



Agencia Tributaria

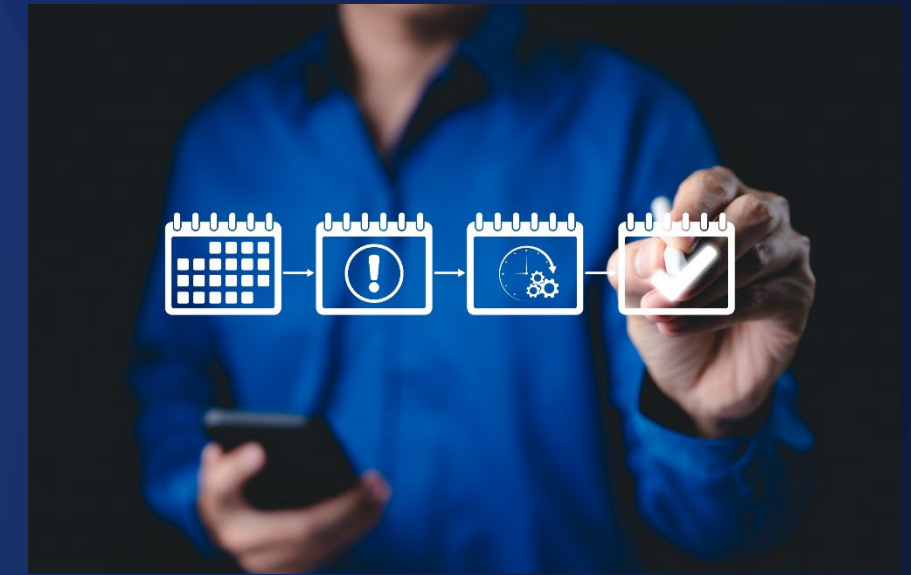
Spain's experience in addressing the VAT challenges of crypto-asset economy

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AGENDA



- Legal Framework for VAT taxation on crypto-assets
- VAT treatment of main categories of crypto-assets
- VAT treatment on connected services
- Challenges arising from enforcement



1. Legal framework for VAT taxation on crypto-assets

MiCA Regulation →

- Regulatory framework regarding issuance and trading of SOME C-A (ARTs, EMTs and Utility tokens)
- Provides general legal definitions

European legislation: VAT Council Directive 2006/112 and Implementing Regulation 282/2011

National legislation: Law 37/1992 of 28 December on VAT and VAT Regulation (RD 1624/1992) + VAT Invoice Regulation (RD 1619/2012)

ECJ jurisprudence + VAT Committee Guidelines and Working Papers

General Directorate of Taxation Binding Rules: official interpretation of tax law, binding for applicant and guidance for other taxpayers

- ECJ Judgement on case C-264/14 David Hedqvist – Bitcoin
- WP 892 – Hedqvist Case
 - WP – 1060 on NFTs
- WP 1070 on sales of video game skins
 - WP 1080 – Danish question on crypto art
 - ECJ pending Case C-472/24 Žaidimu valiuta

Examples:

Binding Tax Ruling V3625-16. Whether Bitcoin mining activities are subject to Value Added Tax (VAT) under Spanish law.

Binding Ruling on NFTs and VAT (March 2022) – V0486-22
How the sale or transfer of NFTs should be treated for VAT purposes

1st challenge → REGULATORY → Applying existing rules for other categories of RWA or services, to highly innovative digital products

2. VAT treatment of main categories of crypto-assets

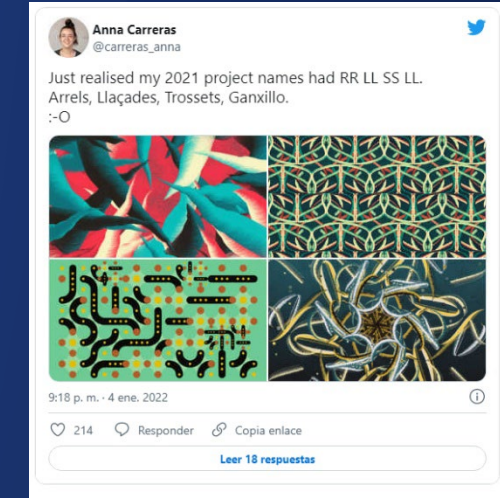
CJEU's conclusion in *Skatteverket v. Hedqvist* (Case C-264/14), decided on 22 October 2015:

1. Bitcoin exchange services are supplies of services against consideration
2. BUT these services are exempt from VAT as provided in art. 135(1)(e) VAT Directive (transactions concerning currency)
3. Bitcoin is treated like a means of payment for VAT purposes
4. Paying with Bitcoin is not a taxable transaction



BITCOIN = non-traditional currency AND transactions concerning crypto-currency are VAT exempt

2. VAT treatment of main categories of crypto-assets



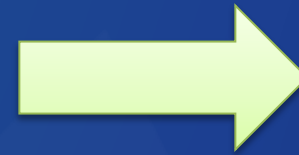
Case C-472/24 – Žaidimų valiuta (in-game tokens) → pending

- Possible VAT treatments:
1. Non-traditional currency;
 2. Multipurpose voucher;
 3. Electronic service

2nd challenge → ASSESING NATURE or purpose of highly complex or hybrid digital assets

3. VAT treatment on services related to crypto-assets

Article 135(1)(e) of the VAT Directive
–and Spanish VAT Law- →
“transactions concerning currency”
are exempt from VAT (not only
supply)



If crypto-service has financial nature → VAT EXEMPT. E.g.:

- Earnings from staking by taxable person
- Mining if consideration are transaction fees (not newly generated coin)
- Intermediation services (not advisory services)

- First binding rule: 31st August 2016
- Miner qualifies as taxable person
- **OUT OF SCOPE OF VAT: NO** direct link between consideration received -newly generated crypto by the system- and service provided.
- And if transaction fees apply? Subject to VAT but exempt

MINING



- Earning from Staking by taxable person → **SUBJECT AND EXEMPT OF VAT**
- Staking service through Smart contracts and on behalf of clients → not financial nature → **SUBJECT TO VAT AT GENERAL RATE 21%**

STAKING AS A SERVICE



- Intermediation in the exchange of cryptocurrency → service related to currency
- **SUBJECT TO VAT but EXEMPT**
- **INVOICING** obligations remain

EXCHANGE of CRYPTOCURRENCY



- Custody of cryptographic keys associated to cryptoassets offline – **COLD STORAGE** to increase security
- Deposit service similar to a safe deposit box rental → not financial service
- **SUBJECT TO VAT AT GENERAL RATE 21%**

CRYPTOASSET OFFLINE CUSTODY



4. Challenges arising from enforcement of Initial Token Offerings (ITOs)

ITO – Initial token offering is a fundraising method used by blockchain-based projects to raise capital by issuing digital tokens to investors (holders)

Tokens issued are considered “utility tokens”: they entitle to receive future goods or services, give access to a platform or even voting rights on the project (governance tokens) and other “privileges” to HOLDERS...

Issuing Company receives FUNDS (Income) it does not need to pay back or pay interest upon this capital and does not charge VAT upon issuance because art. 135 (1)(e) VAT Directive is considered applicable → VAT financial exemption



Challenges

1. **Assessing nature of tokens:** cryptocurrency? Similar to vouchers? Electronically Supplied Services (ESS)?
2. **Time of supply:** upon issuance? Upon redemption? If no redemption and different utilities, when?
3. **Taxable amount:** if token gives right to receive exempt and non-exempt services?



CASE-BY-CASE APPROACH

5. Final remarks

Technical complexity

- Tax auditors lack the technical understanding needed
- Training becomes crucial for Tax Administrations

Outdated Tax Rules

- Tax codes are designed for RWA and services, not for digital assets
- Different types of crypto-assets → not a one-size-fits-all approach but rather a case-by-case assessment

Limited traceability and cross-border implications

- Many crypto transactions occur without clear identification of the parties involved, making it difficult to link assets to taxpayers
- Crypto operates globally, often outside the reach of national tax authorities.
- Cross-border enforcement is sometimes slow and resource-intensive.



Thank you!