operators as to what the correct version of the ledger should be.

The best known (and first implemented) consensus mechanism is the so-called Proof of Work-mechanism (“PoW”) that was introduced in 2008 by the Bitcoin blockchain. In simplified terms, PoW seeks to secure consensus of the blockchain and validate transactions by ensuring that only those that put in work to solve a complex problem and can present the answer, are entitled to have their version of the block validated by the other miners. This form of consensus mechanism is often criticised for the large amount of electricity consumption that is required as the more computer power used, the higher the chance that a miner will be selected to validate and earn the block reward.

The Proof-of-Stake mechanism (“PoS”) does not validate new blocks by raw computing power, but instead by stakes on the network. Nodes can verify new transactions in the ledger by simply staking their coins with an active node on the blockchain. If the node operator either fails to validate properly, or fraudulently tries to validate an incorrect transaction that is not agreed to by the other nodes, then they are penalised financially against their stake (commonly referred to as slashing). Contrary to PoW blockchains, the validation process of PoS blockchains is not called “mining” but “staking”.

<sup>1</sup> Technically Solana uses a consensus mechanism called proof of history.

To encourage the nodes of the blockchain to participate in the validation process, there has to be an incentive for doing so. This incentive is called the “reward” and generally consists of two parts: the block-reward and the transaction-incentive.

- i. The block-reward is an incentive that is automatically “paid” by the network through creating new coins. This process is described in the whitepaper of the blockchain and functions as a regular “payment” in units of the native coin for the nodes that validate new blocks on a given layer 1 blockchain.
- ii. The transaction-incentive, however, is not “paid” by the network. It is paid by the initiator of the transaction to encourage nodes to verify his or her transaction. So, the transaction-incentive is a regular transaction itself between the initiator of the transaction and the “stakers” that is manually initiated.

The term staking is often used interchangeably to refer to any situation where a participant locks up their tokens and earns a yield and is common in a number of token economic models, e.g. in DeFi, and / or with some centralised exchanges who offer so called “Locked Staking” products. The tax treatment of such models may differ depending on the underlying protocol and/or the terms and conditions with the centralised exchange. In this section we focus only on staking done for the purposes of network validation and do not cover these locked staking models.

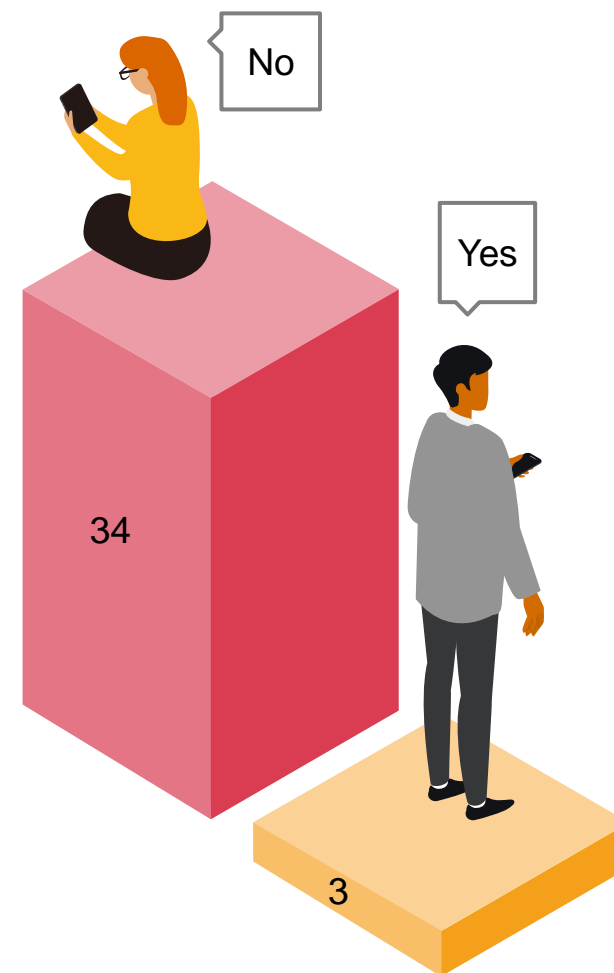
## 2. Taxation of staking

### I. Introduction

As mentioned above the block-reward is a newly created coin paid to the incumbent owner (the tax-payer) as an incentive for network maintenance and the validation of transactions. This process, however, leads to a chain of issues regarding taxation including the tax nature of the reward and timing of when tax may be due.

Based on our survey results, it was clear that very few jurisdictions have released any formal guidance on the treatment of such income, and so there is still a degree of uncertainty in many markets.

Has any guidance on staking been issued in your jurisdiction?



## The timing of taxation and the dilution effect<sup>2</sup>

Staking is a transaction that is unique to Blockchain systems. When staking occurs, the issuance of new coins as part of the block-reward granted to the incumbent owner leads to the “dilution” of the existing coins. Dilution can be described as the loss suffered by incumbent owners of a value unit (such as a coin) at the time new value units are created. Dilution leads, all things being equal, to a decrease in fair market value of all existing value units.

Most OECD country taxrelease systems are based on a variation of the realisation principle. For taxation purposes, there are two issues at hand with regard to the timing of taxation of the block-reward granted in a PoS based system.

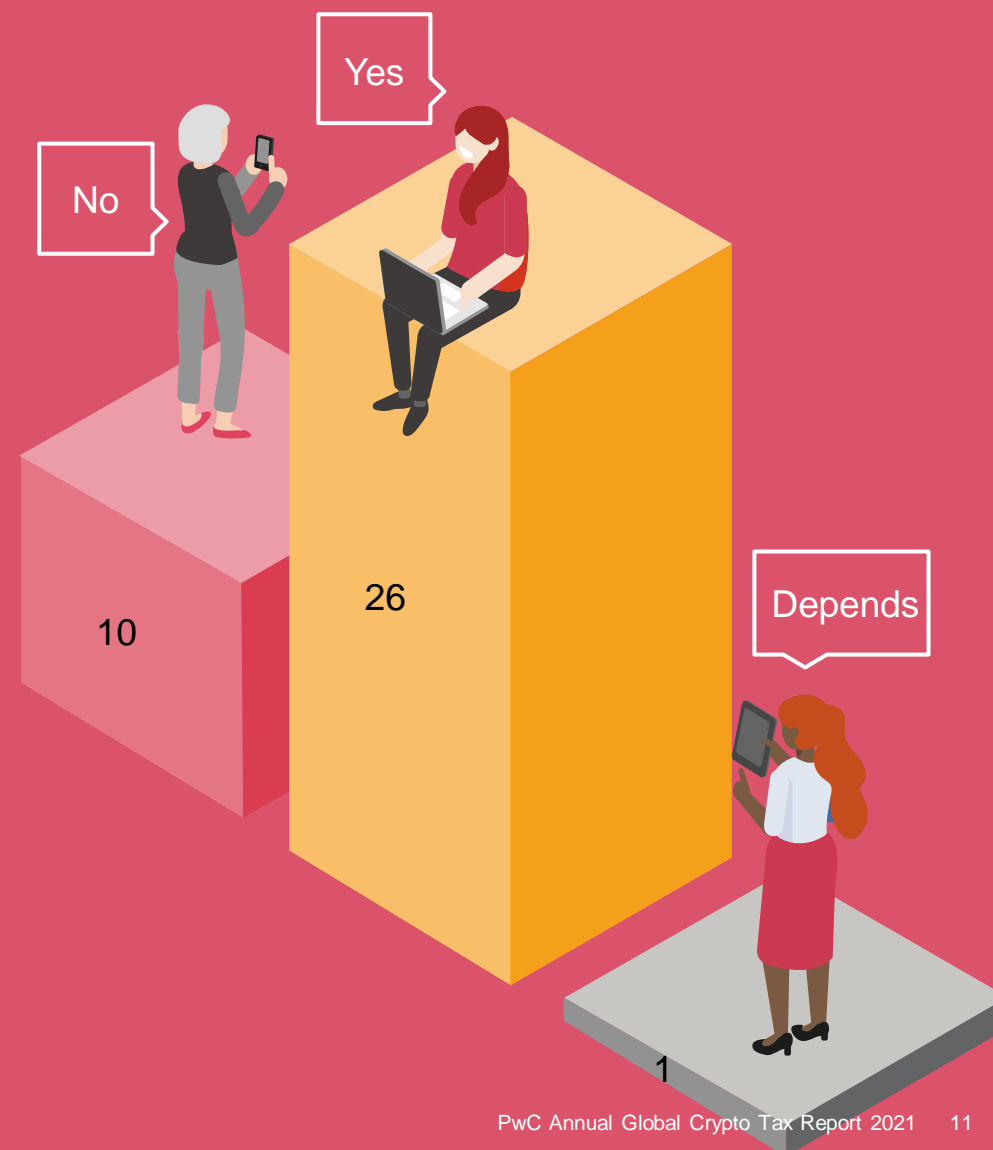
- i. Does the block-reward from staking lead to an (instant) realisation at the time the new coins are granted to the tax-payer?
- ii. Does the dilution effect described above lead to a realisation in the moment the coin is granted to the tax-payer, hence, can this loss offset (some of) the gains of the aforementioned realisation?

The tax authorities in most jurisdictions where there is guidance appear to argue that the block-reward is a (cash-like) fee that the tax-payer receives for his or her network maintenance services, and hence is taxable on receipt. On the other hand, the dilution effect is disregarded, since the effect is only realised if the asset (coin) is sold.

As an alternative, one could make the argument that, instead of adding dilution into the equation and further complicating the tax base calculation, there is a more simple and straightforward approach to tackle the excess taxation that potentially arises in staking arrangements, which is to shift the taxable event from the receipt of the staking reward to the actual sale. However, this approach does not seem to have gained traction with many of the jurisdictions we surveyed, although – as highlighted earlier – there is very little formal guidance, and so this space should be watched closely.

<sup>2</sup> This effect is noted in a paper by Landoni and Sutherland (Source: taxnotes, 17 Aug 2020)

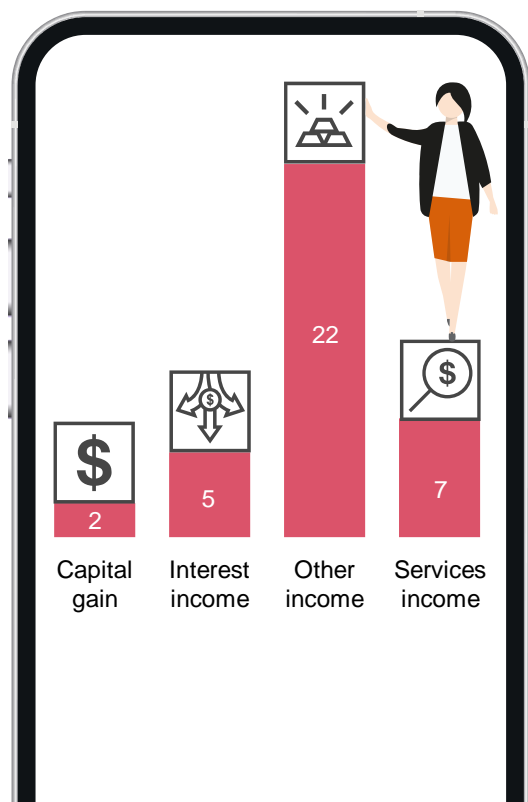
Is it likely that receipt of staking rewards would be considered a taxable event in your jurisdiction?



## II. How is staking income classified?

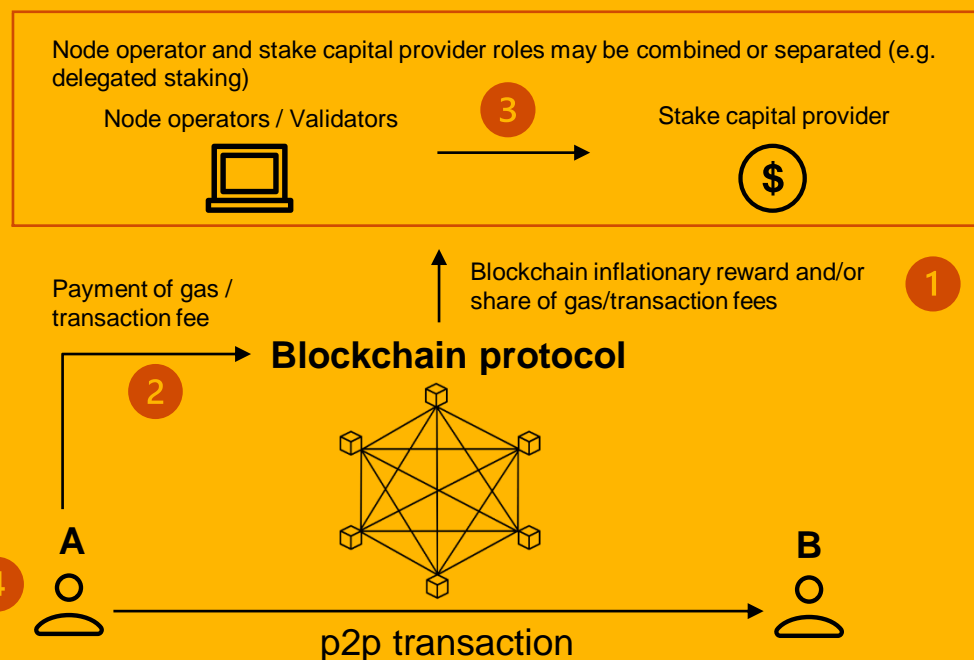
Depending on the local jurisdiction there are many different approaches to this question but, according to our survey, the majority would expect their local jurisdictions to treat staking as some form of other income.

What type of income is likely to be triggered as a result of the taxable event on staking



## How to tax staking: The staking roadmap

### Network



- Depending on protocol, node operators may earn staking rewards from creation of new coins (inflationary dilution) and / or a share of transaction fees/gas. In most jurisdictions these are taxable on receipt [irrespective of source of the reward].
- Transaction fees paid by users. Depending on Blockchain these may be burned (value transferred to all coin holders via deflation) or shared between node operators / validators as part of a staking reward.
- When the roles of the node operator and the stake capital provider are separated [delegated staking], does this change the categorisation of income of the Node operator to service fees for tax purposes? [limited guidance]. Typically node operators appear to earn 7-10% of staking rewards as a fee.
- Would typically expect gas/transaction fees paid as part of a **business activity** to be deductible or treated as an allowable transaction cost for capital gains taxes, but guidance is limited.





## Section 3 - Non-fungible tokens

### 1. Overview

Following the trajectory of its fungible counterparts, the market for NFTs has been garnering media attention as demand for digital artwork and other forms of unique digital items continues to spike. This advent of NFTs is particularly amplified as the sales prices at auction houses have been reaching new heights. Creators whose creations formerly resided only in the physical domain are creeping into the digital space, as they are drawn by this seemingly lucrative market. As we continue to marvel at the innovations brought by blockchain, the possibilities that NFTs bring cannot be underestimated.

While the coverage of NFTs is increasingly expansive, from real estate to intangible assets (including tweets and memes, and lately even

moments in history), this section focuses on exploring the potential tax issues surrounding NFTs associated with intangible assets, such as music, videos, artworks and in-game objects (e.g. weapons, skins) created digitally.

### 2. What is an NFT?

An NFT is a digital asset that is unique, irreplaceable and indivisible. As its name indicates, NFTs are one of a kind and not interchangeable. NFTs are typically used like a digital certificate to represent ownership or rights in relation to an indivisible asset, whether physical or intangible, especially digital intangible assets. However, an NFT is not the underlying asset itself, but an electronic record proving ownership of the asset that is separate from other legal ownership risks (such as the copyright, in the case of a

digital artwork). In other words, owning an NFT does not necessarily equate to owning the asset underlying the NFT, unless the NFT specifically includes a transfer of rights such as the copyright. If such a transfer were allowed under local law at all, it could be tricky in a blockchain environment, given that in certain jurisdictions the transfer of copyright must be in writing and signed by the copyright owner.

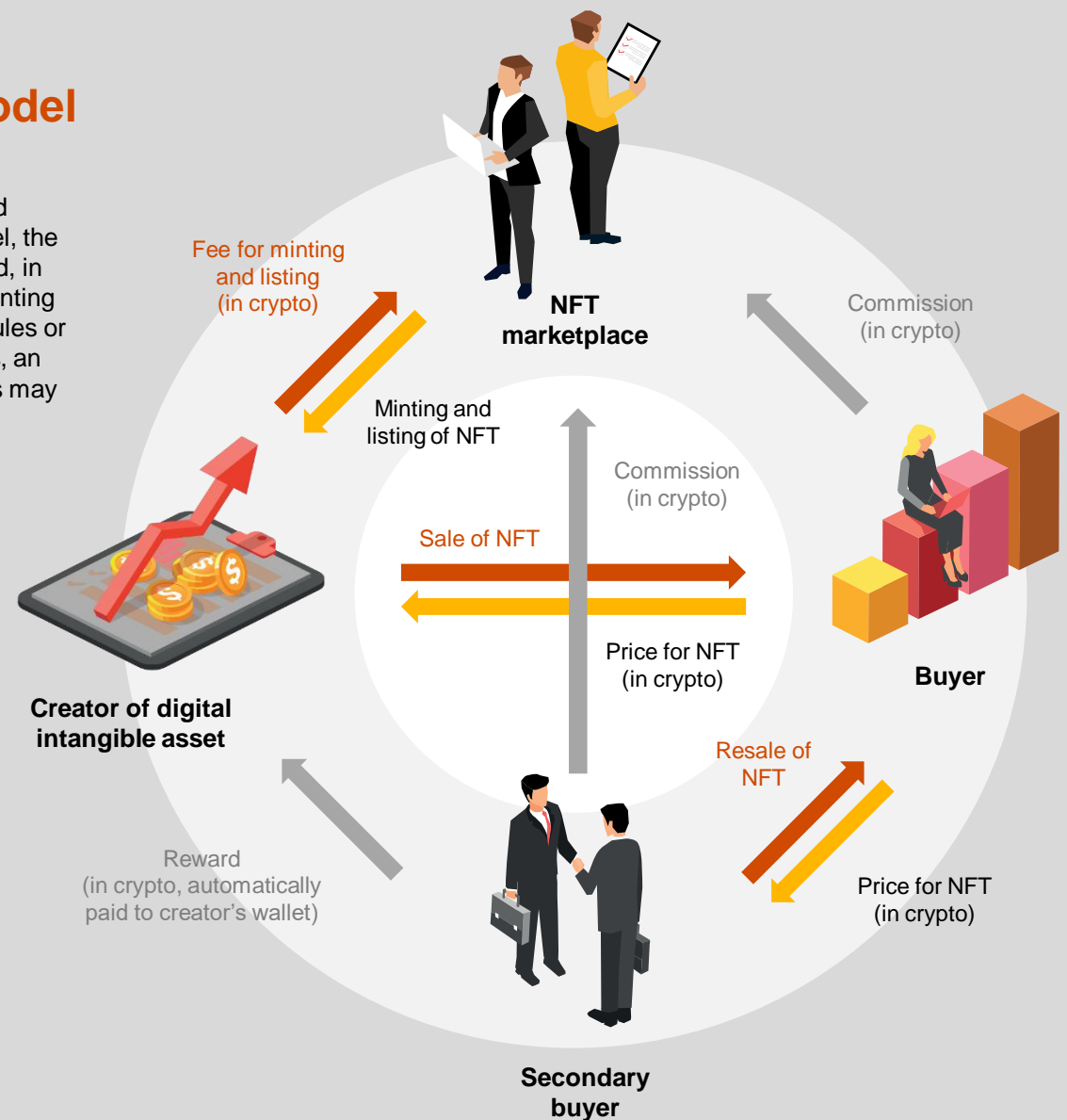
The more common scenario, using a piece of art as an example, would be that the creator (copyright owner) grants the NFT owner a licence to use the work in certain ways, as governed by the digital contract underlying the NFT. Typically, the digital contract would also provide for a royalty to be payable to the copyright owner whenever the NFT is resold, with an automatic payment function built into the NFT.



### 3. Business model

The exact tax implications of different stakeholders depend largely on the business model, the nature of the transactions and, in many jurisdictions, the accounting treatment. Absent any new rules or guidance from tax authorities, an analysis of how existing rules may apply would be required on a jurisdictional basis.

The business model surrounding NFTs can take many different forms, which will continue to evolve. The following is a simplified illustration of a common model at present.<sup>3</sup>



<sup>3</sup> Note that for some more complex income generating NFTs such as those representing music or film rights, the interactions and transactions may be more complex with additional parties involved.

## 4. Potential tax considerations

### I. Creator of digital intangible asset

The creator typically has two income streams: (i) the net sales receipts from the first buyer of the NFT; and (ii) perpetual future income from subsequent resales. These income streams are likely to be subject to income tax in the jurisdiction where the creator is located (by reason of citizenship / incorporation, residence, domicile, etc) depending on the relevant domestic law.

On the other hand, whether these income streams (depending on how exactly it is characterised from a tax perspective based on the terms and conditions, and the rights associated with each party) are subject to tax (collected either via withholding at source or through a requirement to remit tax) in another jurisdiction is worth exploring. This area is particularly complex given the following issues:

- The characterisation of the income to the creator (both on minting and secondary sales) is not clear in many jurisdictions and may be subject to different characterisation in different jurisdictions. These characterisation decisions are further affected by:
  - The legal rights and obligations created by the NFT (including the smart contract and the terms of service/use);

- The application of relevant legal protections related to the underlying property (including, but not limited to, copyright or trademark law); and
- The characterisation principles used by the relevant jurisdiction.

- Even if the income streams are characterised as royalties, in many jurisdictions, not all types of royalties are subject to withholding tax. Generally, those that attract withholding tax involve some sort of commercial exploitation of intellectual property. Royalties or licence fees paid by end users, for instance, may not be subject to withholding tax. Whether the two income streams above fall within the scope of withholding may require detailed analysis.
- Some jurisdictions take into account the location of use or protection, or the location of title passage, in determining the source of the income generated. In this case, the potential practical difficulty in identifying the location of the buyer may add to the complexity of this analysis.
- Even if these income streams fall within the scope of withholding, it may be unclear who has the withholding obligations. Jurisdictions do not generally impose withholding obligations on individuals (assuming many NFT purchasers are individuals). On the other hand, if payments do not flow through NFT marketplaces, it would be inappropriate for them to be the withholding tax agents.

- The potential interplay between domestic law and tax treaties further adds to the complexity, and depends upon the creator to document to the satisfaction of the relevant tax authority a claim for treaty protection.
- Where the income is subject to tax in both the jurisdiction in which the creator is located and the jurisdiction of “source” from a withholding tax perspective, the claiming of double tax relief, if any, may also be an administratively burdensome process which could involve the production of tax payment receipts, tax resident certificates, etc.

Apart from direct taxes, whether these income streams may be subject to indirect taxes<sup>4</sup> (e.g. VAT, US State and Local Sales and Use Taxes, transactions taxes, or even Digital Services Tax / Equalisation Levy or the like – though these are not regarded as indirect taxes by some) is another challenging issue. Just as tax authorities around the world started to look at and issue guidelines on the indirect tax implications of cryptocurrency transactions in recent years, they may need to add NFTs to their list. Whether transactions in NFTs constitute a taxable supply (in the context of VAT) may vary region by region, which means that market players cannot simply factor in a standard cost for tax in the transaction as a one-size-fits-all approach to address the tax risks. Coupled with the potential difficulty in identifying the location of the buyer, it would also be challenging for both the taxpayers and tax authorities to properly administer these transactions and remit / collect such revenues.

<sup>4</sup> e.g., VAT, transactions taxes, or even Digital Services Tax / Equalisation Levy or the like – though these are not regarded as indirect taxes by some



## II. Buyer and secondary buyer

The consideration used for purchasing an NFT is typically another cryptocurrency (e.g. BTC, ETH or any others accepted by the marketplace/seller). Many jurisdictions regard cryptocurrency as property rather than fiat equivalent, such that any gain realised from the exchange of that cryptocurrency with another asset (i.e. the NFT in this case) when the buyer first purchases the NFT is taxable.

In jurisdictions where capital gains are treated differently from trading gains (e.g. exempt or taxed at a different rate), the characterisation of the NFTs from the perspective of the buyer would be relevant. Further, in jurisdictions that adopt a territorial tax system, the determination of the source of income from the secondary sale can be a challenge for the reasons discussed above.

From an indirect tax perspective, whether an NFT buy-sell transaction would be regarded as only one taxable supply or two taxable supplies would need to be determined under local rules of the relevant jurisdictions.



## III. Marketplace

As the intermediary and value-added service provider for the NFT ecosystem, the jurisdiction(s) in which the marketplace is subject to tax requires careful consideration. There are situations where the platform is set up in a location different from where the human activities take place.

Under the traditional tax rules, taxation generally follows physical presence and substance where value is considered to be created. The allocation of profits (and hence taxing rights) between group companies would involve the determination of an appropriate transfer pricing methodology based on the functions, risk and assets employed by each entity. Moving forward, this approach will be modified as jurisdictions around the world agree on a new international tax framework which, inter alia, reallocates the profits of the largest multinational enterprises to market jurisdictions.

The establishment of the marketplace may also involve substantial investments in capital expenditure and/or creation of intellectual properties, the accounting and tax treatments of which may require further thought.

Separately, with the evolving compliance requirements for marketplaces of all kinds, NFT or not, NFT marketplaces should devote sufficient resources to manage the relevant obligations, for instance Common Reporting Standard if relevant, and the European Union's recent initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto assets and e-money — “DAC8”. PwC has expressed its views in hopes for regulatory clarity necessary to push the digital asset industry in the right direction.

Similarly, In the U.S, the expanded information reporting requirements of Digital Assets which passed recently as part of the Infrastructure Bill may be viewed as capturing the sale of NFTs. Specific guidance is needed on the information reporting required for NFTs, both as a “digital asset” or whether they also represent a digital “goods” (in assessing the potential application of section 6050I reporting for payments of cryptocurrency for non-cash goods and services).

From an indirect tax perspective, whether (and where) the intermediary services rendered would be considered taxable supplies and hence trigger registration and reporting requirements is worth investigating



## Section 4 - DeFi

### 1. Introduction to DeFi

#### I. Meaning of DeFi

DeFi stands for “decentralised finance”. It is a collective name for an ecosystem consisting of financial applications built upon advanced distributed ledger technology, commonly known as a blockchain, to provide decentralised financial services. These decentralised financial services are available to anyone who has a smartphone and internet connection. The services are decentralised in that they do not rely on the central financial intermediaries, like banks, credit unions, insurance companies, brokerages or exchanges. Instead, participants transact anonymously, with the software acting as intermediary and aggregator of transactions.

#### II. Some examples of DeFi:

**Secured lending and borrowing:** One of the key functions of the traditional/centralised financial system is to facilitate secured lending and borrowing between the participants. DApps like Compound and Aave (decentralised lending platforms) enable users to carry out lending and borrowing activities without conventional intermediaries.

**Decentralised exchanges / Automated Market Makers (“AMM”):** Decentralised exchanges enable users to exchange crypto currencies or digital assets peer to peer without any centralised intermediaries. Examples of such exchanges are Uniswap, SushiSwap, Balancer, IDEX, Loopring, and Bancor.

**Digital payment and remittance:** Some DApps enables the user to pay or remit crypto currencies peer to peer without any centralized intermediaries.

**Insurance:** Allows users to obtain coverage against smart contract failures and the risk of loss of their deposited crypto assets, without any centralised insurance intermediaries (e.g. Nexus Mutual).

**Other examples:** Cryptocurrency-based derivatives allows the user to trade the value of the underlying asset on the blockchain network without ownership: examples include dYdX and Synthetix. Stablecoins can be either used for decentralised finance activities – like liquidity mining, lending and borrowing – or are pegged to a fiat currency and backed by crypto collateral.

The DeFi environment is developing rapidly, and new applications for the technology constantly emerge. However, it should be noted that all forms of DeFi have a number of common features and issues.



### III. Credit risk

DeFi is a fast-evolving space and at the time of writing the article, the lending on DeFi protocols is fully collateralised. This reflects the difficulty in introducing enforceability of a blockchain contract over assets which are not themselves cryptographic in nature.

Therefore, loans are credit risk-free. Clearly, this impacts the risk and reward for both the parties and how the loans are priced compared to traditional lenders.

### IV. Regulation

DeFi is a new and upcoming space for regulators worldwide and they are still trying to understand how best to regulate its operations and functions. Hence, at the time of writing this article, there are minimal DeFi-specific regulations and guidelines in most jurisdictions. It is expected that this is an area that will develop over the coming months.

### V. Taxation

As noted above, DeFi is in a nascent stage and is developing rapidly. In many respects, it superficially resembles the conventional financial services markets, and the participants and transactions which are found in those markets. However, the detailed form and status of the participants and the transactions are different in some crucial respects.

Consequently, in many jurisdictions it is not clear whether, and to what extent, the tax laws which govern conventional financial transactions apply to DeFi. This creates a problem for policymakers: should those existing tax laws be made to apply, or is an entirely new framework of law required in order to deal with DeFi?

At the time of writing, tax policymakers are still grappling with this issue, to determine how DeFi should be treated. Consequently, there is very limited guidance on how DeFi transactions should be taxed.

Our survey shows that no territories have issued formal guidance on the taxation of borrowing and lending in DeFi protocols. Neither is there any guidance setting out the taxation of governance tokens separately from other types of token.

Working from first principles, however, it is evident that there are a number of specific issues to be addressed. This paper sets out the issues we perceive, and the possible approaches to tackling them.

The tax issues arising in a DeFi transaction can be best identified from the various participants' point of view. We have set out below the issues that we see. Doubtless, more issues will arise as the market develops.

## Taxation at a protocol or DApp<sup>5</sup> level

DeFi protocols / DApps are normally set up by a community of developers and programmers using open-source software on a blockchain. The DApp is the “thing”, to use a neutral term, with which a user apparently interacts. It takes funds from some users, and allocates those funds to other users, and rewards investors and governance token holders. In many ways, it performs the functions which are performed by a company such as a bank, insurer, or other intermediary in a conventional financial ecosystem.

Therefore, a question arises as to whether the DApp is operated by a taxable entity. This matters, not only for those operating the DApp itself, but also for questions which may arise to other parties as to who their counterparties are.

A first step is to consider the level or the degree of centralisation or decentralisation, and in which legal form the protocol is organised. If the DApp is carrying out the actions of a legal person (such as a company) then the position is clear, as it will be that legal person that is responsible for paying any tax that may be due. However, the complexity increases when a protocol or DApp is not working for a legal person, company or individual.

One possibility is that, where a DApp is maintained by a group of people (e.g., operating as part of a DAO or Decentralised Autonomous Organisation), it could be considered to be a partnership. For example, under English contract law, a partnership

exists where two or more persons agree to carry on a joint business venture with a view to profit, each incurring liability for losses and the right to share in the profits. If the participation in a DAO creates a contractual arrangement between the participants which meets this definition, it would appear that arguably a partnership exists as a matter of law. If that is the case, then potentially the general principles of partnership taxation could be deemed to apply. The partners would be the persons who, contractually, are trading in partnership - presumably the holders of the DAO's governance tokens, though in some cases this could extend to others who have a right to profits (for example other investors in the DAO's tokens).

Of course, it will be important to determine the geographical tax jurisdiction of the party controlling the DApp. If the DAO is found to be tax-transparent as a matter of law, the responsibilities for taxation would fall on the partners directly in their own territory. However, if the DAO were found to be taxable in its own right, the question of jurisdiction becomes more significant. Should the tax jurisdiction be determined based on the physical location of a key server (if there is one, given the decentralised model)? or should it be the place where partners make decisions? Or is it the location of an individual partner?

It should also be noted that if a DAO is taxed as a partnership, this does not simply entail taxation of profits but it also creates other compliance obligations. Depending on the territory and the precise circumstances, the partnership may itself

have filing or payment obligations, not only in respect of income taxes, but also in respect of indirect taxes, withholding taxes, stamp taxes, etc. There may also be requirements to create and retain transaction documentation. If such requirements arise, it may be unclear who has responsibility for them in a decentralised business model, and whom a tax authority may pursue for non-compliance. In a worst-case scenario, individuals who have become de-facto partners simply by purchasing a governance token could find themselves unwittingly liable, although this would seem to be extreme.



<sup>5</sup> A DApp is a decentralised application





## Shifts in the model

It is an observable feature of many DAOs that they evolve over time. Many start with a central team of developers who work together to own and control the protocol (e.g. via retention of an admin key or by virtue of them holding a majority of the governance tokens), and then at some point moves to a decentralised model, where control of the DAO is exercised via tokens held by a widely dispersed group of individuals not acting in concert.

Consequently, the questions of partnership and taxation of governance token holders, as discussed above, cannot be assumed to be a settled matter in the case of any one DAO. The ownership pattern may change, and if that drives the tax consequences, they may change too.

For example, if the DAO transitions from a semi decentralised model to a fully decentralised model, is there still a partnership (in law)? A fully decentralised DAO could be, effectively, ungovernable, so that it loses its characteristics of a business carried out in common. If that happens, then the answer to the question of what entity is there, and how is it taxed, could also change.

## Taxation at level of governance token holder

The governance token typically allows the holder to participate in the decision-making process of the protocol. It can be in respect of core protocol itself or other governance-related matters. The holders are rewarded by some element of token payment, typically by making them entitled to share the fee from the income or profits of the DAO.

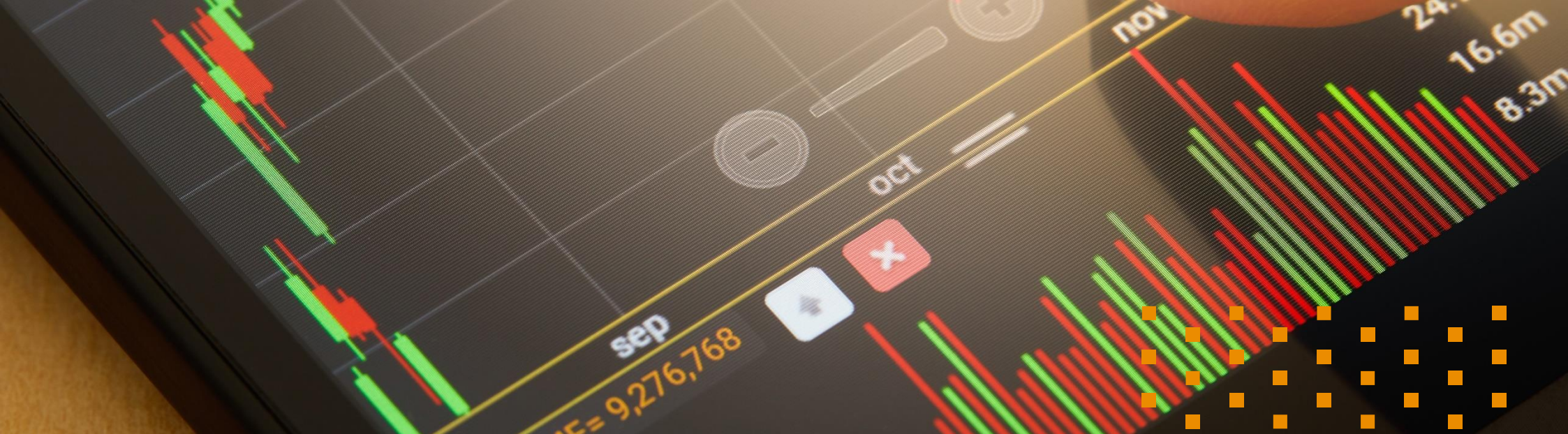
In some cases, as explained above, the governance token holders may be seen for tax purposes as partners in a partnership.

However, where that is not the case, there is no straightforward classification for this transaction. Economically, the governance token holder may be in a position analogous to an equity investor. Depending on local law, that may or may not determine the treatment of any income or gain derived from the token.

## Taxation at level of developers / initiators

Usually, a DApp's developers will have a mechanism, like allocation of the native governance tokens, to benefit from the success of the protocol/DApps. In some jurisdictions, guidance on the taxation of native governance tokens may be available. However, as noted above, complexity may arise for developers when the structure of the DAO gives them responsibility for wider tax matters concerning the DApp.





## Taxation at level of capital / liquidity providers

Capital or liquidity providers are the investors who provide a DApp with its financial resources, typically by investing in a highly liquid cryptocurrency (such as Bitcoin or Ether) in exchange for a defined return.

The taxation of this transaction in the hands of the investor will likely be significantly dependent on how the investor's jurisdiction treats cryptocurrency more generally. For example, some territories such as Switzerland may characterise certain cryptocurrency as money, and it follows that investment transactions are likely to be treated as financial assets. In contrast, other territories such as the UK may treat cryptocurrency as non-monetary, having a nature more like a commodity. Consequently, loan transactions may be treated more like the sale and repurchase of a commodity.

The characterisation of the transaction determines the tax treatment of the interest/income earned by the capital/liquidity provider in a respective jurisdiction. Typically, the protocols or DApps issue native pool tokens or some other digital representation for providing the capital/liquidity to the providers. In the UK, for example, the issue or transfer of tokens to the investor as a reward for the capital provided, is generally treated as a receipt of income. If the token is retained (rather than immediately converted to fiat), its future change in value would likely give rise to a capital gain or loss.

It should also be noted that the lending itself may create a different class of asset (in the hands of the investor) from the tokens being lent. For example, if an investor holds Ethereum in a wallet, then transfers it from the wallet and lends it to a protocol, then in many tax systems that would be a disposal of the Ethereum and an acquisition of a different asset - a receivable of some type, such as a collateral token representing Ethereum, but

recoverable from the protocol. The asset might be described as a loan, or a collateral token, or labelled in some other way, and it might have similar value and properties to the Ethereum that underlies it, but it would not actually be Ethereum. In the same way, a right to receive any other asset X from a counterparty is not the same asset as X.

## Taxation of the protocol / DApp income

The tax characterisation of the income of the protocol/DApp like fees earned on hosting, transaction fees on AMMs, advertising fees or any margin earned on lending earned by the lending platform should most likely be treated as trading income in most jurisdictions. The tax status of the operators of the DApp, as discussed above, will determine who is responsible for paying this tax and complying with any administrative requirements.

## Taxation at the level of capital / liquidity takers

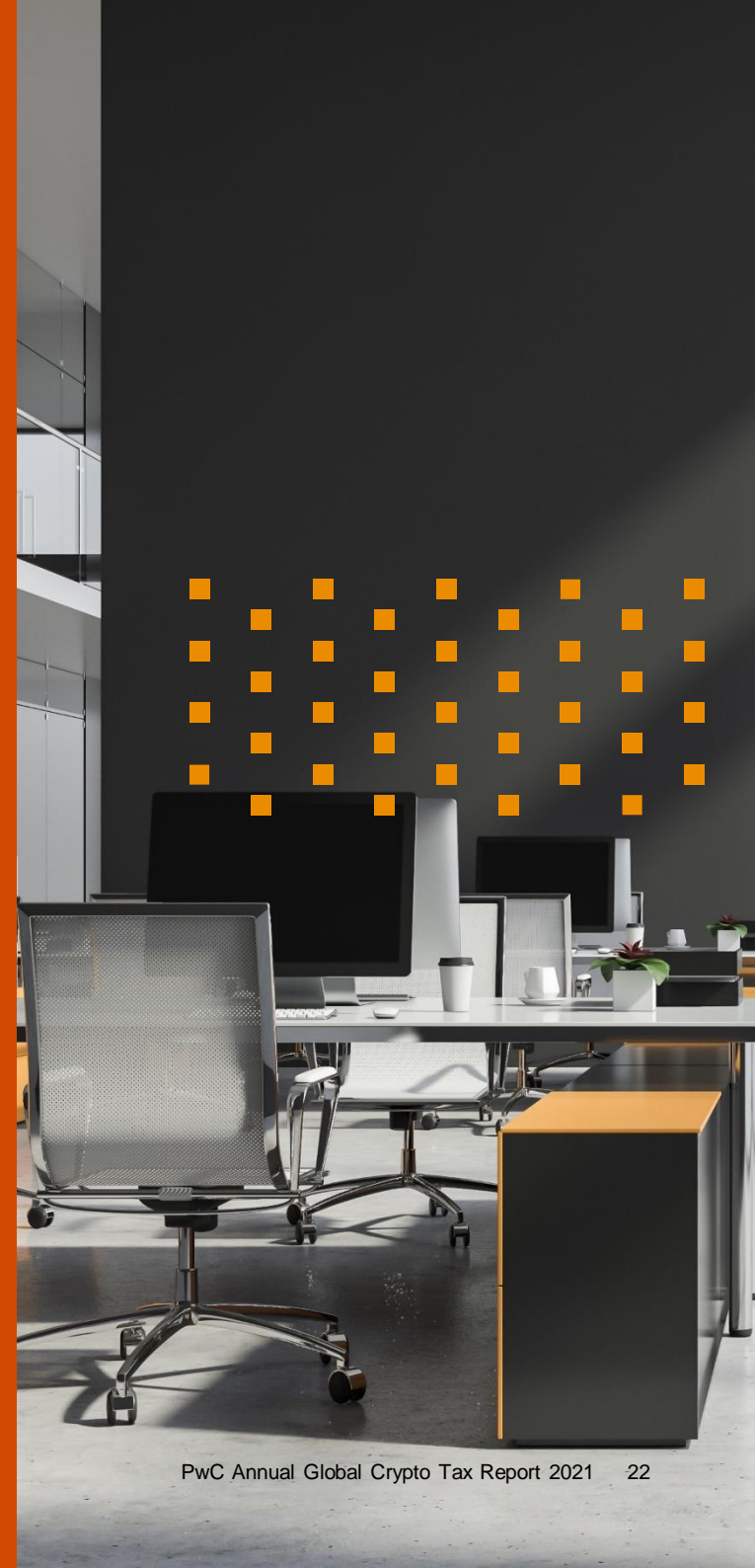
Typically, interest expenses or associated expenses on loans taken out for business purposes are deductible expenses in most jurisdictions. Similarly, on first principles it would be generally expected that insurance premia or similar payments would be deductible if they had appropriate business purpose.

However, the specific classification of cryptocurrency transactions in the territory concerned has to be taken into account. If, for example, a cryptocurrency is treated as money, then it seems likely that the rules applicable to borrowing would be applicable to transactions economically similar using a DApp. However, if local tax law classifies cryptocurrency as a commodity, then the transaction is more akin to a short commodity position, and different rules for deductibility may apply. Moreover, in territories where deductibility of an expense is closely

governed by detailed requirements as to the nature of the expense, and/or a requirement for cash payment, there will be complex questions to answer as to whether a deductible expense arises at all.

Often, domestic tax rules of any given jurisdiction impose a liability to operate a withholding tax on the payor regarding cross border intercompany payments. Therefore, the borrower needs to consider whether there are any requirements to operate withholding tax under the local law of borrower tax residence jurisdiction concerning the interest payment or associated payment on the crypto loan. Again, it is likely to be highly relevant whether or not the transaction is classed as a lending of money, or a non-monetary transaction.

A further difficulty with the operation of withholding tax regimes is the lack of clarity as to who the counterparty is. The only counterparty visible to the borrower is likely the DApp. But, as noted above, it may well not be clear whether the DApp is itself a person, or whether it is simply software effectively masking the identity of the legal counterparty, who may be either the holders of governance tokens (collectively the DAO), or investors, or some other party entirely. If a withholding tax regime is applicable, this is likely to give rise to difficulties for the borrower in determining what tax, if any, is to be deducted. There is also a question of how compliance is to work, and what entitlement (if any) counterparties may have to reclaim or credit tax suffered.







Typically, the tax liability arising from the repayment of the loan principal is dependent on the characterisation of the cryptocurrency transaction in the territory concerned. If, for example, under the local law cryptocurrency is treated as a commodity, then the repayment of the loan principal may trigger taxable gain/loss on the disposal. However, if the territory treats cryptocurrency as money, tax may be payable only on the lending fee or interest.

Pledging is another area that the borrower must consider from a tax perspective. As noted at the start of this chapter, DApps typically do not allow credit risk to be taken. It follows that a borrower generally has to pledge collateral crypto assets to cover the value of any drawdown.

The question is, then, whether this pledging is a taxable transaction for the borrower. Normally, granting security over an asset - but retaining usage of it - is not a taxable transaction in most tax systems. However, as noted above by reference to investing, passing tokens to another person so that they become “wrapped” or restricted in general may amount to a disposal, as the pledging party subsequently holds a different type of asset (the collateral token). Consequently, it seems possible that a pledge of one currency to support a borrowing under a DApp constitutes a taxable disposal of the currency pledged. Of course, depending on the precise details, and the view of tax authorities, there is plenty of scope for alternative analyses.

## VAT / GST taxation of DeFi

VAT/GST is imposed on the consumption of goods and services based on the location of consumption of the goods/services. Normally, local rules and the types of the supplies determine if the vendor (service provider) or the buyer (service recipient) is liable for VAT/GST towards the local VAT/GST authorities. Therefore, the VAT/GST implications (i.e. liability to pay tax) on a DeFi transaction is driven by the following key items:

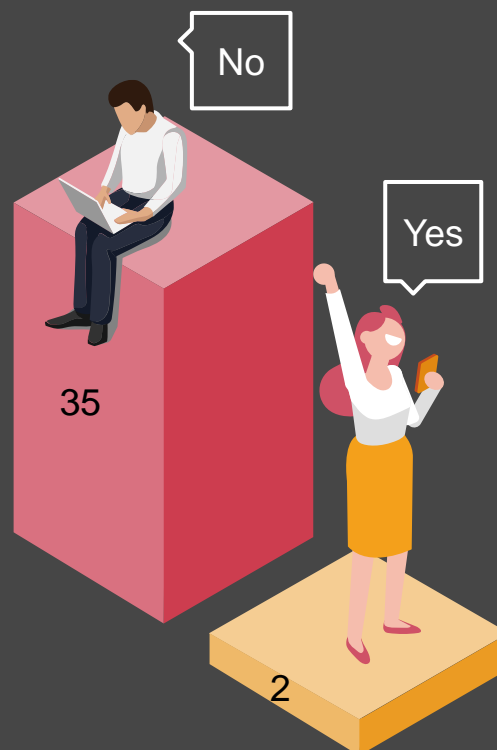
- i. Nature of the supply;
- ii. Who the service provider is; and
- iii. Who the service recipient is.

The first step in determining whether a VAT/GST liability exists is identifying if there is a supply for VAT purposes; (b) if so, determining the nature of the supply. Your starting position when determining the VAT liability of any supplies is that it is liable to VAT unless an exemption applies. For example, simple access to an exchange platform without an underlying financial transaction would be liable to VAT.

However, the identification of the service provider and service recipient is more complex in case of a DeFi protocol. The identification of the service provider and recipient requires a case-by-case analysis of how the protocol is wrapped (i.e. wrapped in an legal entity) and the legal arrangements and contractual documentation, including terms of use of the protocol governing the

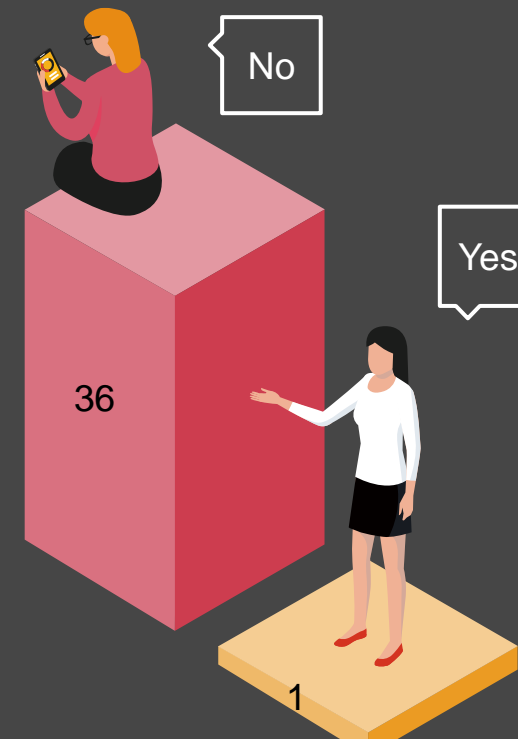
relationship between the protocol and developers and the users. If the protocol is wrapped in a company, it is the company liable for tax normally. However, the identification process becomes complex when a protocol is not wrapped in a company (i.e. is operated as a DAO). In that situation, typically either developers or the users are likely to be liable for tax under the rules of the current VAT/GST systems.

**Are there any rules or guidance on withholding taxes applicable to lending or borrowing using a DeFi transaction?**



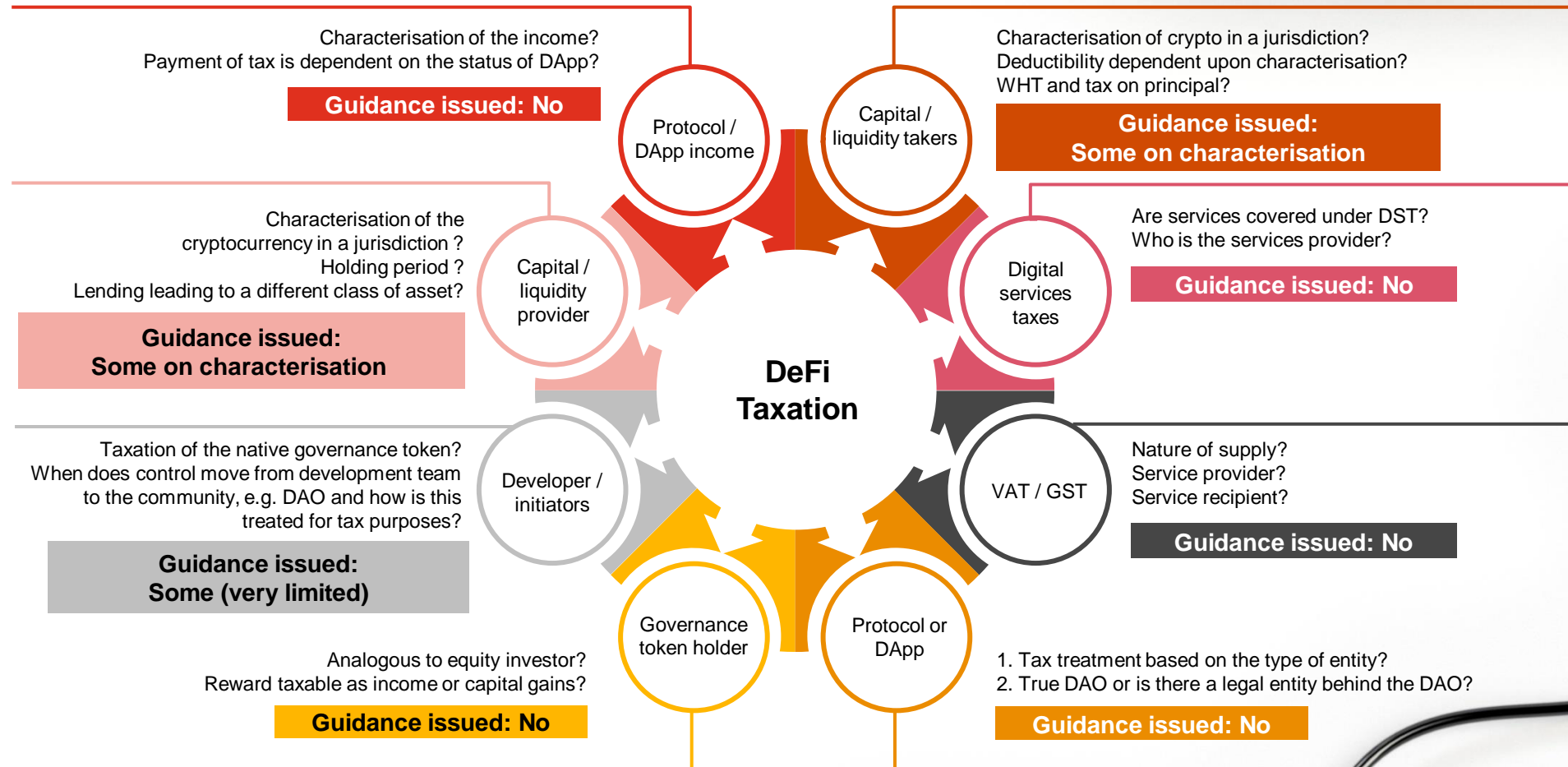
In our view, the local tax authorities will likely introduce specific GST/VAT rules for DeFi, however, it will take time.

**Are there any rules or guidance on “borrowers” ability to deduct the expenses arising from borrowing in crypto-assets via a DeFi transaction?**





## DeFi taxation overview



## Section 5 - Tax information reporting

Consistent with discussions in prior publications, tax third party information reporting (and potentially withholding) continues to be an important tool for tax authorities to manage income tax compliance within their jurisdiction. Digital asset transactions pose unique compliance challenges to tax authorities that are heavily reliant on self-assessment to collect tax. This is because of the relative anonymity with which transactions in many crypto assets can be performed. The quality of the information obtained by tax authorities is dependent on third parties collecting and tracking accurate information. In 2021, as expected the United States passed legislation to expand the transactions and payments subject to third party information reporting and the EU advanced its DAC 8 framework. Both developments were anticipated but underscore the challenge that the rise in the use of digital assets poses on tax authorities working to maintain a compliant system.

### Tax Information Reporting in the United States

The long-planned infrastructure legislation passed in the US contains new third party information reporting requirements associated with the disposition of digital assets. This legislation created the following:

- Defines “digital assets” for the first time in the Internal Revenue Code,
- Defines “broker” in the context of “digital assets” broadly,

- Requires Form 1099-B, Proceeds from Broker and Barter Exchange, transaction reporting (gross proceeds and basis) for digital asset sales,
- Requires transfer statements between “brokers” when holders transfer their assets,
- Requires reporting to the IRS when a transfer (sales or non-sale) is to a non-broker, and
- Requires Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, reporting for business transactions paid for with \$10,000 of digital assets (digital assets as cash).

The legislation related to digital asset gross proceeds reporting is effective for transactions occurring in calendar year 2023. Additional regulations from the US Department of Treasury and Internal Revenue Service are expected prior to the effective date of the reporting requirement. Form 8300 filing is effective for transactions occurring in 2024. Additional regulations are also needed prior to the effective date of Form 8300 reporting.

The US third party information reporting obligations apply to U.S. payors and to certain non-US payors that are treated as controlled foreign corporations (CFCs) among others. Reporting gross proceeds from the sale of digital assets applies when a US non-exempt recipient sells a digital asset and the sale was facilitated by a broker. For purposes of tax information reporting a “digital asset” is “any digital

representation of value recorded on a cryptographically secured distributed ledger or any similar technology. The definition of “broker” includes any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. This definition includes cryptocurrency exchanges that function like broker-dealers do in the securities markets.





Brokers will have several instances to initiate an information return or otherwise provide information either to the IRS and customers or to other brokers. Brokers will be required to:

- file information returns for each reportable transaction,
- provide a transfer statement to a receiving broker when customers transfer digital assets between brokers and
- file an information statement with the IRS when a customer transfers digital assets to a non-broker.

This reporting will require brokers to implement a compliant tax onboarding process with their customers that includes collecting a reliable Form W-9, Request for Taxpayer Identification Number and Certification or a document from the Form W-8 series. Failure to properly onboard will require imposition of withholding. In addition to onboarding, brokers must implement systems to track and record the information needed for reporting such as

acquisition date, adjusted basis, gross proceeds, etc. and develop a lot selection process.

Persons engaged in a trade or business are required to report to the IRS on Form 8300 when they receive more than \$10,000 in cash or cash equivalents in one transaction (Or multiple related transactions) and the transaction occurs inside the US. The infrastructure legislation defines cash to include digital assets. This obligation has the potential of requiring both a Form 8300 and Form 1099-B if a digital asset is used to purchase another digital asset. Regulatory guidance is needed to reduce the potential duplicate reporting.

### **Tax Information Reporting under the European Union's DAC 8**

In July 2020, the EU Commission adopted a new tax package namely the "Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy" ("Action Plan"), which reinforces the fight against tax abuse.

The Action Plan aims to update the DAC to expand its scope and strengthen the administrative cooperation framework. As a result, the DAC 8 initiative and the related public consultation launched by the EU Commission in March 2021 also seeks to ensure adequate tax transparency and proper taxation of income generated by investments or payments in crypto-assets and e-money. This initiative will provide a framework to encourage consistent guidance across the EU in line with anti-money laundering and terrorism financing guidance.

The DAC 8 objective is to establish uniform transparency and disclosure guidelines within the Member States for crypto-asset services providers and issuers, as well as for e-money institutions in order to ensure tax compliance fairly. Beyond the uniformity sought by DAC 8, the goal is to keep the compliance costs to a minimum by providing a common EU reporting standard. At this time, we are awaiting the results of the Commission's review of the information gathered during the consultation.



# Conclusion

As can be seen by the new areas covered in this report and by the fact that in many cases we raise more questions than we provide in answers, developments in business models and innovations in the digital assets and crypto sectors continue to happen at a pace unseen in many other industries. This means that tax rules around the world have the potential to fall even further behind from where they were even last year.

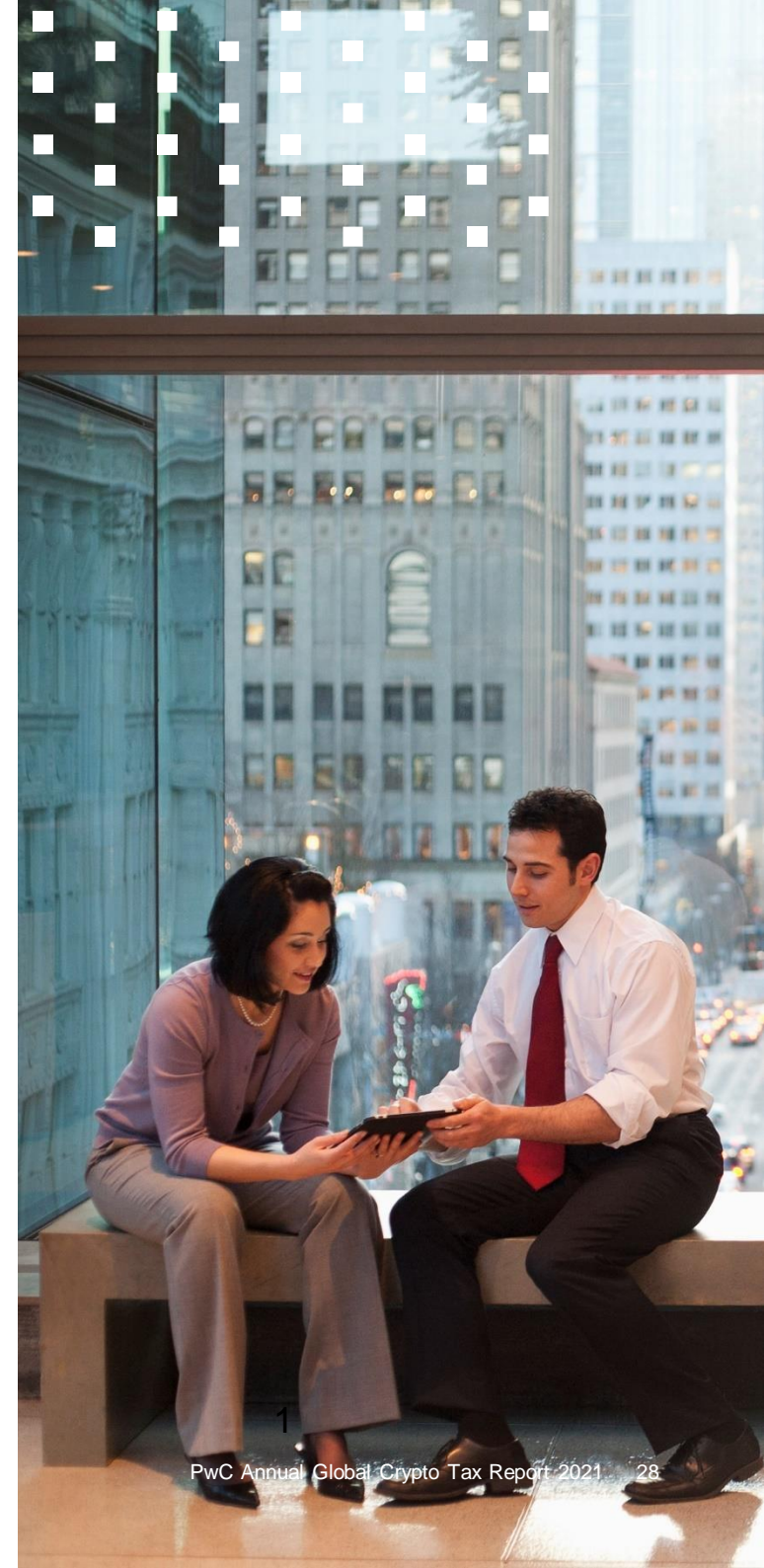
Areas where there are particular needs for policy makers to provide more guidance in the coming year include:

1. Providing a broad principles based framework for approaching many of the more common DeFi transactions such as borrowing and lending, the provision of liquidity to automated market making pools, and the various different ways that yield can be earned from staking and other types of arrangements
2. Providing a framework for looking at NFTs and the increasingly broad range of use cases where these are now being applied (ranging

from art, to music and film rights to in-video game assets and play to earn games to having tokens that back real world assets such as real estate).

3. Providing guidance on how to approach Web3 decentralised business models, including many of the common organisational structures that we are increasingly seeing arise in this space - in particular DAOs.

We will continue to engage with companies and policy makers on some of these important problems and hope to be able to report back next year with some more answers to these important questions - (and of course there will also be many more questions!)





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## Section 6 – Jurisdiction by jurisdiction summaries



## Direct Tax

Question	Answer
<b>General overview</b>	<p>Cryptocurrency was first launched in 2009, however, it wasn't until December 2014 that the Australian Taxation Office ("<b>ATO</b>") published guidance on the income tax treatment of investing and trading in cryptocurrency. The ATO has since published general guidance on the income tax treatment of cryptocurrency in Australia on their website (<a href="https://www.ato.gov.au/general/gen/tax-treatment-of-crypto-currencies-in-australia---specifically-bitcoin">https://www.ato.gov.au/general/gen/tax-treatment-of-crypto-currencies-in-australia---specifically-bitcoin</a>).</p> <p>There has been recent increased scrutiny from the ATO in relation to the profits made from cryptocurrency investing and trading. However, there is no specific income tax legislation in force which applies to cryptocurrency. The ATO has issued a limited number of taxation determinations and public tax rulings which consider either the income tax or GST treatment of cryptocurrency, however these are not binding for taxpayers. Taxpayers may approach the ATO and seek a tax ruling to confirm the tax outcomes of a specific scenario and the ATO's response will be legally binding for the applicant in this circumstance.</p> <p>Australian tax residents are subject to Australian income tax on their worldwide income. Australia also adopts a capital gains tax regime and applies a withholding tax regime where rates of up to 30% may apply to interest, royalties and dividends paid to non-residents (although this rate may be reduced as a result of the operation of a double tax treaty or where the dividends are considered to be "fully franked").</p> <p>Under the current Australian income tax rules, cryptocurrency is not viewed as money or foreign exchange but rather a capital gains tax ("<b>CGT</b>") asset or as a revenue asset, like shares or property, with the character of the asset depending of the intention of the holder. While a digital wallet can contain different types of cryptocurrencies, each cryptocurrency is a separate asset.</p> <p>Where cryptocurrency is held on capital account, a CGT event is triggered when cryptocurrency is sold or exchanged for AUD or other cryptocurrencies or used to obtain goods and services (unless it is considered a personal use asset). In certain circumstances, a 50% discount of the taxable gain can apply where the cryptocurrency has been held by an individual or trust for a period in excess of 12 months. Given the significant increase in cryptocurrency markets and the rapid rise of cryptocurrency prices, it is likely that the ATO will consider investing and trading in cryptocurrencies to be on revenue account, i.e. for short term gains, rather than long-term growth. Accordingly, any profits from cryptocurrency would be taxed as assessable income and not subject to the 50% CGT discount.</p> <p>Where a cryptocurrency investor holds cryptocurrency as an investment or hobby, they may not be subject to capital gains tax on the disposal of a cryptocurrency. This will depend on whether it can be demonstrated that the cryptocurrency is a 'personal use asset' valued at AUD10,000 or less.</p> <p>We note that given the nature of the cryptocurrency, it is often difficult to demonstrate intention for long-term investment purposes and it is likely to be assumed that the cryptocurrency is held on revenue account, unless there is clear evidence to substantiate otherwise. In this case, gains or losses realised from cryptocurrency transactions are subject to income tax at the investor's marginal tax rate (and is not subject to discount), or for traders, under the trading stock rules. If an investor is carrying on a business of trading cryptocurrency, then the cryptocurrency will be considered to be held on revenue account. Profits or losses realised from the disposal of cryptocurrency should be included in their taxable income.</p> <p>For larger organisations including financial institutions, the taxation of cryptocurrency may fall under the Taxation of Financial Arrangements regime. The precise tax treatment will depend on the nature of the underlying cryptocurrency but would generally be on revenue account, where these rules apply. There are still a number of interpretative issues that need to be resolved in relation to when and how this regime might apply to cryptocurrencies.</p>

# Australia

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Prior to 1 July 2017, sales and purchases of digital currency (such as bitcoin) were subject to Goods and Services Tax ("GST"). However, since then the sales of digital currency are input taxed sales which means that:</p> <ul style="list-style-type: none"><li>• no GST is paid on the sale of the digital currency; and</li><li>• generally, GST credits cannot be claimed for the GST included in the price paid for any purchases to make those sales.</li></ul> <p>The definition of "digital currency" is legislated in the GST Act.</p>

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## Direct Tax

Question	Answer
<b>General overview</b>	<p>Austrian tax resident individuals and corporates are taxable in Austria with their worldwide income, with Double Tax Treaties in place to avoid double taxation. Income of individuals is generally subject to progressive income tax up to 55% or – in case of income from capital assets – to flat tax of 27.5% or 25%, income of corporates is subject to 25% corporate income tax.</p> <p>According to the current legal situation, income from cryptocurrencies is in principle taxed as follows at the level of individuals:</p> <ul style="list-style-type: none"> <li>• Payment tokens are to be classified as other intangible non-depreciable assets. Therefore, any gains from the sale of payment tokens are taxable only (subject to progressive income tax up to 55%), if the tokens are sold within one year after acquisition. If the tokens are sold after the expiry of the annual period, capital gains are not taxable. The exchange of payment tokens (e.g. Bitcoin to Ethereum) is also a taxable event, if the exchange is carried out within one year after acquisition of the tokens surrendered.</li> <li>• If the payment tokens are lent out against interest (i.e. the lender receives further payment tokens for the loan), the payment tokens are to be classified as capital assets. This implies that any gains from an exchange of a crypto currency to another crypto currency and from a sale of a payment tokens (exchange to fiat) should be subject to 27.5% flat tax irrespective of the holding period. Further, any interest (received payment token) should also be subject to 27.5% flat tax.</li> </ul> <p><b>Changes regarding the taxation of cryptocurrencies based on a draft law</b></p> <p>In November 2021 a draft law was published which provides for the following changes for individuals:</p> <ul style="list-style-type: none"> <li>• Payment tokens shall qualify as capital assets. Thus, any income (capital gains and interest from lending) shall be subject to 27.5% tax (irrespective of the holding period). The exchange from crypto to crypto shall not qualify as a taxable event.</li> <li>• Any Austrian intermediary, who settles payment token transactions (crypto exchange) shall be obliged to withhold the 27.5% tax and pay the tax to the tax office.</li> <li>• The new tax rules shall apply to payment tokens acquired after 28 February 2021. The withholding obligation for crypto exchanges shall come into force on 1 January 2023</li> </ul>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Based on the case law of the CJEU (see CJEU 22/10/2015, Case C-264/14, Hedqvist) the following applies:</p> <ul style="list-style-type: none"> <li>• The acquisition, sale and exchange of payment tokens, is exempted from VAT.</li> <li>• Mining is not subject to VAT due to the lack of an identifiable service recipient.</li> </ul>

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# Canada

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Corporations and individual's resident in Canada are subject to Canadian income tax on worldwide income. Relief from double taxation is provided through Canada's international tax treaties, as well as via foreign tax credits and deductions for foreign taxes paid on income derived from non-Canadian sources.</p> <p>Subject to relief under an international tax treaty, non-resident corporations are subject to Canadian income tax on income derived from carrying on a business in Canada and on capital gains arising upon the disposition of taxable Canadian property (TCP). Similarly, non-resident individuals are subject to Canadian income tax on income from employment in Canada, income from carrying on a business in Canada and capital gains from the disposition of TCP.</p> <p>Canada imposes domestic withholding tax (WHT) at a rate of 25% on interest (other than most interest paid to arm's-length non-residents), dividends, rents, royalties, certain management and technical service fees, and similar payments made by a Canadian resident to a non-resident of Canada. The rate of WHT may be reduced pursuant to the provisions of a relevant international tax treaty.</p> <p>To date, there is no federal or provincial tax legislation in Canada specific to crypto currencies or transactions involving crypto currencies. Additionally, the Canadian Department of Finance has not provided any indication as to when legislation may be forthcoming.</p> <p>Canada Revenue Agency (CRA), the agency responsible for administering taxes in Canada, has provided some administrative guidance on federal income tax considerations associated with crypto currencies.</p> <p><a href="https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency/cryptocurrency-guide.html">https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency/cryptocurrency-guide.html</a></p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>In Canada, there are two levels of value-added / sales taxes:</p> <ol style="list-style-type: none"> <li>1. A federal value-added tax, levied under the Excise Tax Act ("ETA"). The federal tax includes the Harmonized Sales Tax ("HST"), which is made of a combination of a provincial component (8% or 10%) and a 5% federal component, and is applicable in some provinces ("participating provinces") such as Ontario (13%), New Brunswick (15%), Nova Scotia (15%), Newfoundland and Labrador (15%) and Prince Edward Island (15%). The federal tax also includes the Goods and Services Tax ("GST") applicable in all other provinces and territories.</li> <li>2. Provincial sales taxes ("PST") applicable in 4 provinces, including the province of Quebec where the Quebec Sales Tax ("QST") is a value-added tax generally harmonized with the GST. The PST in the other 3 provinces is in the nature of a retail sales tax, not recoverable by the end user.</li> </ol> <p>In general, all supplies that are made or deemed to be made in Canada (Quebec) are subject to GST/HST (QST), unless they are specifically exempt. Taxable supplies include, inter alia, supplies of intangible personal property ("IPP").</p> <p>The Canada Revenue Agency ("CRA") has issued limited guidance on the taxation of mining activities and the position is evolving. Auditors have not been treating mining transactions consistently. The latest position provided by the CRA, without any official pronouncement being issued, would be that mining is a commercial activity leading to taxable supplies with a requirement to charge or remit GST or HST on the value of virtual currency received and a right to an input tax credit on mining costs. That seems to be so even if the recipient is not identified.</p>

## Indirect Tax (Continued)

Question	Answer
<b>General overview</b>	<p>For the use or supplies of virtual currencies, except as noted below, the supply or exchange of a virtual currency could possibly be treated as a taxable supply of an IPP, even when simply used as a method of payment.</p> <p>However, new legislation was enacted on June 29, 2021 with an effective date of May 17, 2019. Under the new rules, the definition of a financial instrument in subsection 123(1) of the ETA was amended by adding new paragraph (f.1) to include a virtual payment instrument. The definition of virtual payment instrument was also added to subsection 123(1), and it provides that the expression means property that is a digital representation of value, that functions as a medium of exchange, and that only exists at a digital address of a publicly distributed ledger. The definition of virtual payment instrument excludes:</p> <ul style="list-style-type: none"> <li>• property that confers a right, immediate or future, absolute or contingent, to be exchanged or redeemed for money or specific property or services or to be converted into money or specific property or services;</li> <li>• property that is primarily for use within, or as part of, a gaming platform, an affinity or rewards program or a similar platform or program; or</li> <li>• property that is prescribed property.</li> </ul> <p>Currently, no property is prescribed.</p> <p>Since a virtual payment instrument is limited to property, it would not include anything that is considered to be money for purposes of the GST/HST. As a result, a virtual currency (such as a Bitcoin) that meets this definition qualifies as a financial instrument for GST/HST purposes, meaning that suppliers/users are not required to charge and collect GST/HST on supplies or the use of virtual currency. The supply, use or exchange of a token that qualifies as a virtual currency would generally be GST/HST exempt (although it could be zero-rated in limited circumstances when dealing with non-residents and other qualifying conditions are met). Accordingly, suppliers of virtual instruments would generally not be entitled to recover the GST/HST applicable on related costs as an input tax credit.</p> <p>The same treatment would be expected to apply for QST purposes.</p> <p>In general, the supply of a virtual currency would not be expected to be subject to PST.</p>

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## Direct Tax

Question	Answer
<b>General overview</b>	<p>The Colombian tax system is mostly focused on the regulation of profits generated from traditional activities and, thus, has not issued any specific laws in relation to the taxation of cryptocurrencies. However, since the arrival of cryptocurrencies, the Colombian Tax Office, the Tax Office (DIAN), has been discussing the nature of this figure. According to Ruling 901303 of 2021, which confirms a series of Rulings issued since 2016, cryptocurrencies are intangible assets held by an individual that are part of his or her equity. Therefore, when a cryptocurrency is sold, an income is being obtained, which is subject to income tax in Colombia.</p> <p>In addition, as for non-residents, the sale of a cryptocurrency is taxed in Colombia only if the cryptocurrency is located in the country. However, it is not clear what is understood by a cryptocurrency located in the country, as the Tax Office does not specify.</p> <p>Some matters addressed by DIAN in respect to the taxation of digital assets for individual users are:</p> <ol style="list-style-type: none"> <li>1) The user is obliged to submit income tax return and must report the capital or ordinary gain if any arising from the sale of Cryptocurrency. Capital gain if treated as fixed asset held for 2 years or more or ordinary rate if treated as inventory, or fixed asset held for less than 2 years. Capital gain or ordinary income tax to be apply over net taxable income (sale price, which cannot be lower than 85% of the asset's FMV minus the tax basis). Capital gain would be 10% if the cryptocurrencies were fixed assets and held for at least 2 years otherwise a 31% would apply for FY 2021 (ordinary tax rate).</li> </ol> <p>Other requirements provided by DIAN in respect to the taxation of digital assets for corporate users are:</p> <ol style="list-style-type: none"> <li>1) The cryptocurrencies that the taxpayer receives in exchange for goods or services, specifically mining activities) take as basis the value of the goods or services. If there is any gain or loss arising from the exchange rate of the value between acquisition date and December 31st, such gain or loss would have no tax impact until it is effectively realized (i.e. the cryptocurrency is sold).</li> <li>2) The taxpayer must report the cryptocurrency as an intangible asset on its income tax return. Once the cryptocurrencies are sold, gain would be subject to capital gain if the cryptocurrency is a fixed asset held for 2 years or more. Otherwise, the sale will be taxed as ordinary income (31% for FY 2021).</li> </ol> <p>Subsequently, the Tax Office, under Ruling 20436 of 2017, issued the issue of mining activities in Colombia. Mining activities are the operations of blockchain or tracking transactions of cryptocurrencies in which operators receive cryptocurrencies as a return. DIAN considered that such activities are services and, consequently, the cryptocurrencies are deemed as income in kind, derived from the aforementioned. DIAN established that if someone is to receive an income or remuneration for a service, it should be taxed with income tax.</p>



# Colombia

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>The Colombian Tax Office issued under Ruling 20436 of 2017, a guidance on VAT/GST on trading of digital assets/crypto currencies. It was stated that the exchange of cryptocurrency as for good/service or for free would not trigger VAT as cryptocurrencies are intangible assets not related to intellectual property and, therefore, out of VAT scope. However, if the services or goods being paid with cryptocurrencies are subject to VAT, consideration should be subject to this tax (Unified Ruling 003 of 2001, the VAT is triggered for each of the goods or assets that are exchanged - if the good or service is vatable).</p> <p>The Colombian Tax Office states that is likely to be looking at the crypto space more closely in the near future, however we have not yet observed a growing level of tax audit or investigation activity beyond the mentioned above.</p>

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# Denmark

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Under Danish tax law:</p> <ul style="list-style-type: none"> <li>• Danish tax treatment on crypto is new and still developing and very complicated.</li> <li>• There have been issued guidance from the Danish tax authorities on the tax treatment and there have also been published tax rulings on specific crypto transactions.</li> <li>• Transactions with crypto follows as a main rule the realisation principle as stated in the State Tax Act.</li> <li>• Tax rates can for individuals be above 51%</li> <li>• Losses can be ring fenced and can as a main rule not be offset against other trades. In addition, losses can have lower tax value than gains</li> <li>• Documentation requirements are extensive and the Danish tax authorities require documentation for acquisitions and disposals</li> </ul> <p>There have not been any changes since last year but the tax landscape on crypto is still developing and any concrete transaction must be assessed on a case-by-case basis.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Under Danish law:</p> <ul style="list-style-type: none"> <li>• transactions concerning traditional currencies (including payment tokens) - VAT exempt, as per local law, local case law, EU law and EU case law</li> <li>• transactions concerning bitcoin - VAT exempt, as per local law (based on local case law, based on EU case law – case C-264/14)</li> <li>• transactions concerning other non-traditional currencies (e.g. fiat, utility/security tokens) – no availability.</li> </ul> <p>There have not been any changes since last year and we are not aware of any envisaged changes in the near future.</p>

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## Direct Tax

Question	Answer
<b>General overview</b>	<p>On June 8, 2021, the head of the Ministry of Economy presented to the Legislative Assembly the "Bitcoin Law", this bill was sent to the Financial Commission for its study, after the analysis, the Financial Commission issued a favorable opinion and subsequently the Bitcoin Law (hereinafter referred to as "Btc Law") was approved on June 9, 2021. Below are the most relevant aspects contained in the Btc Law.</p> <p><b>Purpose of the Law</b> The purpose of the Btc Law is to regulate bitcoin as an unrestricted legal tender with unlimited release power in any transaction and any title that public, private natural or legal person require to carry out.</p> <p><b>Exchange rate</b> The exchange rate with respect to the United States Dollar ("USD") will be freely established by the market; additionally, it is established that all prices may be expressed in bitcoin. Btc Law establishes that the obligations in money expressed in USD prior to the Btc Law may be paid in bitcoin.</p> <p><b>Obligated subjects</b> The Btc Law establishes that all economic agents must accept bitcoin as a form of payment when required by someone who acquires goods or services. The term "economic agents" is not expressly defined in the Btc Law, notwithstanding the foregoing, the Competition Law offers (for the purposes of that law) the following definition of economic agent: "an economic agent is considered to be any natural person or legal, public or private, directly or indirectly engaged in a lucrative economic activity or not"</p> <p><b>Excluded subjects</b> Based on the provisions of the Btc Law, those who, due to notorious facts do not have access to technologies that allow transactions in bitcoin, are excluded from the obligation to accept bitcoin as a form of payment. Additionally, it is established that the State will promote the necessary training and mechanisms so that the population can access transactions with bitcoin.</p> <p><b>Tax &amp; accounting implications</b> As established in Btc Law, bitcoin may be used to pay all tax obligations; additionally, it is established that "exchanges" in bitcoin will not be subject to capital gains tax; and with regard to accounting, it is established that the USD will continue to be used as reference currency.</p> <p><b>State Implications</b> The Btc Law establishes that the state must provide alternatives that allow users to carry out transactions in bitcoin, as well as have automatic and instant convertibility from bitcoin to USD when required.</p> <p>The limitations and operation of the convertibility mechanisms will be defined in the regulations issued by the Central Reserve Bank and the Superintendency of the Financial System. Likewise, it is established that the Executive Branch must create the necessary infrastructure for the application of this law. The Btc Law establishes that before the entry into force of the law, the State will guarantee through a trust in the Development Bank of El Salvador (BANDESAL) the automatic and instantaneous convertibility of bitcoin to USD. The Bitcoin Law was published in the Official Gazette on June 9, 2021 and entered into force on September 2021.</p>



# El Salvador

## Indirect Tax

Question	Answer
General overview	There is no VAT/GST regime in El Salvador.

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## Direct Tax

Question	Answer
<b>General overview</b>	<p>The French Supreme Court stated that a crypto-asset should be treated as an intangible movable property (CE, 26/04/2018, n° 417809). From a tax standpoint, corporate investors and individual investors are not subject to the same rules.</p> <p><b>Tax regime - Corporate entities :</b> The French Tax Code does not expressly address the situation in which the investor is a corporate entity. Then, in the absence of specific rules, the general tax rules applicable to corporate entities should apply. More precisely, as crypto-assets are treated as intangible assets, corporate entities are required to value them at the end of each year. Any positive variation in inventories is subject to corporate income tax at standard tax rate, at the time of the exchange against another crypto-asset or Fiat.</p> <p><b>Tax regime – Individuals :</b> The tax treatment applicable to individuals depends on whether or not the sale of crypto-assets is made on a regular basis and qualifies as a professional activity (case-by-case analysis). As from January 1st 2019, sales of crypto-assets made on a purely occasional basis by a French taxpayer are subject to French personal income tax at a global tax rate of 30% (12.8% of income tax and 17.2% of social levies). Taxable transactions include the exchange of crypto assets against FIAT money or goods and services. The exchange of a crypto-asset against another crypto-asset is not subject to tax. On the opposite, the sale of crypto-assets made on a regular basis is treated as a business income (“bénéfices industriels et commerciaux – BIC”) and subject to personal income tax at progressive tax rates (from 0% to 45% in 2021) and to social levies (17.2%). As an exception, the sale of crypto-assets obtained as consideration for the taxpayer's participation in a mining activity are subject to personal income tax as non-business income (“bénéfices non commerciaux – BNC”).</p> <p><b>Regulatory rules – Crypto Platforms :</b> From a legal standpoint, digital asset service providers (DASPs – in French “Prestataire de services sur actifs numériques”, PSANs) that offer certain services related to crypto asset investment must, since December 19, 2020, be registered with the French Financial Market Authority (“AMF”) in order to offer the services of custody of crypto-assets or access to crypto-assets and purchase/sale of crypto-assets against legal tender. On a voluntary basis, any digital asset service providers which does not fall within the above-mentioned registration rules, can claim for the approval of the Autorité des marchés financiers and thereby gain more legitimacy in the eyes of investors. At European level, Members States have just agreed on the proposal (DAC 7) amending the Council Directive (2011/16/EU) on administrative cooperation in the field of taxation (DAC) to extend automatic exchange of information to digital platforms (EUROPE B12607A18), the European Commission is already preparing the next revision (DAC 8) to include crypto-assets and e-money. Please note that from a French tax perspective, FTA could require some information to platform having a PSAN status.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>As a general principle, the exchange of crypto assets against FIAT currency or against other crypto-assets is exempt from VAT (CJEU, 10/22/2015, C-264/14 “Hedqvist”), whereas the exchange of crypto-assets against goods and services is subject to VAT. Concerning the investor of an ICO (“Initial Coins Offering”), a distinction must be made according to whether: (i) the token gives the investor the right to dividends or decision-making power like a classic financial security (Security Token), then the operation is exempt from VAT; (ii) the token gives the investor the right to get in the future a good or a service (Utility Token). For Utility Token, the operation is: (i) subject to VAT if the good or service is determined at the time of the Token emission or (ii) not immediately subject to VAT if the good or service is not determined at the time of the Token emission, the counterpart being by definition hypothetical.</p>

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# Germany

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The German tax system is one of the most complex regimes in German and international law. It is based on very few principles but a complex system of principles and exceptions.</p> <p>For the German crypto taxation, the regime has no specific rules for this new economic field. However, the tax system has general rules that can apply. At this point of time the direct taxation of crypto assets in Germany is in a very early stage. Just recently, on the 17th June 2021, the Federal Ministry of Finance has issued a first draft on the direct taxation of virtual currencies and tokens. Until then there were no official statements on federal level on this matter but only very diversified statements of single tax authorities in case by case considerations.</p> <p>Due to the draft status at this point of time it is not clear which guidance will be part of the final letter by the Ministry. There is a lot of critics from the industry and the tax practice. The most pressing topics are:</p> <ol style="list-style-type: none"><li>1. The rebuttable presumption for mining to be a commercial activity</li><li>2. The taxation of staking</li><li>3. The extension of the speculation period from one year up to 10 years for coins and tokens that generate further income</li><li>4. The extensive taxation of airdrops as "other income"</li><li>5. The non-inclusion of statements regarding equity-tokens</li><li>6. The non-existent statements for how to declare crypto gains/losses to the tax authorities</li></ol>

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# Gibraltar

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Gibraltar is a crypto-currency friendly jurisdiction and was the first territory in the world to regulate Distributed Ledger Technology with a DLT framework effective from 1 January 2018. Since then Gibraltar has seen a steady increase in crypto related activity. In PwC Global Crypto Hedge Fund Report 2021, Gibraltar was in the top three jurisdictions in the world for locations of crypto hedge funds.</p> <p>Despite the receptive and flexible approach to crypto-currency in Gibraltar, no specific legislation or guidance has been issued on the tax treatment of crypto assets. As a result, the tax treatment of crypto transactions needs to be considered under general principles. With some limited exceptions, broadly speaking, tax is charged on income accruing in or derived from Gibraltar. The starting point for determining the amount of tax payable in Gibraltar is the accounting profit determined by applicable accounting standards. Consequently, in the absence of specific tax guidance, the accounting treatment of crypto transactions will be influential in determining the tax treatment.</p> <p>Unlike many other jurisdictions, there is no Capital Gains Tax in Gibraltar. This means the question of whether the crypto related activity constitutes a taxable trade becomes crucial in determining whether a tax liability will arise. In many instances it is an “all or nothing” test, if the transaction is classified as capital rather than a trade, no tax liability will arise.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	There is currently no VAT/GST regime in Gibraltar.

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## Direct Tax

Question	Answer
<b>General overview</b>	<p><b>Introduction</b></p> <p>Guernsey does not currently have any specific laws in place with regards to the regulation or taxation of cryptocurrencies, nor has any guidance been released. It is however worth noting that the Guernsey Financial Services Commission (GFSC) views the risks of fraud associated with cryptocurrencies to be high and will take a cautious approach in approving Initial Coin Offerings (ICOs). Such applications will be assessed on a case-by-case basis.</p> <p><b>Direct Tax</b></p> <p>No guidance has been issued with reference to direct taxation of cryptocurrency.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p><b>Indirect Tax</b></p> <p>Guernsey does not operate a VAT or GST regime, nor does it levy any stamp duty.</p>

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# Hong Kong

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The Hong Kong tax system is territorial in nature, where only profits arising or are derived in Hong Kong are liable to Hong Kong profits tax. It is characterized by key features such as not having a GST/VAT regime and no capital gains tax, and generally does not tax dividend income or apply withholding tax on dividends and interest.</p> <p>While no specific laws are in place on the taxation of cryptocurrencies, the Hong Kong Inland Revenue Department ("IRD") issued Departmental Interpretation and Practice Notes ("DIPN") 39 in March 2020, which provides guidance on the digital economy, electronic commerce and digital assets: <a href="https://www.ird.gov.hk/eng/pdf/dipn39.pdf">https://www.ird.gov.hk/eng/pdf/dipn39.pdf</a>.</p> <p>DIPNs do not have legally binding force on taxpayers, however do provide an indication of the position likely to be taken by the IRD.</p> <p>Some clarifications provided by DIPN 39 in respect to the taxation of digital assets are:</p> <ol style="list-style-type: none"> <li>1) Profits tax treatment of digital assets depends on their categorization (payment token, security token or utility token).</li> <li>2) The proceeds of an Initial Coin Offering are taxed by following the attributes of the token that is issued. If securities tokens are issued, proceeds would generally be considered to be capital in nature. If utility tokens are issued, proceeds would generally be taxable if found to be sourced in Hong Kong.</li> <li>3) Digital assets held for long term investment purposes may be considered capital in nature, in which case their disposal would result in capital gains (which are not taxable in Hong Kong). Whether digital assets are held for investment purposes or as trading stock depends on intention at the time of acquisition.</li> <li>4) Cryptocurrency received as employment income should be reported at their market value and subject to the same salaries tax treatment as regular remuneration.</li> </ol> <p>DIPN 39 signifies that the IRD is likely to be looking at the crypto space more closely in the near future, however we have not yet observed a growing level of tax audit or investigation activity.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	There is no VAT/GST regime in Hong Kong.

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# Hungary

## Direct Tax

Question	Answer
<b>General overview</b>	<p><b>Personal income tax:</b></p> <p>A recent change to the Hungarian personal income tax introduced a detailed set of rules for the determination of the income from crypto transactions. These rules are only applicable to private individuals, and not to corporations.</p> <p>The rules were accepted by the Hungarian Parliament in June 2021. They will enter into force in January 1 2022. If the income was not declared yet, the individual may apply these rules for the income earned in 2021 or earlier. That is why the new rules are somewhat like an amnesty.</p> <p>The income is determined yearly. The individual needs to deduct the yearly cost incurred from the yearly gross revenue. Thus, according to the rules, the income is not calculated by transactions but yearly based on the positive and negative cash flow.</p> <p>The losses can be carried forward for two additional tax years. And any cost incurred in 2016 or later may be declared in 2021 – thus very little cost is 'lost' in the tax calculation to the investors.</p> <p>The tax rate is 15%, and there is no additional tax or social security charge. It means that the effective tax rate is reduced by nearly half by the new regulation.</p> <p>The income must be calculated by the individual on a yearly basis and must be paid until the deadline for the submission of the yearly tax return (20 of May 2022 for income earned in 2021).</p> <p>The income from crypto transactions include the profit from capital gains or mining or any other transaction with crypto assets.</p> <p><b>Corporate tax:</b></p> <p>The tax authority issued a non-binding ruling in the past that companies accepting crypto assets as payment should treat them as receivables. This ruling is not public, nonetheless several investors and tax advisors have the copy of the ruling.</p> <p>No other guidance is publicly available.</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p>There is no specific regulation or guidance in space about crypto assets.</p> <p>As Hungary is part of the EU, Judgment in case C-264/14 of the EU court is likely to be applicable in Hungary. Based on this decision, cryptocurrency should be treated as currency or bank notes – at least from a VAT perspective. As such, the acquisition, sale and exchange of payment tokens should be exempted from VAT.</p> <p>Nonetheless, certain requirements based on Hungarian VAT rules cannot be followed when a transaction is paid for by cryptocurrency – such as indicating the proper amount of VAT on the invoice.</p>

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# Ireland

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The Ireland tax system is a worldwide tax system, where a company or individual who is Irish resident for tax purposes is taxable on their worldwide income with a foreign tax credit available for foreign tax suffered in some circumstances.</p> <p>While there are no specific rules in place on the taxation of cryptocurrencies, Irish Revenue have released limited guidance (<a href="https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-02/02-01-03.pdf">https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-02/02-01-03.pdf</a>) on the taxation of cryptocurrencies which confirms that the treatment of income from/charges made in connection with activities involving cryptocurrencies will depend on the nature of the activities and the parties involved. This guidance covers at a high level the direct and indirect tax implications.</p> <p>There have not been any new developments with regards to the taxation of crypto currency in the past year and to our knowledge there are no developments expected in the coming year.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>It is Irish Revenue's view that Bitcoin and other similar cryptocurrencies are regarded for VAT purposes as 'negotiable instruments' and exempt from VAT in accordance with Paragraph 6(1)(c) of the VAT Consolidation Act 2010. 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 (i.e. buys and sells cryptocurrencies acting as the owner of the virtual currency).</p> <p>There are no indirect tax developments in the past year and to our knowledge there are no new developments expected in the coming year. However, due to the evolving nature of this area (e.g. NFTs), and in light of the limited scope of Revenue's published position, impacted companies should ensure that local advice is received in advance of making any supplies in Ireland, as it may be the case that a Revenue submission is required.</p>

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## Direct and Indirect Tax

Question	Answer
<b>General overview</b>	<p>Italian tax law does not provide specific legislation for cryptocurrencies or related transactions. The Italian tax authority released several tax rulings addressing specific cases. Unfortunately, clarifications in the field of indirect taxation in relation to digital assets and cryptocurrencies' world are very limited. Please see below.</p> <p>The qualification of the crypto assets remains uncertain largely depending on the specific features of each asset.</p> <p>The first ruling published in 2016 (please refer to the resolution no. 72/E/2016) referred only to bitcoin transactions and leverages on the European Court of Justice position. Accordingly, it qualifies bitcoin as foreign currencies and extends to bitcoin the Italian tax rules provided for this case. In the case of sale/purchase of bitcoins made by a Company carrying out an exchange service between traditional currency against units of the virtual bitcoin currency and vice versa, the exchange margin was considered as VAT exempt with no right to deduction). The tax treatment applicable pursuant to this interpretation seems reasonable to be generally applied to the payment tokens.</p> <p>A second ruling published in 2018 (please refer to the resolution no. 14/2018) have dealt with the tax issues generated by the issuance through an initial coin offering and the assignment of utility tokens which seems to be qualified as forward contracts from the direct taxation standpoint. The Italian tax authorities have clarified that the VAT treatment of ICO (Initial Coin Offering) of utility tokens should be similar to the VAT treatment of vouchers (i.e., out of scope until the underlying supply is carried out). Please note that, at the time of this reply, the voucher directive was not yet implemented in Italy (i.e. difference between single purpose and multi purpose voucher). As regards the exchange of utility tokens, such a reply confirms what stated in the above mentioned resolution no. 72/E/2016.</p> <p>Finally, via the ruling reply no. 110/2020, the Italian tax authorities have dealt again with the VAT treatment of utility tokens' ICO reaching the conclusion that the issuer of the utility token is carrying out a supply of services consisting in allowing the buyer to access the network and starting its activity as validator and that, in the issuance phase, the utility token do not have the nature of virtual currency. Consequently, the activity of the issuer was considered by the Italian tax authorities as a taxable service subject to the standard rate upon the payment of the fee. Indeed, as mentioned, in this case, the Italian tax authorities have categorically excluded the nature of "means of payment".</p> <p>The Italian tax system does not provide rules or administrative guidelines about security tokens as well as the more recent developments of the crypto ecosystem (e.g. De.Fi systems, NFT's, Airdrops).</p> <p>No clarifications were provided also with reference to mining activities or blockchain transaction validation. Therefore, it is uncertain whether the Italian tax authorities (if no legislative action will be taken in the meanwhile) consider such activities falling under the definition of "economic activity" for VAT purposes.</p> <p>Although legislative provisions/structured set of guidelines would be very welcome, we are not aware of noteworthy developments in the upcoming future.</p>

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# Japan

## Direct Tax

Question	Answer
<b>General overview</b>	<p>A domestic corporation in Japan is taxed on its worldwide income, including foreign branch income, while a foreign corporation is taxed only on its Japan-source income.</p> <p>Permanent resident taxpayers are taxed on their worldwide income. Non-resident taxpayers are taxed only on their Japan-source income. Non-permanent resident taxpayers are taxed on their income other than foreign-source income (in particular, potentially, on certain capital gains) that are not remitted into Japan plus potentially part of their foreign-sourced income that is paid in or remitted to Japan.</p> <p>Income Tax Law and Corporation Tax Law prescribe the taxation of cryptocurrencies, and the National Tax Agency in Japan also provides Q&amp;A regarding certain taxations of cryptocurrencies, mainly on taxations for permanent resident taxpayers and domestic corporations. Clear guidelines have not yet been provided such as the definition of "Japan-source income".</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Consumption tax is levied when a business enterprise transfers goods, provides services, or imports goods into Japan.</p> <p>Consumption Tax Law prescribes that the consumption tax is not imposed on cryptocurrency transactions.</p>

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## Direct Tax

Question	Answer
<b>General overview</b>	<p><b>Introduction</b></p> <p>There are no laws or regulations on Crypto-Currencies in Jersey. Whilst there is guidance published on the website of the Government of Jersey, this is minimal. This guidance covers the following:</p> <p><b>Direct Tax</b></p> <p>Cryptocurrency mining - Cryptocurrency mining on a small or irregular scale will not generally be regarded as a trading activity. The act of mining alone will not make a taxpayer liable to tax. Any costs associated with mining will not generally be deductible as expenses of trading. There may be exceptions to this treatment where mining activities are accompanied by trading in cryptocurrencies on a sufficiently commercial scale that they would be regarded as trading. In such cases, it may be advisable to seek professional advice and where doubt remains a submission may be made to the Jersey Taxes Office.</p> <p>Exchanging cryptocurrencies - Businesses exchanging cryptocurrencies to/from conventional currencies or other cryptocurrencies will only be liable to income tax where the features of trading are met. Occasional transactions will have no taxable profit/loss arising.</p> <p>Using cryptocurrencies - The profits/losses of a business engaged in cryptocurrency transactions must be reflected in any accounts and will be taxable under general Jersey income tax rules. The transactions should be converted to the currency of the accounts in accordance with existing tax rules applying to conventional currencies.</p> <p>Given the emerging nature of cryptocurrencies, further guidance on the tax treatment may be issued as appropriate.</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p><b>Indirect Tax</b></p> <p>Jersey has a GST regime in place with a GST rate of 5%. The value of any supply of goods or services which are bought with cryptocurrency must be converted to sterling for GST purposes at the date of transaction.</p> <p>Income received by GST registered entities from cryptocurrency mining activities will generally be regarded as outside the scope of GST on the understanding that the activity does not constitute an activity "in the course or furtherance of business".</p> <p>No GST will be due where cryptocurrencies are exchanged for sterling, other foreign currencies, or other cryptocurrencies.</p>

# Korea

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Under the Korean tax system, Korean resident corporations and individuals are taxed on their worldwide income whereas non-resident corporations and non-resident individuals are taxed only to the extent of their Korean-source income.</p> <p>On July 22, 2020, the Ministry of Economy and Finance released the proposal to enact a new taxation on the income derived by a Korean resident individual &amp; non-resident (individual &amp; corporation) from the transfer (sale or exchange) or lease of virtual assets (e.g., bitcoins). On December 2, 2020, the National Assembly approved the proposal to amend the tax law, and the amended tax law shall be effective for transfers or leases of virtual assets on or after January 1, 2022. The effective date has been further postponed to January 1, 2023 as approved by the National Assembly on December 2, 2021.</p> <p>In the case of a Korean resident company, income derived by the Korean resident company from the transfer (sale or exchange) or lease of virtual assets (e.g., bitcoins) has been subject to corporate tax, regardless of the new legislation, because gross income for corporate tax consists of any gains, profits, income from trade and commerce, dealings in property, rents, royalties, and income derived from any transactions carried on for gain or profit under the existing corporate income tax law.</p> <p>The amended tax law has expanded the scope of taxation whereby income derived by a Korean individual resident from the transfer or lease of virtual assets would be classified as 'other income' subject to 22% income tax rate (including local income tax). In addition, income derived by a non-resident individual or a foreign corporation from the transfer or lease of virtual assets (including the withdrawal of the assets stored or managed by a virtual asset service provider) would be classified as 'Korean source other income' subject to Korean withholding tax under Korean tax laws. The withholding tax would be imposed at the lower of 11% (including local income tax) of the total proceeds received from the transfer, lease or withdrawal of the assets or 22% (including local income tax) of gains from the transfer, etc. (e.g., the proceeds received minus acquisition cost).</p> <p>In order to claim a tax exemption on the income from virtual assets under an applicable tax treaty between Korea and the country where a non-resident individual or foreign corporation is tax resident, the non-resident individual or foreign corporation should file an application for the tax treaty exemption (together with tax residence certificate) with a Korean tax authority via a withholding agent according to the Korean corporate income tax law.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	There is no clear provision for VAT treatment on virtual assets under Korean tax law, but Ministry of Economy and Finance (MOEF) has issued a tax ruling, interpreting that a supply of virtual assets is not regarded as a VAT-taxable supply of goods (MOEF VAT Department-145, 2021.03.02)

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# Liechtenstein

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Corporations (including Foundations and Associations) are generally taxed on their worldwide income at a rate of 12.5% (flat-rate tax). Income attributable to foreign permanent establishments as well as dividends and capital gains are generally tax exempt (anti-abuse rules apply to participation income). With some exceptions, taxable profit generally corresponds to the accounting profit before tax. Liechtenstein does not levy withholding tax on dividends, interest or royalties. Corporations may however be subject to stamp taxes (issuance stamp tax and securities transfer tax).</p> <p>Individuals are generally taxed based on their worldwide income and wealth. Taxable income consists of all types of employment and pension income while investment income (e.g. dividends, interest, capital gains or rental income) is taxed on a lump-sum basis, i.e. covered by a so-called standardized return on net assets included in the taxable income.</p> <p>While no specific laws are in place on the taxation of digital assets or participants in the digital economy and electronic commerce, the tax treatment of income from such activities can be derived from existing tax rules supplemented by guidance in relation to the tax return filing (namely guidance for legal persons and individuals on the tax return).</p> <p>It should also be mentioned that on 1 January 2020 the "Blockchain Act" entered into force in Liechtenstein. It provides comprehensive regulation of the token economy by regulating civil law issues in relation to client protection and asset protection and adequate supervision of the various service providers in the token economy. In addition, there are measures to combat money laundering by making service providers subject to anti-money laundering and combating the financing of terrorism rules. The Blockchain Act does not affect or change existing tax regulations since the underlying taxation principles remain unchanged and accordingly apply to crypto income as well.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	Please refer to Switzerland Section as the VAT regimes are the same.

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# Luxembourg

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Luxembourg direct tax system is based on a worldwide tax model that taxes its resident taxpayers on their worldwide income and non-resident taxpayers on Luxembourg-source income only.</p> <p>Luxembourg has set itself the objective to become a frontrunner in the development of distributed ledger technologies. In this context, Luxembourg has not introduced specific tax legislation applicable to cryptoassets but Luxembourg taxpayers exposed to this asset class can leverage from existing favorable tax laws that can be transposed to cryptoassets including:</p> <ul style="list-style-type: none"> <li>• the tax neutral issuance of certain security tokens*;</li> <li>• an exemption of dividends, capital gains and net wealth tax on certain security tokens held by Luxembourg taxpayers*;</li> <li>• the absence of withholding tax on dividends distributed by Luxembourg companies to non-resident taxpayers on certain security tokens*;</li> <li>• the absence of withholding tax on interest and royalty payments made by Luxembourg taxpayers to non-resident taxpayers on certain tokens *;</li> <li>• an exemption of income and capital gains on certain cryptoassets through the personal wealth management company for individual tax payers;</li> </ul> <p>In parallel, the Luxembourg direct tax authorities have issued an Administrative Circular on 26 Jul 2018 in which they have clarified the direct tax treatment of virtual currencies in Luxembourg including notably that:</p> <ul style="list-style-type: none"> <li>• virtual currencies are not considered as currencies but as intangible assets for Luxembourg direct tax purposes;</li> <li>• payments made in virtual currencies do not affect the tax treatment of the underlying transactions in Luxembourg;</li> <li>• long-term capital gains derived by individual taxpayers from the disposal of virtual currencies should not be subject to income tax in Luxembourg.</li> </ul> <p>Finally, the recent extension by the CSSF of the licence granted to a Luxembourg alternative investment fund manager to virtual assets investment strategies is expected to open the door of Luxembourg Alternative Investment Funds ("AIFs") to cryptoassets. Luxembourg AIFs and their investors are generally not subject to tax in Luxembourg and therefore, offer a new perspective to asset managers willing to offer cross-border tax neutral cryptoassets-exposed products to their investors.</p> <p>* Subject to certain conditions to be confirmed on a case-by-case basis.</p>



# Luxembourg

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Management services provided to qualifying Alternative Investment Funds (AIFs) or regulated funds investing in cryptocurrencies assets should in principle benefit from a VAT exemption in Luxembourg. Depending on the nature of the cryptocurrencies (e.g. tokens with an underlying tangible asset), the fund could potentially be entitled to recover input VAT incurred on its costs, such position would need to be analysed on a case by case basis.</p> <p>The VAT treatment applicable to transactions related to cryptocurrencies usually depends on the specific facts and circumstances of the case and an analysis is usually recommended. It should be noted that, in principle, no VAT or registration duties should be applicable in Luxembourg on the realization or payout of cryptocurrencies. In their circular letter n° 787 dated 11 June 2018, the Luxembourg VAT Authorities have indicated that cryptocurrencies should generally benefit from the same VAT exemption as the one applicable to "traditional currencies" if the purpose of the cryptocurrencies is to be used as a means of payment and is accepted as such by some operators (article 135 § 1 e) of the VAT Directive / article 44 § 1 c) seventh indent of the Luxembourg VAT law). The circular letter from the Luxembourg VAT Authorities is in line with the CJEU case Hedqvist, C-264/14, 22/10/2015).</p> <p>The Luxembourg VAT Authorities did not issue any guidance on the VAT treatment applicable to mining operations nor on the issuance/sale of tokens within the framework of an Initial Coin Offering (e.g. payment tokens, security tokens, utility tokens).</p>

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# Malaysia

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Malaysia operates a unitary tax system on a territorial basis. Tax residents of Malaysia, whether corporate or individuals, are taxed on income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. However, resident companies (except for those carrying on banking, insurance, sea or air transport operations) and resident individuals are exempted from income tax on foreign sourced income remitted to Malaysia. It was proposed during 2022 Budget that foreign sourced income remitted to Malaysia by resident companies and resident individuals will be subject to income tax effective from 1 Jan 2022 onwards.</p> <p>There is no capital gains tax regime in Malaysia. However, there is real property gains tax, which is a variation of capital gains tax imposed on gains arising from the disposal of real properties (i.e. land and buildings) and shares in real property companies.</p> <p>As at to-date, there is no specific guideline issued by the Malaysian tax authorities on the income tax treatment for crypto activities or transactions. In this regard, detailed analysis would need to be carried out for each crypto activities or transactions based on the existing tax laws to determine the tax implications such as whether the gains or losses arising from the crypto activities or transactions are revenue in nature that will be subject to income tax in Malaysia; different types of token might have different tax considerations in view of their underlying features (e.g. securities token vs utilities token); when is the crystallization of the taxable event if the gains are subject to income tax; etc.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>There is no VAT/GST regime currently in Malaysia, however, there is a Sales Tax and Service Tax (SST) regime in place where Sales Tax applies to the manufacture and importation of taxable goods, and Service Tax applies to the provision of prescribed taxable services.</p> <p>In respect of Sales Tax, as cryptocurrency is unlikely to be classified as goods, the Sales Tax law would not be applicable.</p> <p>In respect of Service Tax, the provision of digital services (including the provision of electronic medium that allows the suppliers to provide supplies to customers) is a prescribed taxable service and is subject to service tax. The definition of “digital service” is “any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated”.</p> <p>To date, it is not clear, and there has not been any guidance issued by the authorities on whether the provision of digital assets (such as digital currency, payment tokens, security tokens or utility tokens) would be considered to be the provision of a digital service or any other taxable service.</p>

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# Mexico

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The Mexican tax system is in principle a worldwide income tax regime whereby Mexican tax resident entities and individuals are subject to Mexican corporate income tax on all their income, regardless of the wealth source.</p> <p>An argument can be made that the Mexican tax system is in fact hybrid, since non-residents without a permanent establishment in the country are subject to Mexican corporate income tax when they derive items of income which are considered to have wealth source in Mexico, thus providing with a territorial taxation system for non-Mexican residents.</p> <p>As of today, there are no tax regulations nor guidelines in connection with the taxation of cryptocurrencies and the Mexican Central Bank has sustained in several instances that said cryptocurrencies are not a recognized or regulated payment methods, whilst also not expressly restricting or outlawing them.</p> <p>Notwithstanding the foregoing, under the Mexican Financial Technology Institutions Law ("FINTECH Law") defines cryptocurrencies as digital assets, whilst the Mexican Anti Laundry Law includes in its vulnerable activities list, operations carried out with cryptocurrencies, reasons for which the Mexican Tax Authorities issued a communique on September 2019, indicating that the exchange of virtual assets as vulnerable activities as of September 19, 2019.</p> <p>In connection with the foregoing, the FINTECH Law provides that the representation of value electronically registered and used among the public as a means of payment for all types of legal acts and whose transfer can only be carried out through electronic means is considered a virtual asset. In no case shall virtual currency be understood as the legal tender in national territory, foreign currency or any other asset denominated in legal tender or in foreign currency.</p> <p>Pursuant to the Mexican Financial Standards (NIF C-22), a cryptocurrency is a unique digital asset that can only be transferred electronically and that is used as a means of payment or exchange or can be sold; for security bines and to avoid it being corrupted, its structure is based on encrypted codes (cryptography).</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	There is no VAT/GST regime in Mexico for cryptocurrencies.

# Netherlands

## Direct Tax

Question	Answer
<b>General overview</b>	<p>In the Netherlands no formal guidance has been published on the direct tax aspects of cryptocurrencies besides a general note that the regular tax rules are expected to be applicable. This means that for cryptocurrency activities, it should be determined on a case-by-case basis whether the activities constitute a business and whether Dutch Corporate Income taxes or Dutch Personal Income taxes (on the net income or on the value of the crypto's per January 1st) could be due on the activities.</p> <p>As the value of crypto's increased significantly and natural persons have been investing a large amount of money in crypto's in the Netherlands over the last few years, it could be the case that the Dutch tax authorities will be looking more into tax rules on cryptocurrencies in the future.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Although currently there is no formal guidance available with regard to the indirect taxation of services related to cryptocurrency in the Netherlands, possibilities exist to apply VAT exemptions for services related to cryptocurrency. Applying such VAT exemptions will have an impact on the input VAT recovery for entrepreneurs.</p> <p>A lower court in the Netherlands ruled early October 2021 that a bitcoin miner has a 75% right to recover input VAT. The case may be appealed by the Dutch tax authorities</p>

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# New Zealand

## Direct Tax

Question	Answer
<b>General overview</b>	<p>New Zealand income tax is imposed on the worldwide income of New Zealand residents, whether derived from New Zealand or overseas. Income of non-residents is also subject to income tax in New Zealand to the extent that it has a New Zealand source. New Zealand does not have a comprehensive capital gains tax regime and there are no gift, stamp or estate duties.</p> <p>While no specific laws are in place addressing the taxation of cryptoassets, the New Zealand Inland Revenue Department (<b>IRD</b>) published guidance on the tax treatment of various cryptoassets transactions in September 2020 (<a href="https://www.ird.govt.nz/cryptoassets">https://www.ird.govt.nz/cryptoassets</a>). The IRD has also released a number of binding rulings (which set out IRD's interpretation of how tax law applies to a particular arrangement, person or item of property) in respect of certain cryptoasset transactions.</p> <p>Some clarifications provided by the IRD with respect to the taxation of cryptoassets are:</p> <ol style="list-style-type: none"> <li>1. Cryptoassets are classified as a form of intangible property for direct tax purposes.</li> <li>2. In most cases, amounts derived from selling, trading or exchanging cryptoassets will be taxable due to a presumption that the cryptoassets have been acquired for the purpose of disposal.</li> <li>3. In most cases, cryptoassets received from mining will be taxable.</li> <li>4. Employers will need to account for either pay as you earn (PAYE) income tax or fringe benefit tax (FBT) in relation to cryptoassets provided to employees.</li> </ol> <p>Draft legislation was introduced into Parliament in September 2021 under which cryptoassets (as defined) will be excluded from New Zealand's financial arrangements tax rules (with effect from 1 January 2009).</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>A flat-rate 15% tax applies to goods and services consumed in New Zealand (GST). There is currently no technical interpretive guidance on the GST treatment of cryptoassets in New Zealand. However, a February 2020 GST policy issues paper ("the issues paper") proposes changes to the Goods and Services Tax Act 1985 (GST Act) to clarify the GST treatment of cryptoassets. Specifically, the issues paper outlines two main options with respect to the exchange of payment tokens for fiat currency:</p> <ol style="list-style-type: none"> <li>1. the exchange could be outside the scope of GST; or</li> <li>2. the exchange could be considered as a financial service, and therefore, exempt from GST.</li> </ol> <p>Submissions were also sought on the definition of a "cryptoasset" for GST purposes. Draft legislation was introduced into Parliament in September 2021 with the following effect:</p> <ol style="list-style-type: none"> <li>a) cryptoassets (as defined) will be excluded from GST (with effect from 1 January 2009);</li> <li>b) as the definition of "cryptoasset" requires fungibility, non-fungible tokens will be subject to the standard GST rules; and</li> <li>c) a GST-registered business that issues security tokens will be able to recover GST on the transactions costs (with effect from 1 April 2017).</li> </ol> <p>The final shape of the law may change following the submission process and Inland Revenue is expected to issue further guidance.</p>

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# Panama

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The tax system in Panama is territorial in nature, meaning that only activities performed within Panama are subject to Income Tax. Withholding tax on services paid to non-residents related to taxable income being earned in Panama and Capital Gains Tax on shares and stock (among others) which constitute taxable income in Panama are regulated through Tax Law.</p> <p>Having said that, there is no current regulation regarding cryptocurrencies in Panama. Considering this, the application to cryptocurrencies of the general tax regime is unclear at this time.</p> <p>Notwithstanding the above, in Panama the taxation of cryptocurrencies is under debate. A Project Law was issued last year (not publicly under analysis) and a new (different) one is expected to be issued in the upcoming months. Both are, in theory, up for discussion in the Legislative Branch of Government.</p> <p>There are no restrictions duly established by law. In fact, the activities carried out through this or another instrument of that category do not fall within the competence of the Superintendency of Banks of Panama (SBP) or the Superintendency of the Securities Market of Panama (SMV) (these Regulators only emphasize that cryptocurrencies are not regulated in Panama and that therefore there is a risk in using these cryptocurrencies). However, such Regulators don't prohibit cryptocurrencies and remain currently neutral.</p> <p>In any case, if income is being earned as a result of these activities within Panama, such income could be subject to income tax. Also, if a fee is being charged by a non-resident, the service is related to the generation of taxable income by the recipient in Panama and such recipient wants to consider the payment deductible for income tax purpose, withholding tax could be applicable.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>The tax system in Panama is territorial in nature, meaning that only activities performed within Panama are subject to VAT. However, as mentioned above there is no current regulation for cryptocurrencies in this matter.</p> <p>In any case, if a service is provided within Panama, VAT would in principle be applicable</p>

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# Philippines

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The Philippines adheres to the principles of a democratic republican state with a presidential form of government. For 2020, the country's priority investment areas include all qualified manufacturing activities, including agro-processing; agriculture, fishery, and forestry; strategic services; healthcare and disaster risk reduction management services; mass housing; infrastructure and logistics, including LGU-PPPs; innovation drivers; inclusive business models; environment and climate change-related projects; and energy.</p> <p>In line with the foregoing, on 26 March 2021, the Philippine President signed into law Republic Act (RA) No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act. The law contains amendments to several provisions of the National Internal Revenue Code of 1997 ("Tax Code"), primarily on the reduction of the corporate income tax rate and the introduction of a new title on tax incentives.</p> <p>While there is no clear guidance yet from the Philippine tax authority (BIR) for the specific rules and regulations applicable to cryptocurrency (e.g., Bitcoin), businesses are expected to comply with the applicable filing and compliance requirements for the business. We note that an exchange or digital wallet operator is required to register as a virtual currency exchange which is considered as Remittance and Transfer Company in the Philippines.</p> <p>Further, other government agencies, like the Securities and Exchange Commission (SEC), has issued guidance treating cryptocurrencies as securities, while the Bangko Sentral ng Pilipinas (BSP) issued regulations on cryptocurrency exchanges. Also, cryptocurrencies and other digital assets are considered as property within the meaning of Anti-Money Laundering laws and regulations. The SEC has also advised that violators to the registration and disclosure requirements—where the virtual currencies offered are in the nature of a security—would be reported to the BIR so that the appropriate penalties and/or taxes can be assessed. If the BIR treats cryptocurrencies as properties or assets, the relevant tax consequences on the sale/transfer or exchange of such assets may apply.</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Please note that there is a pending legislation on the application of a 12% VAT on foreign digital services. House Bill No. 7425 seeks to impose 12% VAT on Digital Service Providers (DSPs), whether resident or non-resident, on their sales of goods or properties which are digital or electronic in nature and those electronically rendered services in the Philippines.</p>

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# Portugal

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The Portuguese tax system is based on the worldwide taxation principle. In what concerns the Personal Income Tax (PIT), Portugal has a schedular system and taxation will only occur regarding income referred on the schedules. Exemptions and tax reductions applicable to foreign source income are available for PIT purposes, and special residence regimes apply. In what concerns Corporate Income Tax (CIT) Portugal has exemption regimes applicable to certain domestic and foreign source income such as, in what concern companies or other corporate entities, the participation exemption regime applicable to dividend and capital gains.</p> <p>While no specific provisions are in place, the Portuguese Tax Authorities (PTA) issued one PIT ruling in 27 December 2016, which provides some guidance on the taxation of cryptocurrencies. This ruling is a non-binding ruling, except regarding the taxpayer that requested it, however, it does provide an indication of the position likely to be taken by the PTA.</p> <p>In said ruling the PTA stated that cryptocurrencies would not be technically considered as a currency since they have no legal tender within Portugal. Notwithstanding, since said cryptocurrencies can be exchanged by fiat currency and give rise to gains, said gains shall not be taxed in Portugal if they fall in the capital gains schedule, but shall be taxable when they qualify as business income. In the latter case, taxation of the income generated with cryptocurrencies would occur in Portugal at the general progressive rates regardless its source jurisdiction. No guidance exists regarding the calculation of the PIT cryptocurrency taxable income.</p> <p>Portuguese CIT resident taxpayers are subject to CIT regarding all they worldwide income. As such income derived from cryptocurrencies is subject to CIT of resident entities regardless of its source. No guidance was provided yet regarding CIT gains derived from crypto assets.</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Portugal is an EU Member State and, as such the Portuguese VAT follows the EU VAT directives.</p> <p>The PTA issued rulings that provide some guidance on the taxation of cryptocurrencies. Those are non-binding rulings nonetheless (except for the taxpayer who requested it). According to the PTA the exchange of cryptocurrency for fiat currency is considered a supply of services exempt under Article 9 (27) (d) of the Portuguese VAT code [Article 135 (1) (e) of the VAT Directive]. This understanding is in line with the European Court of Justice case-law.</p>

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# Saudi Arabia

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Saudi Arabia ("KSA") operates a dual Zakat / corporate income tax ("CIT") regime by reference to the nationality of the investors of Saudi companies, specifically GCC versus non-GCC investors.</p> <p>According to the KSA tax law and By-Law, KSA resident companies are subject to CIT at a rate of 20% on the profits attributable, directly or indirectly, to their non-KSA/non-GCC investors.</p> <p>KSA resident companies wholly owned by GCC Persons, either directly or via other GCC companies, are subject to Zakat instead of CIT. Zakat is a religious levy and is assessed on the KSA/GCC Persons' share of the KSA resident company's net wealth at a rate of 2.5778%, or at 2.5% on the share of the KSA company's adjusted profit for the year, whichever is higher.</p> <p>KSA resident companies that are (ultimately) owned jointly by GCC and non-GCC Persons are subject to Zakat and CIT on a proportionate basis.</p> <p>In practice, the Zakat, Tax and Customs Authority ("ZATCA") will look through the chain of ownership of a Saudi company to the ultimate owners to determine whether the company is subject to Zakat, corporate income tax or both. Look-through treatment is, however, generally not applied to a non-GCC Person in the ownership structure.</p> <p>The Tax Law provides for withholding tax ("WHT") at different rates (ranging from 5% to 20%) on payments made to non-resident parties (including those located or tax resident in GCC countries other than KSA) by a KSA tax resident entity from a source of income in KSA.</p> <p>Dividends, interests or loan charges paid by a KSA tax resident entity to a non-resident are subject to KSA WHT at a rate of 5%, unless such WHT is reduced or eliminated pursuant to the terms of an applicable double tax treaty.</p> <p>KSA adopts a worldwide principal of taxation whereby all income of the JV generated within or outside of KSA should be subject to taxation in KSA after deducting certain expenses.</p> <p>The calculation of taxable income includes all revenues, profits and gains (recognised on an accrual basis) resulting from carrying out an activity after deducting certain allowable expenses. Certain income/gains are exempt from KSA taxation (such as gains on dealing with listed securities).</p> <p>The ZATCA has not yet issued any guidance in relation to the taxation of cryptocurrencies. As such, the normal KSA tax and income sourcing rules would apply. Further clarity on taxation of cryptocurrencies would require approaching ZATCA for a clarification request on certain transactions and their tax implications, until such guidance is publicly available.</p>

# Saudi Arabia

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Saudi Arabia has a VAT regime. The VAT system was introduced with effect from 1 January 2018. The standard rate was 5%, increasing to 15% with effect from 1 July 2020.</p> <p>Saudi Arabian VAT Law includes relatively narrow exemptions for supplies of financial services made in the KSA in certain circumstances. For example, the issue, transfer or receipt of, or any dealing with money, or securities, notes, or orders for the payment of money is considered a financial service to be exempt from VAT, except in cases where the consideration for the service is in the form of a fee, commission or commercial discount. In general, financial services provided in the KSA should be KSA VAT standard rated where the consideration is payable by way of fees, commissions or similar.</p> <p>The tax authority has not issued specific guidance on the VAT implications of cryptocurrencies. However, businesses should be aware of the potential related consequences, with examples including potential VAT registration and declaration requirements, although the application of any appropriate reliefs from VAT should be considered (e.g. VAT exemption, with the related impact on input VAT recovery also assessed).</p> <p>The non-VAT implications of undertaking such activities in the KSA should be carefully considered, for instance from the legal and regulatory perspectives and any interaction with the Real Estate Transaction Tax (implemented with effect from 4 October 2021) should be noted.</p>

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# Singapore

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Singapore asserts its jurisdiction to tax primarily on the basis of source. Income sourced (or deemed sourced) in Singapore as well as foreign sourced income received in Singapore will be subject to Singapore income tax. An entity, whether resident or non-resident, will be liable to Singapore income tax if it carries on a trade or business in Singapore or derives income sourced (or deemed sourced) in Singapore.</p> <p>While there are no specific laws in place on the taxation of digital tokens, the Inland Revenue Authority of Singapore (IRAS) has published an e-Tax Guide entitled "Income Tax Treatment of Digital Tokens" on 17 April 2020 (<a href="https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide_cit_income-tax-treatment-of-digital-tokens_091020.pdf?sfvrsn=91dbe1f7_0">https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide_cit_income-tax-treatment-of-digital-tokens_091020.pdf?sfvrsn=91dbe1f7_0</a>) which provides guidance on the taxation of digital tokens. The e-Tax Guide is not legally binding on taxpayers, however, it is based on general tax principles and provides an indication of the IRAS's views.</p> <p>The main points of guidance provided by the IRAS as are follows:</p> <ul style="list-style-type: none"> <li>• Tax treatment of the digital tokens depends on the characterisation of the token for Singapore income tax purposes (payment token, utility token, security token)</li> <li>• Income tax treatment for the holder of the digital token depends on the characterisation of the token, the method of receipt / disposal of the tokens, and the circumstances surrounding the receipt / disposal.</li> <li>• Taxability of initial coin offering (ICO) proceeds depends on the rights and functions of the tokens issued to the investors.</li> <li>• The IRAS does not prescribe any methodology to value payment tokens. Taxpayers can use an exchange rate that best reflects the value of the tokens received, provided that: (1) the exchange rate must be reasonable and verifiable, e.g. based on exchange rates available on payment token exchanges; and (2) the methodology used to determine the exchange rate is consistently applied year on year.</li> </ul>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Prior to 1 January 2020, supplies of digital tokens/virtual currencies/cryptocurrencies were treated as a taxable supply of service and subject to GST at either the standard rate of 7% or zero-rated. With effect from 1 Jan 2020, supplies of "digital payment tokens" will no longer be subject to GST. Specifically:</p> <ol style="list-style-type: none"> <li>The use of digital payment tokens as payment for goods or services will no longer give rise to a supply of those tokens.</li> <li>A supply of digital payment tokens in exchange for fiat currency or other digital payment tokens, and the provision of any loan, advance or credit of digital payment tokens will be exempt from GST.</li> </ol> <p>The GST treatment for digital tokens/virtual currencies/cryptocurrencies that do not qualify as "digital payment tokens" remain unchanged.</p> <p>The definition of "digital payment token" is legislated in the GST Act.</p>

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# South Africa

## Direct Tax

Question	Answer
<b>General overview</b>	<p>In terms of South African income tax law, cryptocurrencies are considered to be financial instruments. As cryptocurrencies are neither official South African tender nor widely used and accepted in South Africa as a medium of payment or exchange, cryptocurrencies are not regarded by the South African revenue authority (SARS) as a currency for income tax purposes or capital gains tax.</p> <p>The tax treatment of any transaction must be considered on a case by case basis, e.g. the income tax treatment of gains or losses derived from mining or trading of cryptocurrencies will be determined based on the general revenue vs capital considerations, whilst goods or services purchased (or rather traded) for cryptocurrency will be considered to be barter transactions and will be taxed accordingly.</p> <p>There have been Position Papers released by the Intergovernmental Fintech Working Group which sets out the risks and benefits of the use of crypto assets in South Africa and the desire to increase the regulation of these assets with the hopes of increasing protection to users in South Africa. The biggest proposed development in this regard is the registration of crypto asset service providers as accountable institutions in terms of the Financial Intelligence Centre Act 38 of 2001 which would place certain record keeping and reporting duties to the Financial Intelligence Centre. While these Position Papers do not go into detail on the tax treatment of crypto assets in South Africa, SARS has released guidance in line with the above principles.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Most transactions involving crypto assets would be treated as an exempt financial service in terms of the South African VAT regime. Accordingly, most crypto transactions will not attract a VAT liability. Given the lack of guidance from SARS on the VAT treatment of specific uses of crypto assets it is recommended that the South African VAT treatment of a particular transaction is considered in terms of the general VAT principles contained in the Value-Added Tax Act 89 of 1991.</p>

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# Sweden

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Sweden currently has no specific tax legislation for crypto. The Swedish Tax Agency ("STA") has released some guidance in relation to mining, and provided some comments in relation to a case from the Supreme Administrative Court of Sweden ("SAC") on which tax rules should be applicable to bitcoin. Other than that, guidance and case law related to crypto is practically non-existent.</p> <p>There is no legal definition of crypto in Swedish law. The SAC has, however, come to the conclusion that bitcoin cannot be compared to participations or foreign currency. Instead, bitcoin should, according to the SAC, be taxed as "other income" in Sweden.</p> <p>According to the STA, payment by bitcoin for the purchase of goods or services should be seen as a disposal of the bitcoin and should therefore be subject to capital income.</p> <p>If bitcoin has been acquired by way of mining, the income will normally be taxed as salary income for individuals. However, if the mining undertaken by the individual meets the criteria of a sole proprietorship, mining of bitcoin will be taxed according to these rules instead.</p> <p>In general, Sweden has yet to make any significant advancements from an income tax perspective when it comes to crypto. There have been no major noteworthy developments during the last year, and no major changes are expected within the coming year.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Sweden currently has no specific VAT legislation for crypto. The STA has published some guidelines on the VAT treatment of trading with crypto currencies and payment tokens and also on the VAT treatment of crypto currency mining activities. The STA's guidance on trading with crypto currencies is based on the ECJ court case C-264/14, Hedqvist. Other than that, guidance and case law related to crypto is practically non-existent.</p> <p>As regards trading with crypto currencies and other payment tokens, the STA's view is that crypto currencies that are reminiscent to FIAT currencies, e.g. bitcoin, should be treated as a FIAT currency for Swedish VAT purposes. As such, a payment with e.g. bitcoin does not imply that the payer supplies a service for Swedish VAT purposes. Exchange services regarding crypto currencies reminiscent to FIAT currencies are VAT exempt.</p> <p>Other payment tokens than crypto currencies reminiscent to FIAT currencies are for Swedish VAT purposes considered as single- or multipurpose vouchers. The VAT treatment of trading with such payment tokens should be assessed on a case by case-basis and is dependent on the nature of the payment token in question.</p> <p>Finally, the STA's view is that mining of crypto currency is an activity out of scope of VAT. As such, mining activities are neither liable to VAT nor allows for input VAT recovery right.</p> <p>In general, Sweden has yet to make any significant advancements from a VAT perspective when it comes to crypto. There have been no major noteworthy developments during the last year, and no major changes are expected within the coming year.</p>

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# Switzerland

## Direct Tax

Question	Answer
<b>General overview</b>	<p><u>Taxation of digital assets</u></p> <p>The Swiss Federal Tax Authorities have issued guidance regarding the taxation of digital assets. This guidance covers (amongst others) a classification of tokens (native token, utility token, asset backed token), taxation of ICOs, capital gains of individuals as well as withholding tax and stamp tax.</p> <ul style="list-style-type: none"> <li>The proceeds of an ICO are generally subject to income tax at the level of the Swiss issuer. However, it may be possible to build a provision in the corresponding amount.</li> <li>Generally, distributions made to native token and utility token investors are not subject to Swiss withholding tax. Payments on debt tokens qualify as interest payments and are subject to withholding tax of 35%. For equity and participation token, a case-by-case analysis has to be made (safe harbor rules available).</li> <li>Generally, neither native token, utility token nor asset-backed token (as defined by the Swiss Federal Tax Authorities) are subject to transfer stamp tax. However, debt token qualify as taxable securities and are therefore subject to transfer stamp tax (provided that a Swiss securities dealer is involved in the transaction).</li> </ul> <p>The Swiss Federal Tax Authorities yearly publish the applicable valuation of the most common tokens for tax purposes.</p> <p><u>Corporate income tax liability</u></p> <p>A company that is incorporated in Switzerland or has its effective place of management is subject to corporate income tax and capital tax in Switzerland. The effective Corporate Income Tax rate for federal, cantonal, and communal taxes is between 11.9% and 21%, depending on the company's domicile (canton / city).</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Swiss VAT authorities have published guidelines with respect to the crypto and blockchain technology.</p> <p>The VAT treatment will depend on the qualification of the token/coin and the related services. The tax authorities have aligned their definition on the financial market surveillance authorities and have differentiated 3 different types of token: a) Payment coins/token; b) Utility coins/token; c) Asset [backed] coins/token.</p> <p>The payment token will generally be considered / assimilated to means of payment and services in connection with said token should normally be similar to "identical" services provided with fiat currency. For example, the acquisition and sale of payment token are considered as out of scope while trading/exchange fees will be considered as exempt without credit (similar to fiat currency).</p> <p>With respect to utility token and asset token, the type of services, the underlying asset (or utility / services) will have to be further examined to determine the correct VAT treatment.</p> <p>With respect to mining activity, proof of work or proof of stake, the VAT treatment will depend on how the remuneration is performed: a) If the mining/validation is remunerated by block reward (new token issued on the blockchain), there should be not VAT relevant transaction as the counterparty is not identifiable; b) If the mining/validation is remunerated by a validation fees paid by the participants to the transaction, this would be considered as a IT services (taxable transaction from a Swiss VAT perspective) located at the place of the recipient. Pool mining/pool staking services would be considered as relevant for VAT and taxable at the place of the recipient.</p> <p>Supplies in crypto currencies are allowed, but the invoices must also report the values (taxable amount and VAT (or applicable rate)) in CHF or other legal fiat currency. The exchange rates must come from an "appropriate" exchange rate portal/data base and the proof of the rate used must be saved "durably". Indeed, it should be made verifiable easily and immediately when requested by the tax authorities.</p>

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## Legal

### Distributed Ledger Technology Act

#### **Features of the new act**

In September 2020, Swiss Parliament adopted the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT-act). With the introduction of this act, Switzerland strengthens its position as a leading location for the fintech and blockchain sector. The new law has a pioneering role in international comparison.

DLT allows its users to agree that rights, such as claims or memberships, are reflected and transferred from one user to another on the distributed ledger. How rights can be securitized and made transferable is the essence of securities law, thus DLT provides a new means to address an old need.

On 1 February 2021, the parts of the DLT-act that amend the Swiss Code of Obligations, the Federal Intermediated Securities Act and the Federal Act on International Private Law have entered into force. These provisions enable the introduction of ledger-based securities that are represented on the blockchain. Tokenization is possible for a broad range of securities, such as shares, bonds, fund units and other securities. This is a major difference to legislation in other countries, where the tokenization is limited to certain securities.

Ledger-based Securities are a new type of uncertificated securities, which are created when entered in a distributed electronic register that meets certain requirements regarding functional safety and integrity, as well as transparency of information for parties involved. Entries in the distributed electronic register have the same functionality and entail the same protection as negotiable securities.

These civil law changes in particular further increase legal certainty regarding the transfer and holding of digital assets from a Swiss law perspective and, thus, foster the general adoption of the technology as a new way of issuing financial instruments.

The remaining provisions of the DLT-act entered into force on 1 August 2021. They in particular introduced a new financial market infrastructure authorization type, the so-called "DLT trading facility", which will allow the multilateral trading of DLT securities by not only regulated financial intermediaries but also by unregulated end-users. Additionally, a DLT trading facility will be allowed to provide central custody, clearing and settlement services for DLT securities, e.g. on a blockchain.

Furthermore, the DLT act introduced specific provisions in the Banking Act and the Debt Enforcement and Bankruptcy Act allowing entities to offer digital assets (including digital securities) custody services without the need to be licensed as a bank as long as the digital assets are held on a segregated manner.

The DLT-act is unique and only a few other countries have laws or regulations in force regarding digital securities.

#### **Taxation of transactions on a distributed ledger**

The assessment of the tax consequences of transactions on a distributed ledger takes place on the basis of the existing Swiss tax laws. There is no specific tax law regulating such distributed ledger transactions.

It is at the moment not planned that the tax law will be adjusted as a result of the introduction of the DLT Law. Consequently, the relevant tax consequences with respect to the DLT Law are as follows:

- Dividend distributions made by a Swiss domiciled company are subject to a withholding tax of 35%. Based on the current practice of the Swiss Federal Tax Authorities, distributions made on the basis of equity and participation tokens are not subject to Swiss withholding tax, as long as these tokens do not grant any shareholding membership rights.
- Swiss Transfer stamp tax is levied on the transfer of ownership in taxable securities against consideration, if at least one of the parties involved in the transaction is a Swiss securities dealer in the sense of the Transfer Stamp tax act, acting for his own account or as broker/intermediary. A stock exchange generally qualifies as a broker. However, according to the current practice of the Swiss Federal Tax Administration, at least DLT peer-to-peer trading facilities should not qualify as securities dealer in the sense of the Swiss Transfer Stamp tax act.
- The income and capital gains tax consequences depend on the qualification of the token and on the tax status of the investor. The current practice of the Swiss Federal Tax authorities should not be affected by the new DLT law.

The Swiss Federal Tax Administration has issued far reaching guidelines how crypto transactions need to be treated from a Swiss tax perspective. Nevertheless, a case-by-case assessment and potentially a discussion with the tax administration how to treat a specific transaction is inevitable.

# Taiwan

## Direct and Indirect Tax

Question	Answer
<b>General overview</b>	<p>Under the Taiwan tax system, there is limited tax guidance relating to the taxation of cryptocurrencies. The taxation of cryptocurrencies transactions would mostly follow the general taxation rules. That may include the taxation or exemptions on the trading gains depending on whether specific conditions are met, as well as the taxation of transactional taxes, i.e. VAT and security transaction tax ("STT") where appropriate.</p> <p>The regulator Financial Supervisory Committee ("FSC") and Taiwan Exchange have announced the regulation for security tokens ("ST Rule"). Tokens issued based on the ST Rule would therefore be viewed as "security". Following this, the transaction of such security token would be subject to STT, and the capital gain would be exempt from income tax.</p> <p>Other than the above, currently there are no other tax laws or regulations specifically for governing cryptocurrencies. It remains unclear how to define the nature of other types of cryptocurrencies such as utility tokens and their taxation. Having mentioned so, it's worth noting that gains from trading of cryptocurrencies other than security tokens as defined under the ST Rule would likely fall under taxation scope for both income tax and VAT purposes. Besides, service fees charged by crypto currency trading platform shall be subject to both income tax and VAT.</p>

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# Thailand

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Under Thailand's direct tax system, resident companies are subject to tax on worldwide income. Non-resident companies which are 'carrying on business' in Thailand are subject to income attributable to the business carried on in Thailand. Non-resident companies which are not carrying on business in Thailand are subject to tax on 6 categories of income derived from or in Thailand. These include interest, royalties, service fees, dividends and capital gains and benefits/gains derived from cryptocurrency or digital tokens (see below). Tax is imposed by way of withholding.</p> <p>Resident individuals are subject to tax on income derived in Thailand and on income derived outside Thailand, if remitted to Thailand in the same calendar year as the income is derived. Non-residents are subject to income derived from or in Thailand by way of withholding.</p> <p>Transactions in cryptocurrency or digital tokens are subject to a law issued in 2018. This law provides that only exchanges, traders or dealers licensed by the Securities and Exchange Commission may operate exchanges or trade or deal in cryptocurrency or digital tokens. The rules also address the issuance of currency or tokens.</p> <p>Also, in 2018 the Thailand Revenue Code was amended to include within the definition of "assessable income":</p> <ul style="list-style-type: none"> <li>• Share of profit or any other benefits of the same nature obtained from holding or possessing digital tokens.</li> <li>• Capital gains received from the transfer of crypto currency or digital tokens.</li> </ul> <p>A withholding tax of 15% is imposed on the payment of profits, other benefits and capital gains. The withholding tax applies to transactions with both resident and non-resident individuals. A resident individual may claim a tax credit for the withholding tax.</p> <p>Payments to non-resident companies (not carrying on business in Thailand) are also subject to 15% withholding tax (subject to the provisions of any applicable double</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Thailand has a comprehensive VAT system which applies to the sale of goods and provision of services in Thailand and the importation of goods and services.</p> <p>Exports of goods and services are also subject to VAT, though at the rate of 0%.</p> <p>Cryptocurrency and digital tokens are classified as intangible goods under the VAT law and are subject to VAT. In 2018, the Thai Revenue Department announced that it was intending to waive VAT on transactions in cryptocurrencies and digital assets, in order to facilitate the operation of exchanges and the raising of funds using initial coin offerings. However, to date no regulation has been issued to provide the exemption.</p> <p>In 2021, a regulation was issued requiring providers of electronic services to register for and pay VAT in Thailand on B2C transactions. The regulation comes into effect on 1 September 2021. The regulation may impact non-resident exchanges, traders and dealers charging consumers in Thailand for services (e.g. brokers fees etc.).</p>

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# United Kingdom

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The UK tax system has, over the years, moved from a worldwide tax system to a more territorial tax system over years especially in the case of the companies by enacting dividend exemption regime, an elective branch exemption regime and reformed Controlled Foreign Company (CFC) regime. However, individuals are still taxed on a worldwide basis, subject to some limited exemptions.</p> <p>While no specific tax legislation is in place regarding the taxation of cryptocurrencies, Her Majesty's Revenue and Customs ("HMRC") issued Cryptoassets Manual ("CM") on 30 March 2021, which provides guidance on how HMRC is going to treat a transaction/business associated with the crypto assets. However, the CM is not legally binding on taxpayers, but it indicates the position likely to be taken by the HMRC concerning the crypto assets.</p> <p>Some clarifications provided by CM in respect to the taxation of crypto assets are:</p> <ol style="list-style-type: none"><li>1. Profits tax treatment of all types of tokens is dependent on the nature and use of the token. Importantly HMRC does not consider crypto assets as currency or money but more equivalent to a commodity.</li><li>2. Whilst crypto assets are, legally, intangible assets, they do not generally fall in the intangible asset tax regime because they are not for "enduring use" within a business. They are therefore usually chargeable assets (i.e. subject to the capital gains tax regime) for companies and individuals.</li><li>3. Profits of a company or a business are taxed as income from trading crypto assets if certain conditions/factors are met; otherwise, any gains arising will be taxed as chargeable gains.</li><li>4. In HMRC view, individuals will be considered trading in crypto assets only in exceptional circumstances. However, if the taxpayer's activity is considered to be trading in the crypto assets, then the income will be subject to income tax. Otherwise, capital gain tax is payable on the gains arising from the sale of the crypto assets.</li><li>5. Companies holding crypto assets as an investment are subject to pay corporation tax on any gains on the sale of the crypto asset.</li><li>6. Partners or members are liable to corporation tax on the gains if they are a company. Otherwise, the individual partners will pay the capital gain tax if the partnership or limited liability partnership holds crypto assets as an investment.</li><li>7. Crypto assets received as employment income it is treated as 'money's worth' and are subject to Income Tax and National Insurance contribution based on the value of assets converted into sterling pounds.</li><li>8. CM signifies that the HMRC will continue to look into the crypto space more closely in the near future. However, we have not yet observed a growing level of a tax audit or investigation activity.</li></ol>



# United Kingdom

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Digital assets are generally considered to be within the scope of UK VAT, although HMRC's publicly available VAT guidance is increasingly limited in comparison to the developing number, type of, and transactions in digital assets.</p> <p>To date, HMRC's guidance has concentrated on cryptocurrencies and in contrast to its view from a direct tax perspective (as set out above), for VAT purposes the trading of exchange tokens on exchanges is treated by HMRC as within the financial services exemption available for the 'issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money'. Fees charged or revenue earned by intermediaries in relation to the exchange transaction are also VAT exempt where the intermediary is involved in facilitating the transaction. This is a reflection of the European position and is in line with the CJEU judgment in Hedqvist (C-264/14) which laid out the VAT liability of transactions and revenue streams.</p> <p>Due to the limited scope of HMRC's published position, taxpayers have looked to obtain an individual ruling with HMRC and agree VAT exemption for certain types of transaction. However, it remains the case that with regards to other types of tokens or new types of digital assets, e.g. NFTs, the VAT position is less clear and consideration must be given to the token type, what rights, if any, attach to the token and can be exercised by the owner, and the location of the parties to the transaction.</p>

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# United Arab Emirates

## Direct Tax

Question	Answer
<b>General overview</b>	<p>The UAE currently has no system of federal income taxation. Instead, most of the Emirates have their own corporate income tax decrees ("the Decrees") enacted in the late 1960s.</p> <p>The Decrees very broadly deal with who are taxable persons, rates, administration, computation of taxable profits and loss relief. The Decrees continue to apply and potentially levy income tax on all companies (including branches of foreign companies) operating in the respective emirates at rates of up to 55%.</p> <p>Although the Decrees continue to exist and are enforceable, in practice corporate income tax is only applied to the upstream oil and gas companies and branches of foreign banks.</p> <p>The UAE Decrees currently do not levy WHT, stamp duty, personal income tax or any other taxes, and there are currently no transfer pricing rules in the UAE.</p> <p>We do not foresee that the existing Decrees can be applied in their current form, and the above practice is unlikely to change in the near future.</p> <p>Entities established within a designated free zone in the UAE are not considered to be "onshore" in the UAE and are therefore subject to the rules and regulations of that free zone.</p> <p>Free zones in the UAE typically offer companies established in their free zone either (i) a tax exemption or (ii) a 0% tax rate. The length of these tax holidays can vary between 15 to 50 years, with a possibility of renewal upon their expiry.</p> <p>Based on public sources, our understanding is that the UAE is looking into a possible introduction of a Federal corporate tax. However, there have been no public announcements from the UAE in this regard, beyond references from the International Monetary Fund to economic impact studies carried out by the UAE government and general statements from the UAE Government in the media (including the Ministry of Finance Annual Report 2014).</p> <p>As such, there is currently no visibility on the scope of application of a possible future federal corporate tax regime, or on the interaction between a federal corporate tax and the existing Decrees.</p> <p>Based on the above, under the current direct tax framework in the UAE, we don't expect cryptocurrency transaction to be subject to direct tax or withholding tax.</p>

## Indirect Tax

Question	Answer
<b>General overview</b>	<p>Value added tax ("VAT") was introduced in the UAE on 1 January 2018 with a general standard rate of 5%.</p> <p>The current position on taxation of cryptocurrencies is unclear as there is no guidance that has been published to date from a VAT perspective and it will depend on the view the UAE Federal Tax Authority ("FTA") takes on cryptocurrencies pursuant to the Federal Law No. 8 of 2017 ("VAT Law") and the implementing regulations.</p>

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## Direct Tax

Question	Answer
<b>General overview</b>	<p><b>Existing Administrative Guidance</b></p> <p>In the United States, the Internal Revenue Service (IRS) has issued administrative guidance on certain aspects of the U.S. federal income tax treatment of cryptocurrencies and cryptocurrency transactions. This includes: Notice 2014-21 (16 FAQs), which, among others, defines "virtual currencies," characterizes convertible virtual currencies as property, and addresses mining activities; Revenue Ruling 2019-24, which prescribes the treatment of hard forks and air drops; the 2019 Frequently Asked Questions (updated in 2020), which supplements Notice 2014-21 by providing guidance on the application of U.S. federal income tax principles to cryptocurrency transactions; and Chief Counsel Memorandum 202124008, which concludes that swaps of certain cryptocurrencies do not qualify as tax-deferred like-kind exchanges under Section 1031 of the Internal Revenue Code as it existed prior to its amendment in 2017.</p> <p><b>Legislation</b></p> <p>The Infrastructure Bill (Public Law No: 117-58), which was enacted on November 15, 2021, will impose certain information reporting obligations by "brokers" with respect to "digital assets." The bill also contains definitions that may be leveraged for other IRS guidance projects in the future. These rules will apply to returns required to be filed, and statements required to be furnished, after December 31, 2023. Specifically:</p> <ul style="list-style-type: none"> <li>• The term "Digital Asset" is defined as "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary [of the Treasury Department]."</li> <li>• The definition of a "broker" is expanded to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfer of digital assets on behalf of another person."</li> <li>• The bill covers gross proceeds and basis reporting and requires transfer statements between brokers and interim reporting for transfers to non-brokers.</li> <li>• The bill requires reporting by anyone who receives more than \$10,000 worth of digital currencies in the course of a trade or business in one transaction or multiple related transactions.</li> </ul> <p><b>Legislative Proposals</b></p> <p>The Build Back Better reconciliation bill (H.R. 5376), which passed the House on November 19, 2021, includes significant business, international, and individual tax increase provisions. In the context of cryptocurrency, effective for transactions occurring after December 31, 2021, the bill would expand the wash sale rules under Section 1091 of the Internal Revenue Code to cover "digital assets" (defined the same as under the Infrastructure Bill), including contracts or options to purchase or sell digital assets. The bill would also expand the definition of "appreciated financial position" in the Section 1259 constructive sale rules to include positions with respect to digital assets, effective for constructive sales that occur, or for contracts entered into, after the date of enactment.</p>

# United States

## Indirect Tax

Question	Answer
<b>General overview</b>	<ul style="list-style-type: none"> <li>Few states have addressed cryptocurrency and cryptocurrency transactions in state sales and use tax laws or other state sales and use tax tax guidance. In the few states that have issued guidance, states generally treat cryptocurrency as a medium of exchange.</li> <li>Similarly, states have not generally issued guidance related to the taxability of other cryptocurrency activities, such as mining, airdrops, and hard forks, but such activities may be subject to state sales and use tax depending on the specific facts and circumstances.</li> <li>Emerging technologies related to cryptocurrency (e.g., NFTs) may potentially be subject to state sales and use tax under existing state sales and use tax frameworks.</li> </ul>

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# Vietnam

## Direct Tax

Question	Answer
<b>General overview</b>	<p>Cryptocurrency is not yet legally recognised as a payment instrument in Vietnam. Thus, there are no tax regulations concerning cryptocurrency. Below are some developments so far for reference.</p> <p>The Prime Ministry issued Directive No. 10/CT-TTg dated 11 April 2018 ("Directive No. 10") requiring the State Bank of Vietnam ("SBV"), Ministry of Finance ("MOF") together with other competent authorities to develop a policy and issue regulatory framework governing crypto currencies.</p> <p>Following Directive No. 10, the SBV has issued Directive No. 02/CT-NHNN ("Directive No.02") on measures to enhance the control of transactions in relation to virtual currencies. Accordingly, the State Bank Governor requires the SBV's head office and its provincial branches, credit institutions, and other organisations providing payment intermediary services to apply measures to control and handle transactions in relation to virtual currencies. Directive No.02 specifically indicates that credit institutions and payment intermediary service providers are not allowed to provide payment services, perform card transactions, provide credit via cards, support processing, payment, money transfer, clearing and settlement, currency conversion, payment transactions, cross-border money transfer relating to virtual currencies for customers because of potential risks of money laundering, terrorist financing, fraud and tax evasion.</p> <p>Recently, the Government has issued Decision 942 dated 15 June 2021 which stipulates the strategy on development of the e-government toward digital government in the period from 2021-2025. In the decision, it is proposed that the research, development and trial use of crypto currency based on blockchain technology will be conducted by the State Bank of Vietnam for the period in 2021-2023. Thus, there may be more development on this topic in the near future.</p> <p>In Decision 2146 dated 12 November 2021, it is proposed that the Ministry of Finance would cooperate with the Ministry of Justice and the SBV to build legal framework to control virtual currency in accordance with international practice to mitigate tax evasion and money laundering but the timeline is uncertain.</p>

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## Indirect Tax

Question	Answer
<b>General overview</b>	Same as those for the Direct Tax.

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