

Europe: Crypto assets in employee compensation, business and wealth management — points to note in various jurisdictions

In brief

Individuals' and companies' increasing interest in crypto assets has led certain employers to introduce cryptocurrencies as compensation, leading to a number of challenges in its implementation and for tax purposes. Individuals holding crypto assets are also facing multiple consequences when holding and transferring such crypto assets.

These topics were discussed during our webinar on 17 January 2023. With the participation of our offices in France, Germany, Belgium, Spain, Italy, Luxembourg, the Netherlands, the United Kingdom and Switzerland, the points worth mentioning for each of the topics are summarized below:

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1. Payment of a crypto bonus, grant of free tokens

The practice of paying part of employees' compensation in cryptocurrency has developed in the last few years, triggering new questions, notably from a labor law standpoint, a regulatory standpoint, and in terms of tax and social security consequences and practical implementation issues.

While salary generally has to be paid in fiat currency, it is generally admitted in our surveyed countries that nothing prevents an employer from paying a bonus in cryptocurrency, keeping in mind that a thorough regulatory review must be performed and frequently updated due to numerous amendments happening fast in many jurisdictions. The commonly admitted limit is that the minimum wage determined in local laws cannot be paid in cryptocurrency.

In **Spain**, for social security purposes, since the crypto bonus is considered a payment in kind, there is a limitation of 30% on the payments in kind regarding the total amount paid as a salary to employees.

The cryptocurrency bonus or a grant of free tokens is taxed as employment income in all surveyed countries.

In **the United Kingdom**, the payment of compensation in cryptocurrency is generally subject to withholding, by way of income tax and national insurance, at source, by virtue of cryptocurrency being considered a "readily convertible asset." Employers paying employees using cryptocurrency are therefore obliged to ensure that the correct withholding of tax and national insurance is applied against the value of payments in the form of cryptocurrency. Due to the highly volatile nature of cryptocurrencies, there are practical considerations for both employers and employees that should be considered before entering into such arrangements.

In **Switzerland**, any payment of compensation in cryptocurrency is subject to social security contributions and, if applicable, withholding tax, calculated based on the value of such cryptocurrency at the time it is paid out.

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2. Business income for individuals: mining/trading

There is a fine line between personal income and business income with respect to crypto assets. Each surveyed country has its own definition of business income, applied to cryptocurrency on a case-by-case basis. Mining and trading activities are usually qualified as business activities.

In **the United Kingdom**, it is more common for individual taxpayers engaging in cryptocurrency-related activities to be subject to capital gains tax (see below). However, if the individual taxpayer is engaging in more sophisticated, regular and organized cryptocurrency activities, the activity may amount to a financial trade with the returns from that activity treated as income subject to UK income tax. Other activities that may constitute income for UK income tax purposes include, but are not limited to, staking, mining, farming and, in some cases, the receipt of airdrops.

In **France**, the French tax authorities specifically mention that cryptocurrency derived from mining is taxed as a noncommercial activity. The Finance Law for 2022 (No. 2021-1900 on 30 December 2021) amended the French tax code to include the trading of crypto assets as a professional activity taxed as a noncommercial activity. The taxable basis is determined according to specific rules and then subject to progressive tax rates up to 45%, and social surtaxes.

In **Italy**, since the approval of the 2022 Italian Budget Law, a particular tax regime has been implemented for individuals that earn income stemming from mining/trading activity, providing that proceeds with a value greater than EUR 2,000 for each fiscal year, realized through the refund, disposal, barter transaction and holding of cryptos are to be taxed with a substitutive tax amounting to 26%.

In **Luxembourg**, a circular comments on the position of the Luxembourg tax authorities on cryptocurrency income realized by individuals (Circular LIR No. 14/5 – 99/3 – 99bis/3 of 26 July 2018). The circular specifies in which circumstance gains made by individuals in relation to cryptocurrencies qualify as "business income" or as "other income" (not subject to tax if not speculative). According to the circular, income derived from mining virtual currency or operating online stock exchange of virtual currencies would usually qualify as business income.

In **Switzerland**, mining activities most likely would be qualified as "business activity" with the result that any profit would be subject to personal income tax and social security contributions. The same would be true if an individual is classified as a professional crypto asset dealer, by reason of, among other things, frequent dealings or leveraged investments in crypto assets.

3. Tax consequences of holding cryptocurrencies

Individuals can choose to hold their crypto assets directly or through a holding company. An individual taxpayer holding cryptocurrencies possibly triggers various tax consequences for individuals, notably for wealth tax purposes and reporting obligations.

In **the United Kingdom**, there is no specific legislative framework that deals with the taxation of cryptocurrency. HMRC, the UK tax authority, issued guidance that sets out its view on the taxation of cryptocurrencies. The absence of specific legislation that addresses the taxation of this new and often complex asset class gives rise to certain instances of uncertainty, which makes it vital for taxpayers to seek appropriate professional advice when engaging in cryptocurrency-related activities.

For UK tax resident and domiciled (or deemed domiciled) taxpayers, the taxation of cryptocurrency in the UK is less complicated, because those taxpayers will be subject to tax in the UK on an arising basis. However, for UK tax resident but not UK domiciled taxpayers, HMRC's view of the taxation of cryptocurrency effectively prevents the remittance basis from applying to the holding of cryptocurrency, although it is noted that this is not a unanimously shared view.

In **the Netherlands**, in the case of a contribution to a Dutch BV or NV, a tax deferral is generally available for cryptos that are part of a business (Box 1). If the crypto is not part of a business but is personal wealth (Box 3), the gain realized upon a contribution to a BV or NV is generally not taxable under the current rules (which only tax deemed returns).

There is a general obligation for individual taxpayers to report their cryptocurrency accounts (all accounts or only foreign accounts, depending on the jurisdiction). Some penalties are provided in the case of failure to report.

In **Spain**, a new reporting tax form (coded 721) was approved by the Spanish government and could be in force in 2023 for individuals.

In **Spain, Italy, Switzerland** and **the Netherlands**, cryptocurrencies will generally be included in the taxable basis for wealth tax purposes.

4. Transferring cryptocurrencies

The transfer of crypto assets, whether during the individual's lifetime, for free or for consideration, or at death, will most certainly trigger tax consequences.

In **Spain**, there is no specific regime, and cryptocurrency capital gains are included in the savings taxable basis for personal income tax purposes.

In **the United Kingdom**, a transfer of cryptocurrency either by way of sale or a gift is likely to give rise to capital gains tax issues. The comments made in the section above about the extent to which the remittance basis is available will affect the implications of such transfers by UK tax resident but not domiciled taxpayers. The capital gains tax computation can be complex in the UK, due to the generally fungible nature of cryptocurrency assets. Unless the cryptocurrency activities amount to a financial trade, capital gains made on such transfers are currently taxable at rates of up to 20% in the UK.

In **Belgium**, the cryptocurrency capital gains also follow the regular tax regime, such capital gains being potentially tax-exempt.

In **Germany** and **Luxembourg**, if the individual holds the crypto assets as private assets for a given time period, respectively one year and six months, the capital gain will be exempt.

In **Italy**, since the approval of the 2022 Italian Budget Law, a particular tax regime has been introduced for individuals, providing that capital gains and other proceeds with a value greater than EUR 2,000 for each fiscal year, realized through the refund, disposal, barter transaction and holding of cryptos are to be taxed with a substitutive tax amounting to 26%. Such capital gains amount to the difference between the consideration received or the fair value of the cryptos and their price or purchase value. Capital losses may be offset against capital gains, and if capital losses are greater than the capital gains, the excess may be carried forward and deducted for the total amount within the following four fiscal years. If the individual received proceeds under EUR 2,000, they will be tax-exempt.

In **France**, an ad hoc tax regime was implemented in 2019. In the event of exchange of crypto against crypto, the taxpayer benefits from a tax deferral. The specificity of this regime is how the capital gain taxable basis is computed, since it takes into account the total increase of value of all wallets held by a taxpayer and their household at the time of one sale of crypto. The capital gain is equal to the difference between the selling price and the acquisition price of all cryptos in all wallets over the ratio between the selling price and the value of all the wallets. The capital gain is subject to a 30% flat rate (comprising 12.8% of income tax and 17.2% of social surtaxes). For capital gains realized since 2022, taxpayers will be able to opt for the taxation of their capital gains at the progressive income tax (up to 45%) and social taxes (at 17.2%). If the taxpayer receives less than EUR 305 in proceeds from crypto assets sales, they are tax-exempt.

Crypto assets will generally be included in gift and inheritance tax.

In **Luxembourg**, there should be no Luxembourg gift taxes on gifts of cryptocurrency assets that are not registered in front of a Luxembourg notary, and the transfer of cryptocurrency assets in a direct line as succession proceeds is, in principle, exempt from inheritance taxes.

In **Switzerland**, any gains realized by the sale of crypto assets held as private assets should qualify as a tax-free private capital gain (unless the individual is qualified as a professional crypto asset dealer; see above). The transfer by way of gifts or inheritance may be subject to cantonal inheritance and gift tax calculated on the fair market value. Please note that the (surviving) spouse is exempt from inheritance and gift taxes and, in most cantons, the descendants in a direct line are also exempt.

For surveyed countries that have an exit tax, cryptocurrencies are currently not included in the taxable assets upon transfer of the tax residence of an individual taxpayer.

5. Are there any differences for NFTs?

Generally speaking, NFTs are subject to the same tax regime as crypto assets.

In **Italy**, due to the differences between NFTs and cryptocurrency, a case-by-case analysis will need to be performed on NFTs since the income generated by NFTs could fall within the category of royalties.

In **the United Kingdom**, although NFTs are equally treated as chargeable assets for UK tax purposes (and much like cryptocurrency assets, NFT activities that amount to a financial trade can result in returns being subject to UK income tax rather than capital gains tax) due to their non-fungible nature, the rules that determine the calculation of capital gains differs to the rules applied to most cryptocurrency assets. The rate of capital gains tax applied to gains made in respect of NFTs is also at a rate of up to 20%.

In **France**, there are uncertainties as to whether NFTs are in the scope of the specific crypto assets tax regime. There is hope for the *sui generis* regime to be created to clarify.

In **Switzerland**, there are no clear rules and an analysis on a case-by-case would be required. However, NFTs should be subject to the same tax treatments as other crypto assets.

Read our previously published alerts on the regulatory aspects of crypto assets from October and December 2022:

- [EU DAC 8](#)
- [EU MiCA](#)

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