



CRYPTO ASSETS -

INDIA AND GLOBAL
TAX LANDSCAPE

By Nupur Jalan



CRYPTOCURRENCY



'A digital or virtual currency secured by cryptography and based on a network that is distributed across large number of computers'*.

*Investopedia

HOW CRYPTO CURRENCY WORKS?

Crypto mining vs. staking?

Crypto Mining (Proof of Work)

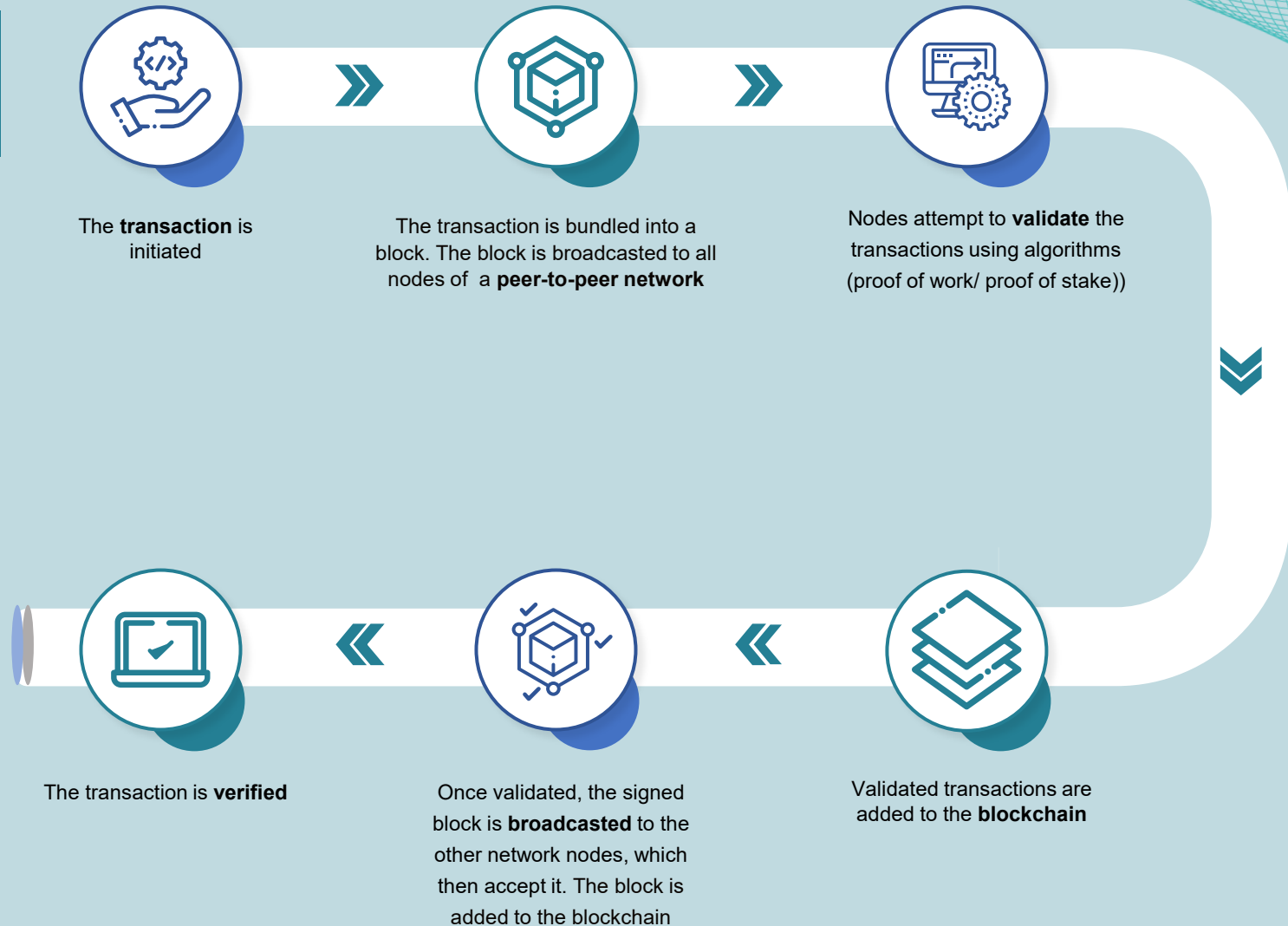
Mining capability - Depends on **computational power**

Block reward - First miner receives **block reward**

Crypto Staking (Proof of Stake)

Validation capacity - Dependent on the **stake in the network**

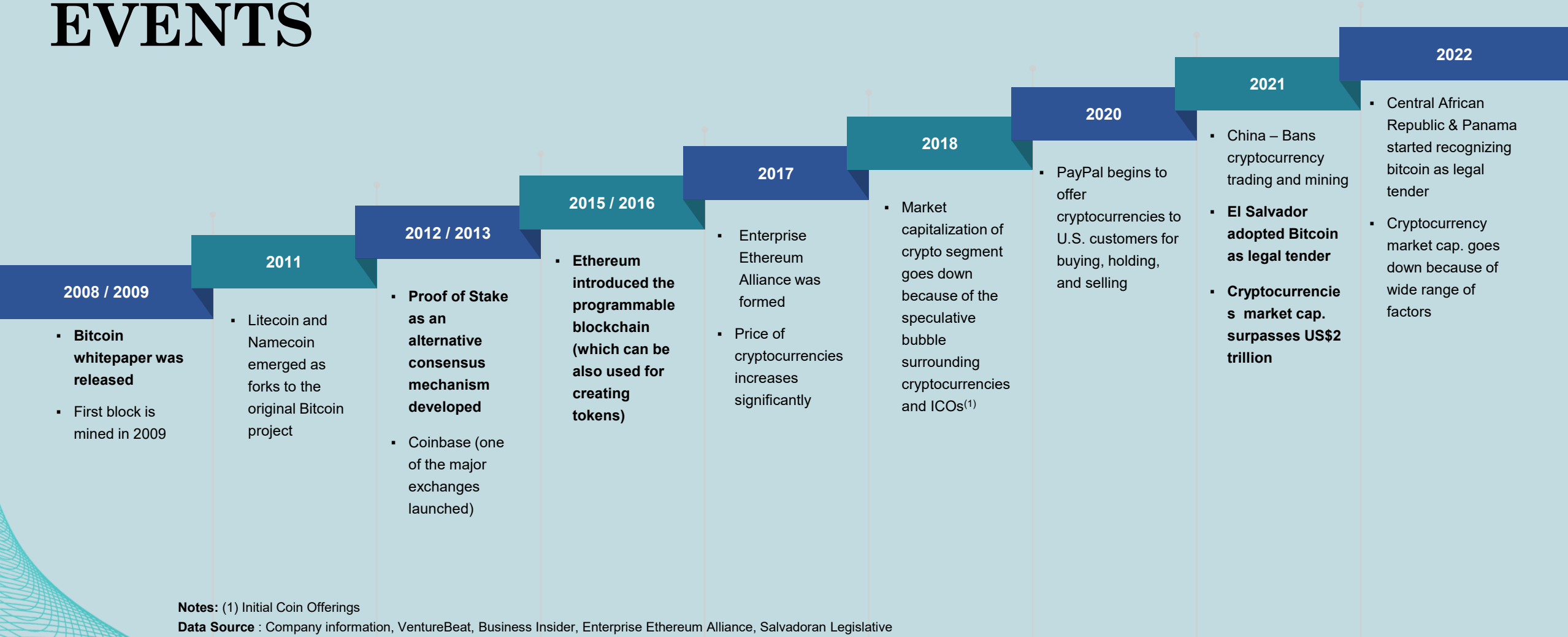
No block reward - Validator earns **transaction fees**



Modified diagrams, Primary source : Statista Digital Market Outlook 2022, Digital Economy Compass (2022) Statista



TIMELINES OF SOME CRYPTO SEGMENT EVENTS



Notes: (1) Initial Coin Offerings

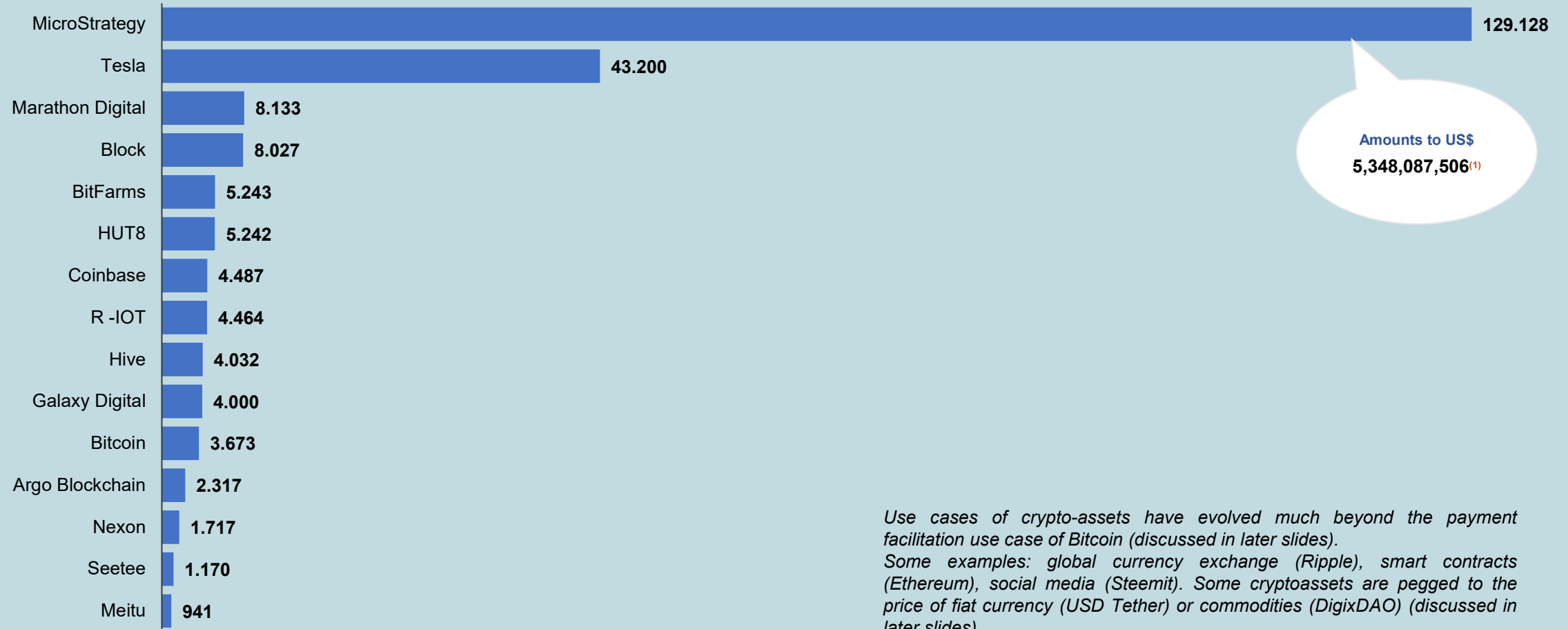
Data Source : Company information, VentureBeat, Business Insider, Enterprise Ethereum Alliance, Salvadoran Legislative Assembly, BBC, Reuters, Euronews, statista

Some of the cryptocurrencies:	Bitcoin	Dogecoin	Cardano	Ether
	Polkadot	Ripple	Solana	etc.

VARIANTS OF CRYPTOCURRENCY



Some of the Public companies with highest Bitcoins on their balance sheet



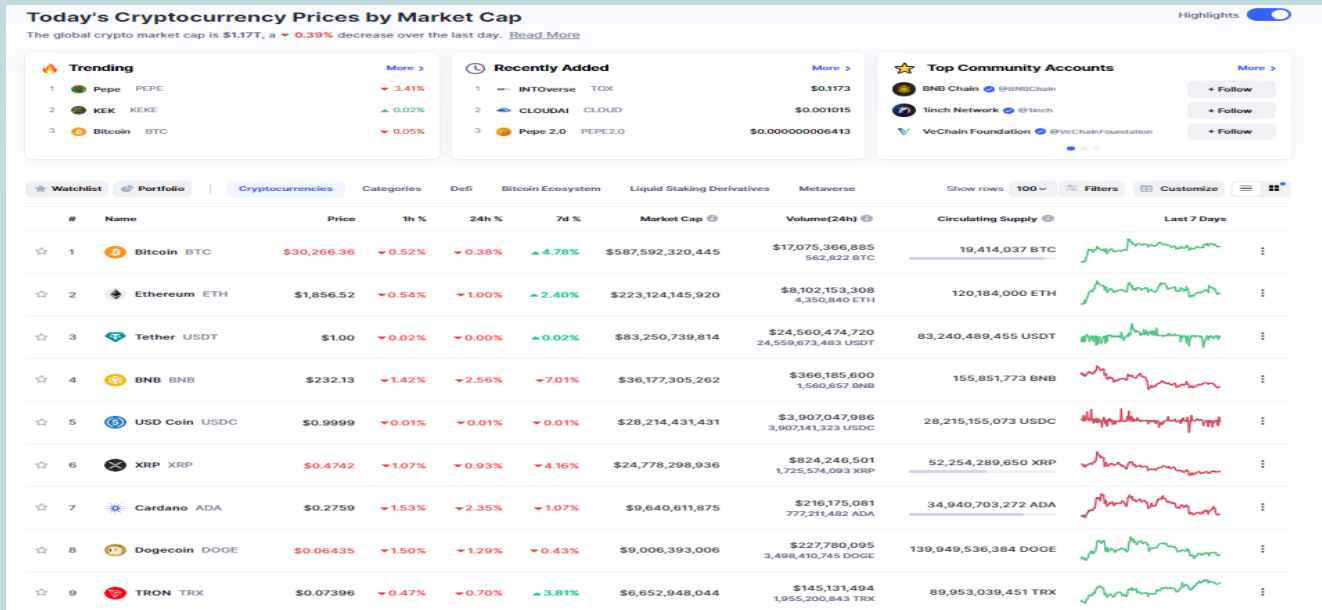
Amounts to US\$
5,348,087,506⁽¹⁾

Use cases of crypto-assets have evolved much beyond the payment facilitation use case of Bitcoin (discussed in later slides). Some examples: global currency exchange (Ripple), smart contracts (Ethereum), social media (Steemit). Some cryptoassets are pegged to the price of fiat currency (USD Tether) or commodities (DigixDAO) (discussed in later slides).

Notes: (1) As of 11.04.2022

Data sources : btcdirect.eu, bitcointreasuries.net, bitiinfocharts.com, coinmarketcap.com, statista

TODAY'S (28th June 2023) CRYPTOCURRENCY PRICES BY MARKET CAP.



Source - <https://coinmarketcap.com/>

- Different used cases:

- Bitcoin, Bitcoin Cash, Litecoin, Bitcoin SV etc. are products of hard forks from the Bitcoin blockchain.
- Crypto, Monero, NEM etc. are alternative forms of money that exist on blockchains (created independent of Bitcoin)
- Tether's USD Tether and USD Coin are examples of stablecoins
- Ripple's XRP and Stellar's Lumens act as "bridge currencies", for facilitating the exchange of fiat currencies. Ripple focuses on the corporate and banking markets, Stellar focuses on individuals and traditionally unbanked markets.
- Several crypto-assets offer a platform for the development of decentralized applications. Ex: Ethereum network, Cardano, Tron, Tezos, IOTA etc.

VIRTUAL CURRENCIES AND TAXES



- No internationally agreed standard definition of crypto-assets
- No standard taxonomy of the different types of assets that comprise crypto-assets
- For classification purposes, one may consider to look also at their economic purpose, the rights and liabilities associated with the assets, and the way the assets derive their inherent value
- Broadly classify crypto-assets into three main categories: as payment tokens, utility tokens, or security tokens. Accounting and tax classification will change depending on the nature of token

THE TAX TREATMENT ACCORDINGLY VARIES AMONGST COUNTRIES

Definitions of virtual currencies for tax purposes

Intangible assets other than goodwill	Financial instrument or asset	Commodity or virtual commodity	Legal tender	Legal payment method
<ul style="list-style-type: none"> ▪ Australia ▪ France ▪ Chile ▪ Czech Republic ▪ Luxembourg ▪ Nigeria ▪ Spain ▪ Sweden ▪ Switzerland** ▪ The United Kingdom 	<ul style="list-style-type: none"> ▪ Argentina * ▪ Brazil ▪ Croatia, ▪ Denmark ▪ Israel ▪ Japan ▪ Slovak Republic ▪ South Africa 	<ul style="list-style-type: none"> ▪ Austria ▪ Canada ▪ China ▪ Indonesia 	<ul style="list-style-type: none"> ▪ El Salvador ▪ Panama ▪ Central African Republic 	<ul style="list-style-type: none"> ▪ Japan

Source: OECD (2020), Taxing Virtual Currencies: An Overview Of Tax Treatments And Emerging Tax Policy Issues, OECD, Paris. www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emergingtax-policy-issues.htm

** Argentina: For income tax purposes, virtual currencies are mentioned along with some financial instruments or assets even though there is no clear definition of virtual currencies

** Switzerland: Companies trading in virtual currencies account for it as inventories

DIFFERENCE IN NOMENCLATURE/ TERMINOLOGY IN DIFFERENT COUNTRIES



Country	Latest guidance	Total issues addressed	Preferred terminology	Designation	Legal tender	Indirect tax	
						VAT legislation amended	VAT consequences addressed
Australia	2019	12	Cryptocurrency	Not stated	No	Yes	Yes
Finland	2019	12	Virtual currency	Property	No	No	Yes
United Kingdom	2018	12	Crypto-asset	Not stated	No	No	Yes
Malta	2018	11	Distributed ledger technology	Not stated	No	No	Yes
Canada	2019	9	Cryptocurrency	Commodity	No	Yes	Yes
Norway	2019	9	Digital currency/virtual currency	Asset	No	No	Yes
Switzerland	2019	9	Cryptocurrency	Intangible/movable asset/derivative	No	No	No
United States	2019	9	Virtual currency	Property	No	No	No
Israel	2018	7	Digital token	Financial asset	No	No	Yes
South Africa	2018	7	Cryptocurrency	Financial instrument	No	Yes	Yes
Sweden	2015	7	Virtual currency	Asset	No	No	Yes

Country	Latest guidance	Total issues addressed	Preferred terminology	Designation	Legal tender	Indirect tax	
						VAT legislation amended	VAT consequences addressed
Austria	2017	5	Virtual currency	Intangible asset	No	No	Yes
Poland	2018	4	Cryptocurrency	Not stated	Not stated	No	Yes
Slovakia	2018	4	Virtual currency	Not stated	No	No	Unconfirmed, but EU member
Chile	2018	2	Cryptocurrency	Not stated	No	No	Yes
Singapore	2020	1	Virtual currency/cryptocurrency	Not stated	No	No	Yes
Spain	None	7	Secondary source	Intangible asset	No	No	Yes
Germany	None	7	Virtual currency	Financial instrument (regulatory)	Not stated	Yes	Yes
France	None	6	Digital asset	Intangible property	No	No	Unconfirmed, but EU member
Italy	None	2	Virtual currency	Not stated	Not stated	No	Yes
Portugal	None	2	Cryptocurrency	Not stated	No	No	Yes
Argentina	None	1	Digital currency	Not stated	No	No	No

Country	Latest guidance	Total issues addressed	Preferred terminology	Designation	Legal tender	Indirect tax	
						VAT legislation amended	VAT consequences addressed
Bulgaria	None	1	Secondary source	Financial asset	No	No	Unconfirmed, but EU member
Denmark	None	1	Bitcoin	Not stated	No	No	No
Japan	None	1	Secondary source	Not stated by secondary sources	Not stated by secondary sources	No	No
Romania	None	1	Secondary source	Not stated by secondary sources	Not stated by secondary sources	No	Unconfirmed, but EU member
Russia	None	1	Cryptocurrency	Property	No	No	No
Iceland	None	0	Bitcoin	Not stated	No	No	No
Yes					0	4	17
No					23	24	7
Other					5	0	4
Total					28	28	28

Source: S. Parsons, Chapter 3: Review of the Current State of the Taxation of Crypto-Assets in Taxing Crypto-Asset Transactions: Foundations for a Globally Coordinated Approach (IBFD 2023), Books IBFD

VIRTUAL CURRENCIES AND TAXES



Taxable events – Select country examples

First event on receipt of new tokens from mining

- Andorra
- Argentina*
- Austria**
- Cote d'Ivoire
- Colombia
- Croatia
- Estonia
- Finland
- Japan
- Luxembourg**
- New Zealand
- Slovenia
- South Africa
- United Kingdom
- United States

First event on disposal

- Croatia
- Czech Republic
- Denmark
- Estonia
- France
- Latvia Lithuania
- Poland
- Slovak Republic

Different approaches for businesses/regular traders & individuals/occasional traders

- Australia
- Canada
- Germany
- Hong Kong (China) Netherlands
- Norway
- Singapore
- Sweden
- Switzerland

** Argentina: Treatment depends on case-by-case

** Switzerland: Mining income is taxed

As mentioned earlier, tax treatment depends on types of token. Some are discussed below briefly:

- **Payment tokens:** Usable as a means of exchange for goods or services and also as a store of value and unit of measurement. Ex. – Bitcoin
- **Security (or Asset and Financial) tokens:** tradeable assets that are held for investment purposes. Ex – BCAP
- **Utility (or Consumer) tokens:** Facilitate the exchange of or access to specific goods or services (like licence to allow the holder access to a particular service). Ex. - Storj

Source: OECD (2020), Taxing Virtual Currencies: An Overview Of Tax Treatments And Emerging Tax Policy Issues, OECD, Paris. www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emergingtax-policy-issues.htm

TRANSACTIONS REPRESENTING DIFFERENT TAXABLE EVENTS

Crypto-assets		Transactions representing possible taxable events																									
		Origination				Use						Extinction															
		Block rewards	Developer allocation	ICO's and other market sales	Fiat currency deposit	Investor sale	Hard fork	Remuneration and other incentives	Speculation and investment	Payment solution	Payment of transaction fees	Future hard fork and airdrop participation	Payment of counterparty transaction fees	Inter-currency transfer	Minimum account balance	Network usage and delegation	DPoS candidacy and delegation	Transaction fee reduction	Incentivised hacking	Non-existent accounts	Repurchases	Redemptions	DPoS candidacy	Penalties	Storage	Surplus auctions (supply reductions)	Lost access
Name	Symbol																										
1	Bitcoin	BTC	✓																								
2	Ethereum	ETH	✓	✓																							
3	XRP	XRP	✓	✓																							
4	Bitcoin Cash	BCH	✓			✓																					
5	Litecoin	LTC	✓																								
6	Binance Coin	BNB	✓	✓		✓																					

Crypto-assets		Transactions representing possible taxable events																										
		Origination				Use						Extinction																
		Block rewards	Developer allocation	ICO's and other market sales	Fiat currency deposit	Investor sale	Hard fork	Remuneration and other incentives	DPoS candidacy and delegation	Network usage and delegation	Minimum account balance	Inter-currency transfer	Payment of counterparty transaction fees	Future hard fork and airdrop participation	Payment of transaction fees	Payment solution	Speculation and investment	Airdrop participation	Recapitalization (debt auction)	Retained	Third-party developers	Fiat currency deposit	Investor sale	Hard fork	Remuneration and other incentives	Developer allocation	ICO's and other market sales	Block rewards
Name	Symbol																											
14	TRON	TRX	✓	✓																								
15	Dash	DASH	✓																									
16	Chainlink	LINK	✓																									
17	Tezos	XTZ	✓	✓																								
18	Ethereum Classic	ETC	✓	✓																								
19	NEO	NEO	✓	✓																								
20	IOTA	MIOTA	✓	✓																								
21	Cosmos	ATOM	✓	✓																								

Crypto-assets		Transactions representing possible taxable events																										
		Origination				Use						Extinction																
		Block rewards	Developer allocation	ICO's and other market sales	Fiat currency deposit	Investor sale	Hard fork	Remuneration and other incentives	Speculation and investment	Payment solution	Payment of transaction fees	Future hard fork and airdrop participation	Payment of counterparty transaction fees	Inter-currency transfer	Minimum account balance	Network usage and delegation	DPoS candidacy and delegation	Transaction fee reduction	Incentivised hacking	Non-existent accounts	Repurchases	Redemptions	DPoS candidacy	Penalties	Storage	Surplus auctions (supply reductions)	Lost access	
Name	Symbol																											
7	Tether	USDT	✓																									
8	EOS	EOS	✓																									
9	Bitcoin SV	BSV	✓																									
10	Monero	XMR	✓																									
11	Stellar	XLM	✓																									
12	UNUS SED LEO	LEO	✓																									
13	Cardano	ADA	✓																									

Crypto-assets		Transactions representing possible taxable events																										
		Origination				Use						Extinction																
		Block rewards	Developer allocation	ICO's and other market sales	Fiat currency deposit	Investor sale	Hard fork	Remuneration and other incentives	DPoS candidacy and delegation	Network usage and delegation	Minimum account balance	Inter-currency transfer	Payment of counterparty transaction fees	Future hard fork and airdrop participation	Payment of transaction fees	Payment solution	Speculation and investment	Airdrop participation	Recapitalization (debt auction)	Retained	Third-party developers	Fiat currency deposit	Investor sale	Hard fork	Remuneration and other incentives	Developer allocation	ICO's and other market sales	Block rewards
Name	Symbol																											
22	Maker	MKR	✓																									
23	NEM	XEM	✓	✓																								
24	USD Coin	USDC	✓																									
25	Crypto.com Chain	CRO	✓																									
TOTAL			14	15	7	3	5	2	2	3	3	1	1	25	17	16	6	2	2	2	2	2	2	2	2	2	2	2

Source: S. Parsons, Chapter 4: Crypto-Asset Analysis in Taxing Crypto-Asset Transactions: Foundations for a Globally Coordinated Approach (IBFD 2023), Books IBFD

SELECT COUNTRY LAWS ON CRYPTO TAXES



Select country laws on crypto taxes

Japan	<u>Cryptos gains are considered miscellaneous income. Tax rates on crypto gains vary - rates can be high upto 55%.</u>
South Korea	<u>Virtual assets are categorized under other income for income tax purposes. Gains will be taxed at a rate of 20%.</u>
New Zealand	<u>Cryptos are treated as properties for income tax purposes. Tax treatment depends on the characteristic and use.</u>
Australia	<u>Cryptos are subject to capital gain taxes in Australia in the range from 19 to 45%.</u>
Austria	<u>Cryptos holdings will be counted as income from capital assets, and are taxed at the special rate of 27.5%.</u>
France	<u>Cryptos are taxed similar to movable property. Occasional traders are charged a flat tax of 30% while miners and professional traders are taxed 45%.</u>
Ireland	<u>Ordinary tax rules apply - profits and losses from crypto transaction are taxable as normal income.</u>
Lithuania	<u>Cryptos are considered as property and levies a 15% rate on the gains. Income from mining activities is only considered as income upon the sale of the cryptos after mining.</u>
Netherlands	<u>Taxes on capital gains are not imposed, but a deemed interest on the value of all assets minus all liabilities is imposed. The deemed interest is taxable against a flat rate of 31% (in 2021, 30% in 2020).</u>

Indirect taxes: Different countries may have different VAT regime for cryptocurrency taxation. However, where not specified taxability should be tested under existing rules. The European Court of Justice (ECJ) in the case of Hedqvist (Skatteverket vs David Hedqvist Case C-264/14) held that virtual currencies can be compared with fiat currencies in that *their sole purpose was to provide a means of exchange* and ruled that transactions including the exchange of fiat currency for virtual currencies and vice versa, performed for consideration, are transactions exempt from VAT within the meaning of Article 135(1)(e) of the EU VAT Directive.

SUMMARY OF CRYPTO-ASSET TAX GUIDANCE AND POSITIONS BY COUNTRY

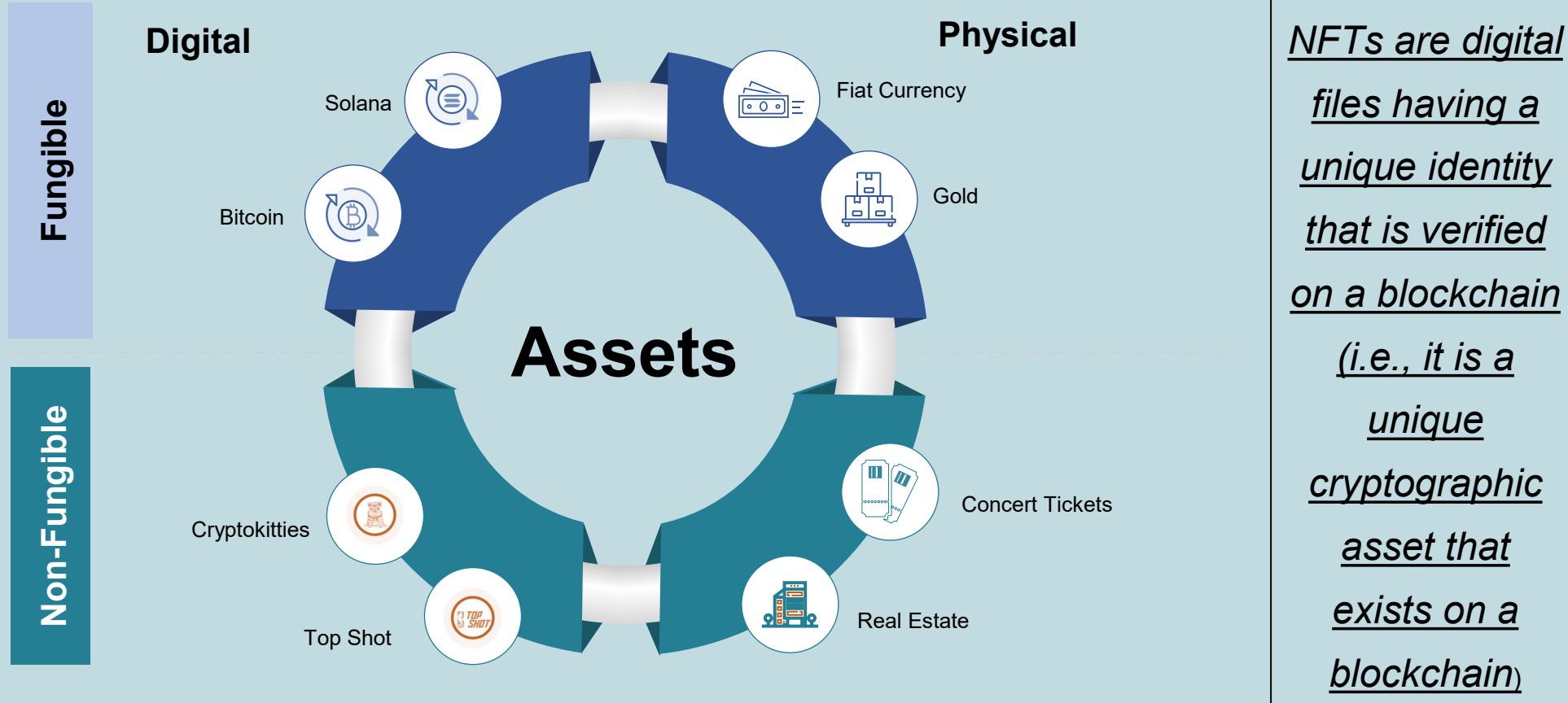
Table 3.1. Summary of crypto-asset tax guidance and positions by country (continued)

Country	Direct tax – holder																Direct tax – issuer	
	Income tax legislation amended	Profit or loss (general)	Payment for goods/ services	Sale for fiat currency	Mining – general/ proof-of-work	Exchange for other crypto-asset	Investment/ capital	Business/ revenue	Receipt as remuneration	Dispose of as gift	Forks and airdrops	Participation in ICO	Crypto exchange or ATM	Mining – Transaction fees	Other token categories	Loss or theft	Mining – Proof-of-stake	Income tax consequences addressed
Australia	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	No	No
Finland	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	No
United Kingdom	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	No
Malta	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	No	Yes
Canada	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	No	No	No	No
Norway	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	Yes	No
Switzerland	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	No	Yes
United States	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No
Israel	No	No	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	Yes	No	No	No	Yes
South Africa	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No
Sweden	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No
Austria	No	No	No	Yes	No	Yes	No	Yes	No	No	No	No	Yes	No	No	No	No	Yes
Poland	No	No	Yes	Yes	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No
Slovakia	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
Chile	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

Country	Direct tax – holder																	Direct tax – issuer		
	Income tax legislation amended	Profit or loss (general)	Payment for goods/ services	Payment for fiat currency	Sale for fiat currency	Mining – general/ proof-of-work	Exchange for other crypto-asset	Investment/ capital	Business/ revenue	Receipt as remuneration	Dispose of as gift	Forks and airdrops	Participation in ICO	Crypto exchange or ATM	Mining – Transaction fees	Other token categories	Loss or theft	Mining – Proof-of-stake	Income tax consequences addressed	
Singapore	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Spain	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No	No	No	No	No	No
Germany	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
France	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
Italy	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Portugal	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Argentina	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Bulgaria	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Denmark	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Japan	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Romania	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Russia	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Iceland	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Yes	5	9	15	15	16	12	14	14	8	5	4	4	4	3	3	2	2	2	3	3
No	23	19	13	13	12	16	14	14	20	23	24	24	24	25	25	26	26	26	25	25
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28

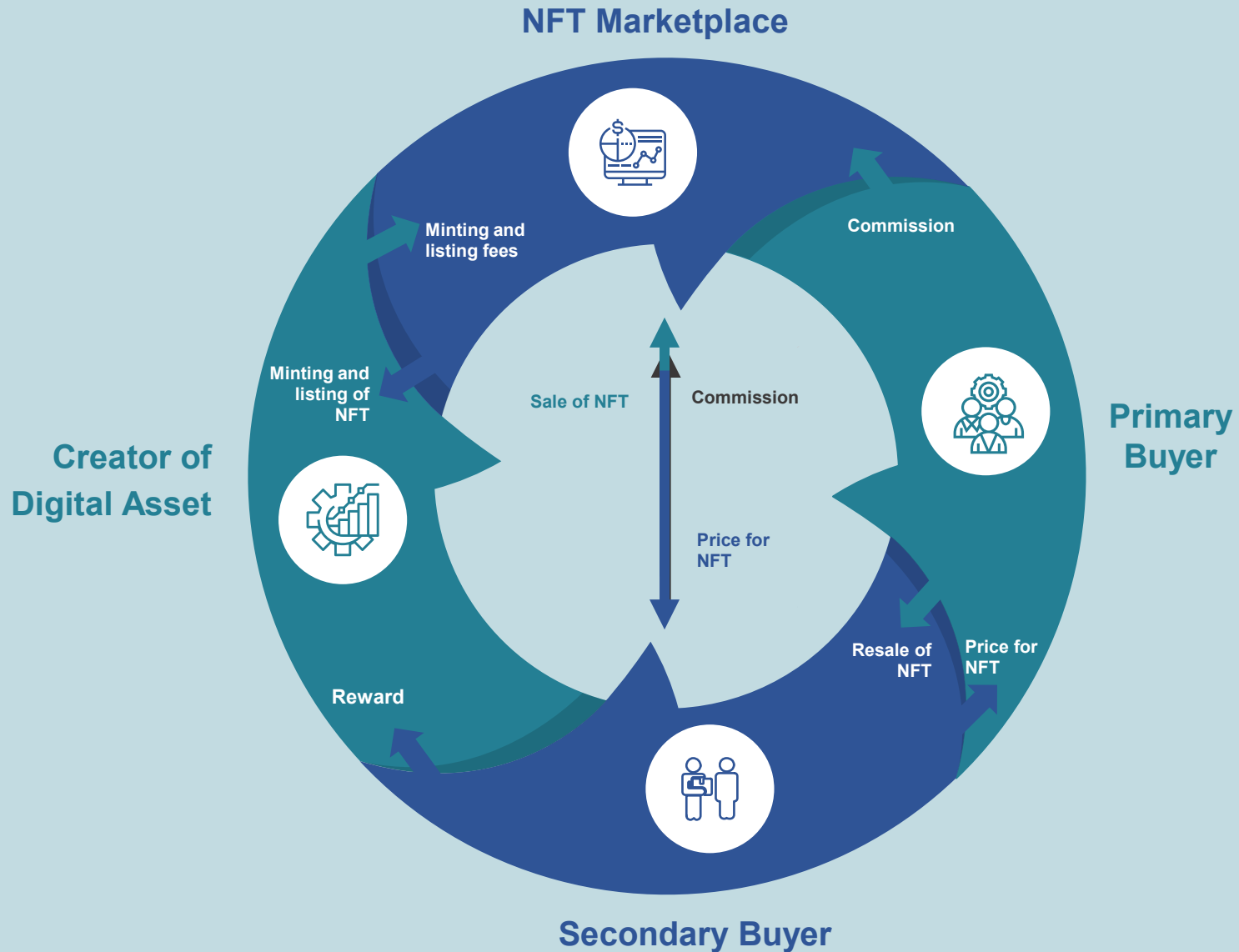
S. Parsons, Chapter 3: Review of the Current State of the Taxation of Crypto-Assets in Taxing Crypto-Asset Transactions: Foundations for a Globally Coordinated Approach (IBFD 2023), Books IBFD

NON-FUNGIBLE TOKENS (NFTS) – AN INTRODUCTION



NFTs are digital files having a unique identity that is verified on a blockchain (i.e., it is a unique cryptographic asset that exists on a blockchain)

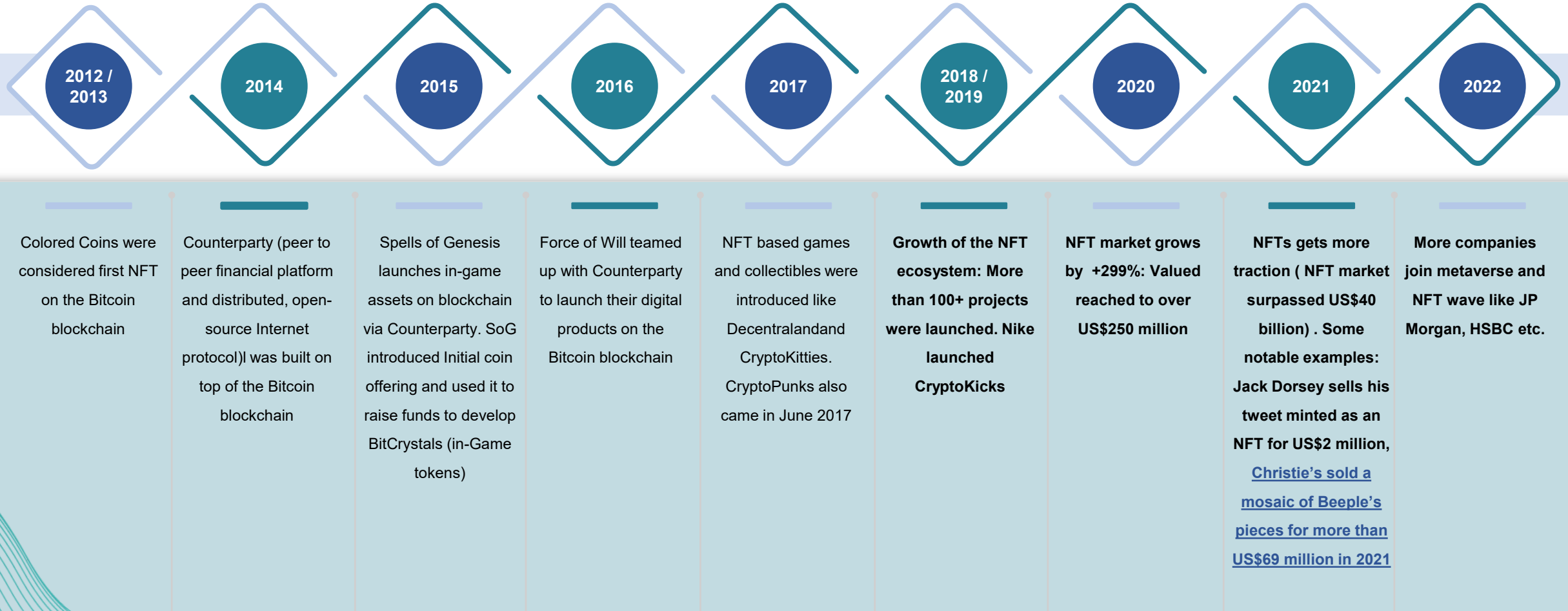
TRANSACTION FLOW IN NFT



The diagram depicts a situation where the original owner allows the buyer to transfer NFT to others buyer and get some reward (royalty) for each such sale. This would depend on the terms of the contract between the creator of digital asset and the primary buyer

Source: Non-Fungible Tokens: Significant and Emerging VAT Issues (PWC); available at <https://www.pwc.co.uk/services/tax/indirect-taxes/non-fungible-tokens-significant-and-emerging-vat-issues.html>

TIMELINE OF EVENTS LEADING TO THE RISE OF NFTS



Modified diagram, primarysource : Statista Digital Market Outlook 2022

NFT'S AND ACCOUNTING CONSIDERATIONS*



Purchaser of NFTs:

Right to an underlying digital asset or the right to an underlying physical good in received

Based on the nature rights transferred, the **assets would be recorded in the balance sheet of the purchaser.**

Separately, depending on the applicable Accounting standards, **the entity may need to revisit fair value and may have to do impairment of the assets if fair value is lower than the amount at which asset was recorded.**

Seller of NFTs

IP license:

The entity may license its IP to allow other parties to mint and sell it in lieu of license fees. In such cases, **license fees will be recorded as income of the entity.**

Creation of own NFTs:

If the entity decide to mint the NFTs themselves, **then entity would have to do proper recording of the expenses related to minting (appropriate consideration should be made to the characterization of the income – i.e., they treated income from sale of NFT as business income or capital gain income).**

Exchange platforms:

If the entity is running marketplace for trade of NFT's, **depending on the characterization of the platforms as agent/ principal; accounting will be performed. For ex. If exchange platform acts as agent, it may only treat commission income as their revenue.**

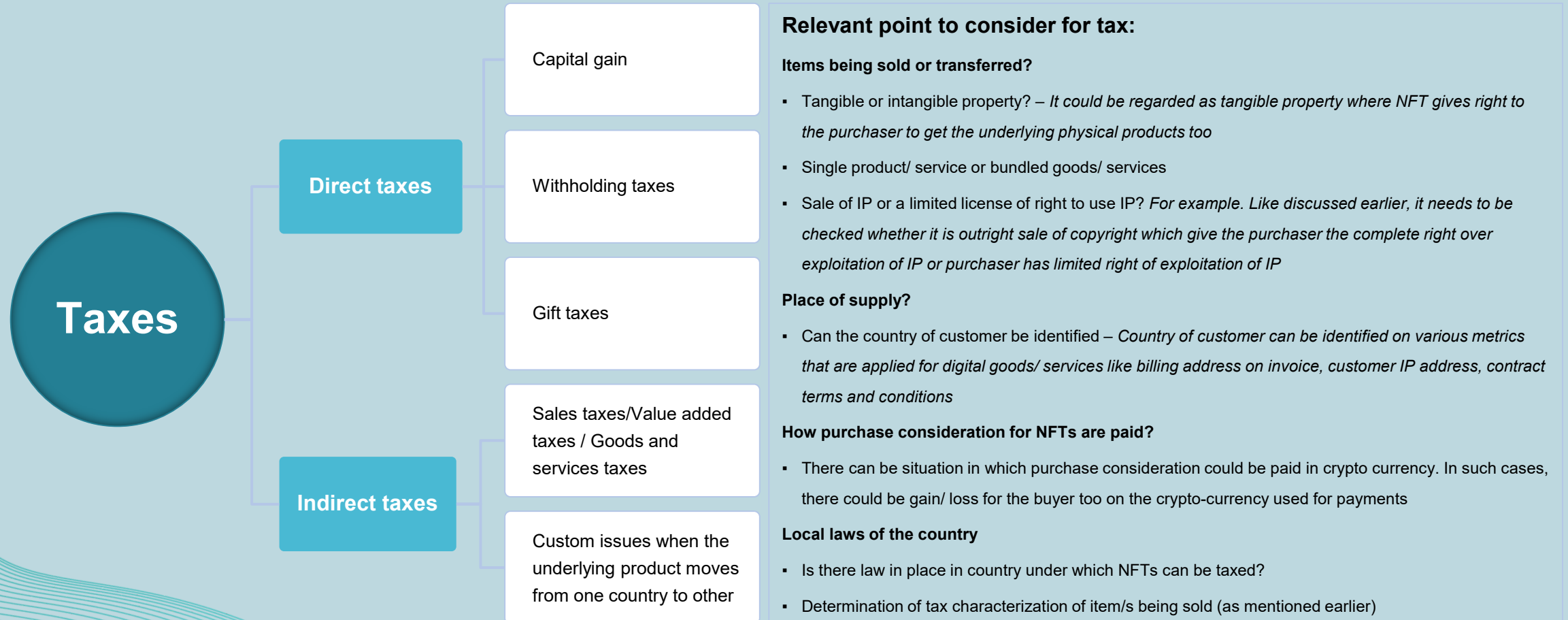
*Additional considerations will come in play, where NFT gives right over the underlying product/ services

Source: EY, Monetization of non-fungible tokens (2022)

NFT'S AND POTENTIAL TAX CONSIDERATIONS



From tax side, there could be implications from both direct and indirect tax side depending on the laws of the country. Some of the applicable taxes could be:



INDIRECT TAXES ON NFTS – SELECT COUNTRY DISCUSSION



	Some guidance of tax authority on cryptocurrency	Some guidance of tax authority on cryptocurrency?	Indirect taxes on NFTs?	NFTs fall within the definition of ESS / Remote services?
NZ	Yes	Yes	Standard rated	Yes
Australia	Yes	No	Standard rated	Yes
Germany	Yes	No	Unclear	Unclear, Potentially ESS
Ireland	Yes	No	Unclear	Unclear, Potentially ESS
Netherlands	Yes	No	Unclear, Potentially standard rated	Unclear, Potentially ESS
Middle East	No	No	Unclear	Unclear, Potentially ESS
Singapore	Yes	No	Likely to be taxable	Unclear, potentially ESS / Remote services
South Africa	Limited	No	Unclear, potentially standard rated	Unclear, potentially ESS
UK	Yes	No	Likely to be standard rated	Unclear, potentially ESS
US	Limited	No	Unclear, potentially taxable	Unclear, potentially digital goods

Source: *Non-Fungible Tokens: Significant and Emerging VAT Issues (PWC)*; available at <https://www.pwc.co.uk/services/tax/indirect-taxes/non-fungible-tokens-significant-and-emerging-vat-issues.html>

The European Court of Justice (ECJ) in the case of Hedqvist (Skatteverket vs David Hedqvist Case C-264/14) held that virtual currencies can be compared with fiat currencies in that *their sole purpose was to provide a means of exchange* and ruled that transactions including the exchange of fiat currency for virtual currencies and vice versa, performed for consideration, are transactions exempt from VAT within the meaning of Article 135(1)(e) of the EU VAT Directive. However, VAT implication on non-fungible tokens may not be the same as that of cryptocurrency. In Spain ruling V0482-22, of March 10, 2022, issued by the Spanish General Directorate of Taxes (Dirección General de Tributos), Transfer of NFTs was regarded as ‘supply of services’. Per the ruling, VAT was accorded similar treatment as that of ‘electronically supplied goods’.

In New-Zealand, NFT is defined as ‘crypto-asset that contain unique distinguishing identification codes or metadata’.

NFT'S AND POTENTIAL TAX CONSIDERATIONS



NFT seller is the original owner

When NFT seller and purchaser of NFT is in the same country:

- Depending on the rules in the domestic tax law of the country, NFT transactions may be taxed under both direct taxes and/or indirect taxes.
- NFT seller: the sale of an NFT shall give rise to a taxable gain/loss. The characterization of the gain/loss depends on the nature of asset in which NFTs are treated for the taxpayer.
- VAT may also apply depending on the country laws.
- Illustration 1: Mr. A (purchaser) & Company XYZ (seller) are residents of Country C. Company XYZ holds NFTs as an asset held for investment. In this case, depending on the laws of Country C, Company XYZ will have capital gain/loss on sale of the NFTs. Accordingly, capital gain tax may apply. Separately, depending on the VAT laws, if Country C levies VAT on this transaction, Company XYZ will have to charge VAT additionally to Mr. A and pay to the tax authorities.
- Suppose, in the above case, Mr. A pays the consideration through cryptocurrency. In this case, if Mr. A acquired cryptocurrency at say \$2000 and now the same cryptocurrency is used to buy say NFTs worth \$6000; this could mean that the value of cryptocurrency held by Mr. A has increased and he have to separately account for capital gain/loss on the cryptocurrency too and pay taxes accordingly depending on the laws of Country C.

When NFT seller and purchaser of NFT is in different country:

- Cross-border tax issue could arise, and taxability may need to be determined under the domestic law and the applicable tax treaty. VAT may also apply depending on the country laws.
- If in the same Illustration 1 discussed in the previous slide, if Company XYZ is located in Country D instead on Country C, then reference would need to be placed to the relevant tax treaties additionally to determine the ultimate taxation of the gain/losses for Company XYZ in addition to the domestic laws of the countries (in situation where such income is taxable in the domestic law of the countries).
- Characterization of income/loss needs to be determined for seller i.e., whether it is business income, capital gains etc.

NFT'S AND POTENTIAL TAX CONSIDERATIONS



NFT seller/ distributor is not the original owner and royalties needs to be paid to original owner

- Apart from the points mentioned above, there would be additional taxes that could be applicable on the royalties received by the original owner. The original owner may be located in the same country as that of seller or different country
- Depending on the laws of the country and additionally applicable tax treaty (in cross-border situation); the payer of royalty may need to withhold taxes on royalties paid. The royalties received will also be taxable in the country of the recipients(i.e., original owner too). In case of double taxation, the resident state of the recipient (i.e., original owner) should provide foreign tax credit

Potential transfer pricing issues

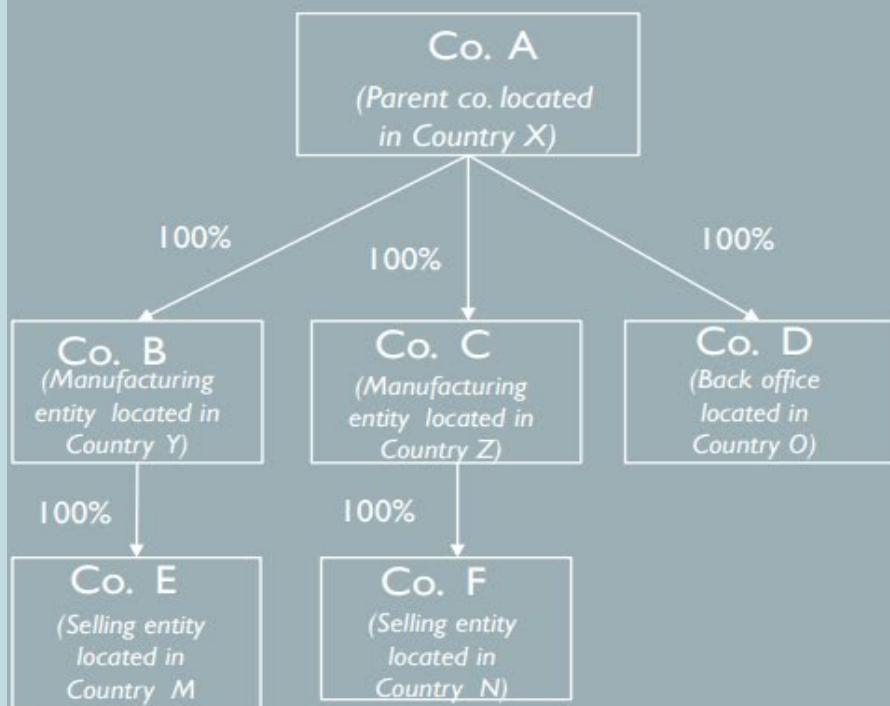
- Let's presume Company A (parent company), Company B (subsidiary 1), Company C (subsidiary 2) are related party.
- The parent Company A grants pre-existing license of IP to Company B for minting the NFTs under the licensing agreement. Company C runs and exchange platform for NFTs and sells NFTs minted by Company B
- **Transfer pricing considerations:**
 - License fees: appropriate benchmarking of licensing fees needs to be done (challenge may be find comparable in this case)
 - Commission: Considering Company C runs platform on agent model, where it takes commission for others for trading on its platforms – in this case, Company C should charge commission from Company B too for selling the minted NFTs on its platform and the same should be at arm's length price

NFT – CASE STUDY



NFTs – Case Study

Situation 1



Facts

- Parent company decided release NFTs.
- The NFTs are minted for parent company by Co. D
- Only parent company has the right to distribute the NFTs

Questions

- Co. A would need to remunerate Co. D for minting of the NFTs on its behalf. What could be transfer pricing implications? *The minting of NFTs could fall in back-office function and Company A can remunerate Company D based on cost plus mark-up (The margin should be representative of realistically alternative option available)*
- The distribution of NFTs helps in brand building and brand awareness. The other group entities would also be benefitted because of this. Since, the parent co. is distributing the NFTs can this be considered as activity providing only incidental benefits to other group entities? *There is a possibility to argue that this could fall in activity only providing incidental benefits and parent company should not charge separately to group entities for this incidental benefits.*

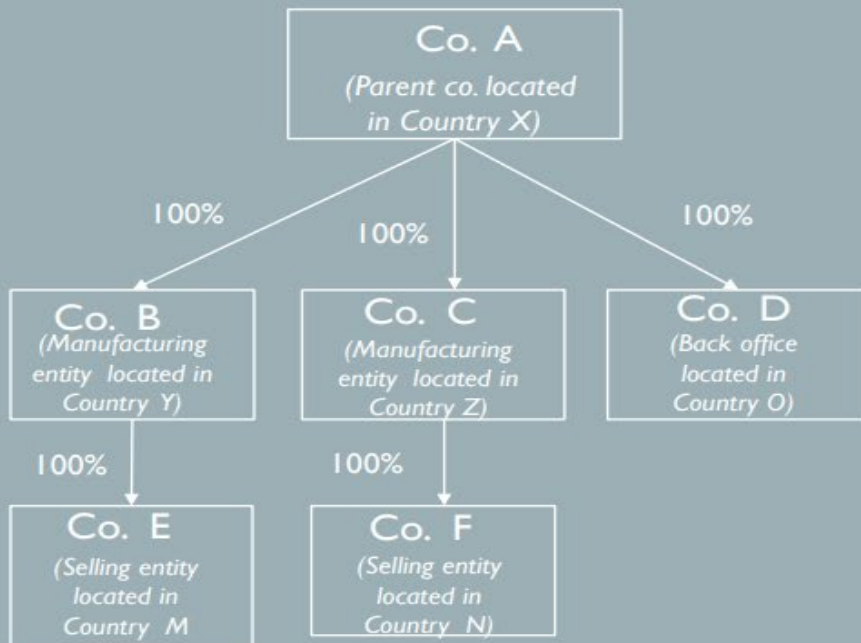
** Depending on the laws on countries there could be withholding tax implications of the payments made to group entity*

NFT – Case Study



NFTs – Case Study

Situation 2



*presuming Co. E & Co. F is selling different product designs

Facts

- The NFTs are minted by Co. D for Co. E & Co. F (different NFTs for different product designs)*
- The NFTs are sold by the selling entities (with no right of further distribution to the customers) – Holder of NFTs gets the right to exchange the NFTs with physical product

Questions

- Co. E & Co. F would need to remunerate Co. D for minting of the NFTs on its behalf. What could be transfer pricing implications? *The minting of NFTs could fall in back-office function and Co. E & Co. F can remunerate Co. D based on cost plus mark-up (The margin should be representative of realistically alternative option available)*
- Should Co. E & Co. F pay royalty to Co. A for getting the NFT minted for the IP/ trademark that Co. A owns? *Yes, Co. E & Co. F should pay royalty to Co. A based on the benchmarking study undertaken.*
- The sale of NFTs by Co. E & Co. F leads to incidental benefit for the entire group – *there are possible arguments to argue that these are incidental benefits, so no separate remuneration is required for it*

** In this case Co. E & Co. F will be acting as distributor entity for physical products while for digital assets (NFTs) they can be regarded as the entity doing the entrepreneurial function.*

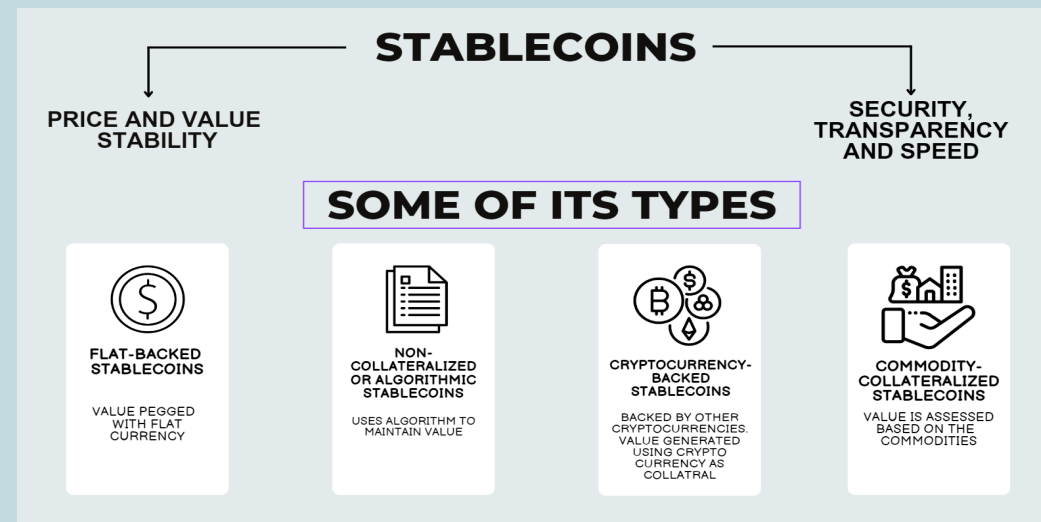
** Depending on the laws on countries there may be withholding tax implications of the payments made to group entities*



STABLE COINS

- Digital currency that is pegged to a less volatile reserve asset such as the U.S. dollar or gold. Stablecoins were introduced to minimize volatility relative to unpegged cryptocurrencies like Bitcoin.

Description	Tax implications
Sale of stable coins for fiat	<i>Sale of stable coins for fiat may not result in any profits. However, if there are any change during the sale/disposal of the coin (for ex. because of fx differences) then the difference should be accounted as capital gains or loss.</i>
Purchase of goods and services	<i>Any capital gain/ loss arising should be chargeable to tax.</i>
Receiving stable coins as a payment	<i>When a trader for the sale of goods or services receives stable coin as a mode of payment, then it will be considered as an ordinary income and taxed at an income tax rate.</i>
Stable coin interest	<i>The interest gained out of this can be accounted as a regular income tax.</i>



Modified diagram, Primary source: <https://www.wonder.fi/resources/what-are-stable-coins>



METAVERSE – CERTAIN TAX CONSIDERATIONS

- Jurisdictional issues – For determining the jurisdiction, whether one would trace the locale/ IP to the place of the domicile/ habitual abode of the person or it should be the locale/ IP from which the person takes access to the virtual world?
- VAT on virtual transactions (like discussed earlier in case of NFTs)
- Tax on sale of virtual real estate (for ex., sale of virtual land in metaverse) – Is land in metaverse intangible asset?
- Hard to value intangibles/ data taxation issues
- Determination of value of the digital assets in Metaverse is biggest challenge because of the volatility in value of the digital assets. The same digital assets may have different values at different time of the day
- Applicability of digital taxes
- PE/ FTS and other tax treaty questions



OTHER GLOBAL DEVELOPMENTS

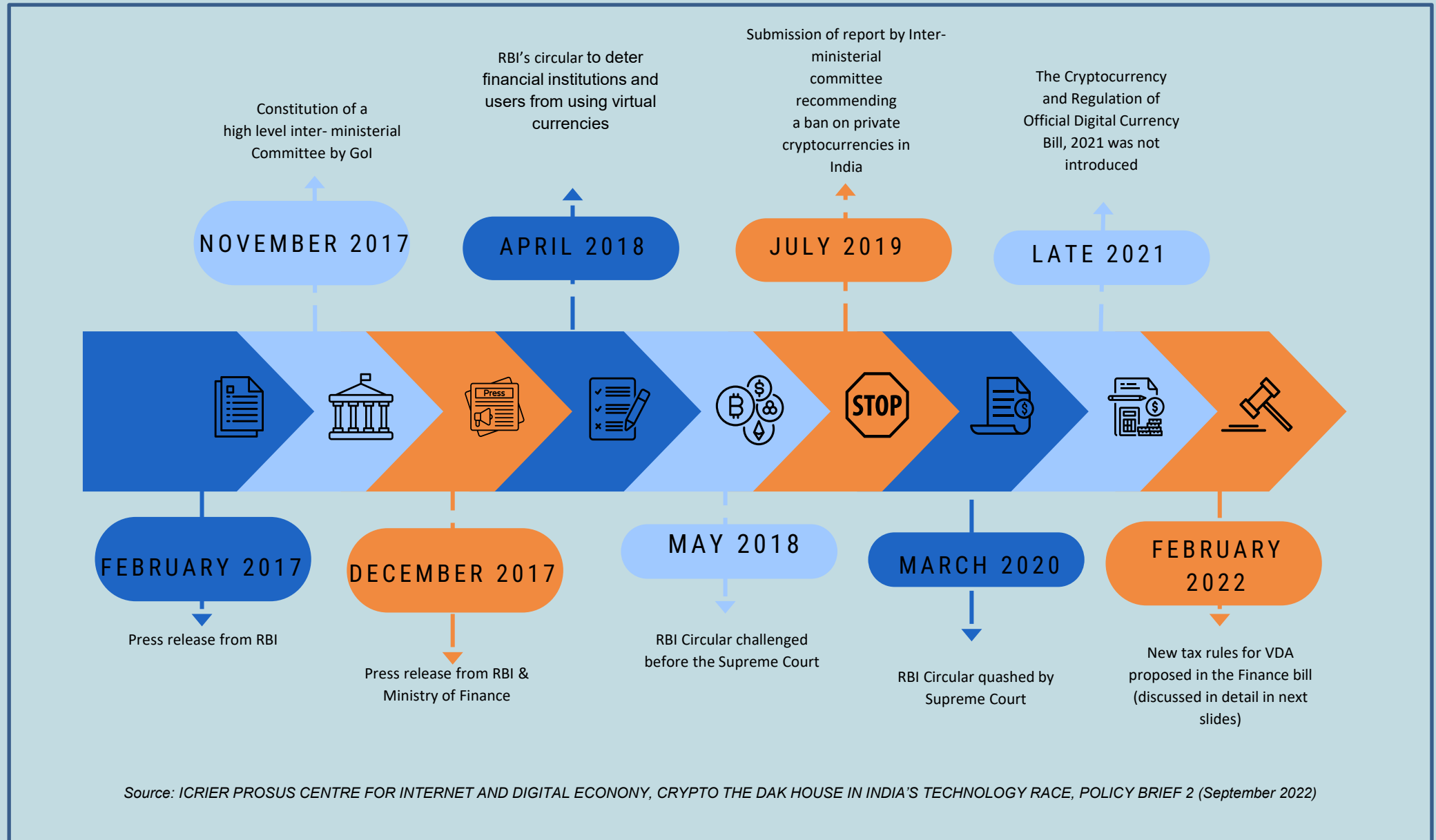
REPORTING FRAMEWORKS:

OECD's Crypto Asset Reporting Framework (CARF), DAC 8 in the European Union (EU)

CARF and the amendments to CRS to cover a variety of digital assets were released in October by the OECD. CARF does include a comprehensive frameworks and guidelines which aim at increasing transparency in the sector. It mandates digital market intermediaries, such as crypto-asset exchanges and wallet providers (referred to as reporting crypto asset service providers), to do due diligence-procedures to identify their customers and to report customer's aggregate exchanges and transfers annually to the local tax authorities. This information can further be disseminated by local tax authorities to other tax authorities (resident country of the crypto user) under the Automatic Exchange of Information framework in a cross-border setup.

Directive 2018/843 introduced new rules for the regulation of cryptocurrency transactions in the European Union. However, the European Commission has proposed an additional amendment to the Directive on Administrative Cooperation (DAC) to address the challenges of digital assets, known as DAC 8. DAC8 aligns the European tax transparency requirements with those agreed in August 2022 by the OECD under its Crypto-Asset Reporting Framework (CARF) and amended Common Reporting Standards (CRS) (with some modifications). DAC 8 would require digital asset service providers, including cryptocurrency exchanges and wallet providers, to collect and report information on their users to the relevant tax authorities. This information would include the name and address of the user, the type of digital asset involved, and the value of the transaction.

INDIA – DETAILED DISCUSSION



Source: ICRIER PROSUS CENTRE FOR INTERNET AND DIGITAL ECONOMY, CRYPTO THE DAK HOUSE IN INDIA'S TECHNOLOGY RACE, POLICY BRIEF 2 (September 2022)

INDIA – DIRECT TAX

Taxability under Income-tax Act

On and after 1 April 2022

Mechanism for taxation of VDAs was brought into the tax regime in Finance Bill 2022 (effective from 1 April 2022). The definition of VDAs included (Sec. 2(47A) ITA) in the ITA is broad. It includes non-fungible tokens, currency like bitcoins and any other coins which are traded digitally. Also, the central government is granted the power to specify any other digital asset in the definition of VDA by notification in the Official Gazette.

Taxation rate: Sec. 115BBH Finance Bill 2022 provides that income or gains arising on the transfer of VDAs shall be taxable. The income or gain is taxable at a flat rate of 30% plus applicable surcharge rates, as the case may be, and health and education cess of 4%. Some other countries that tax gains from the sale of VDAs as capital gain have prescribed a range of tax rates, while some impose tax at a flat rate.

Allowance of deduction and carry forward of losses: No deduction is allowed for any expenditure other than the cost of acquisition. Also, the cost of acquisition does not include infrastructure costs. In many countries, infrastructure costs, such as for equipment and electricity, are deductible. Further, set-off of losses arising on the sale of VDAs is not permissible against any income, and there is no carry-forward of these losses. The practice on this varies across countries. For example, in Sweden, losses are deductible up to 70%.

Non-allowance of basic exemption: The basic exemption limit will not be available as the section contains non-obstante clause.

Gift: It is specified that where VDAs are gifted, the same will be taxable as income from Other Sources in the hands of the recipient.

Income from transfer of VDAs will be taxed at 30%

No deduction permitted except cost of acquisition

Loss from such transfer can't be set off against

TDS applicable @1% on payment for such transfer (on amount above a specified threshold)

Gift of VDAs taxable in the hands of recipient

NOTIFICATION ISSUED



Notification No. 74/2022, dated 30-06-2022

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 30th June, 2022
(Income-tax)

S.O. 2958(E).—In exercise of the powers conferred by proviso to clause (47A) of section 2 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies following virtual digital assets which shall be excluded from the definition of virtual digital asset:

(i) Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services; (ii) Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services; (iii) Subscription to websites or platforms or application.

2. This notification shall come into force from the date of publication in the Official Gazette.

[Notification No. 74/2022, dated 30-06-2022]

Notification No. 75/2022, dated 30-06-2022

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 30th June, 2022
(Income-tax)

S.O. 2959(E).—In exercise of the powers conferred by clause (a) of Explanation to clause (47A) of section 2 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred as 'the Act'), the Central Government hereby specifies a token which qualifies to be a virtual digital asset as non-fungible token within the meaning of sub-clause (a) of clause (47A) of section 2 of the Act but shall not include a nonfungible token whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.

2. This notification shall come into force from the date of publication in the Official Gazette.

[Notification No. 75/2022, dated 30-06-2022]

Schedule VDA						
Income from transfer of virtual digital assets						
Sl. No.	Date of Acquisition	Date of Transfer	Head under which income to be taxed (Capital Gain)	Cost of Acquisition (In case of gift; a. Enter the amount on which tax is paid u/s 56(2)(x) if any b. In any other case cost to previous owner)	Consideration Received	Income from transfer of Virtual Digital Assets (enter nil in case of loss) (Col. 6 – Col. 5)
(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
Total (Sum of all Positive Incomes of Capital Gain in Col. 7)						(Item No. C2 of Schedule CG)

Extract from Income tax return form



TAX DEDUCTION AT SOURCE

Section 194S in relation to tax deduction at source (TDS) was introduced for payments made for VDAs. Any person who is responsible for paying any consideration to an Indian resident for transfer of a VDA is required to deduct TDS at the rate of 1% if the payment exceeds the relevant threshold limit from 1 July 2022 onwards

Liability for deduction	Threshold
Any individuals and HUF less than INR 1 crore in annual turnover in business or less than INR 50 lacs (in the case of professionals)	50,000
Other individuals, HUFs, companies, LLPs, firms	10,000

Circular issued in this regard:

Circular No. 13 of 2022: *Guidelines for removal of difficulties under sub-section (6) of section 194S of the Income-tax Act, 1961*

Circular no. 14 of 2022: *Order under section 119 of the Income-tax Act, 1961 (the Act) in relation to tax deduction at source under section 194S of the Act for transactions other than those taking place on or through an Exchange*

If it is not an exchange transaction, buyer responsible for deducting TDS; in case of exchange transaction both parties are required to deduct TDS. Where consideration is in kind – person responsible for paying to ensure that tax required to be deducted has been deducted/ paid for such consideration, before releasing the consideration.

*Specified person does not require TAN to deduct the taxes (Sec. 194S(2)). The person should quote PAN in the Challan and TDS statement.

INDIA - TAXABILITY UNDER ITA



- Chargeability will be governed by section 4/5/9 of the ITA (Residents – worldwide tax/ non-residents – source-based taxation)
Situs principle: If situs of VDA is situated in India, Income arising to non-residents on transfer shall be taxable in India u/s 9(1)(i).
Determination of situs in such situations could be challenging, since these assets exist in decentralized network and could be transferred electronically and is location agnostic.

Definition of Transfer:

- Transfer defined in inclusive manner in the ITA. Transactions that may not be regarded as transfer: (Lending of VDA for earning interest/ VDA lost or stolen)
(In United Kingdom theft of crypto-assets or the loss of a private key is not regarded as a disposal, in Australia they accept both as disposal events)

Mining transaction:

- As mentioned earlier, some countries defer the taxation event to sale/ disposal. In India also such cryptocurrency received, are taxed on disposal
- In US, it is to be included in gross income at the date of receipt. In Norway, taxable income is based on the MV of cryptocurrency received at the time of extraction.
- Cost of electricity and equipment incurred in generating cryptocurrency through mining is deductible in Finland.
- Forging transaction taxability? (Should not be covered in Sec 115BH as no transfer)

Employer providing VDA to employee:

- Perquisite Section 17(2)(iii)/ without consideration: could be regarded as gift (relevant section 56(2)(x))

Transfer with consideration	Transfer without consideration
In exchange of fiat currency: Taxable u/s 115BBH	Gifts: Income u/s 56(2)(x) for recipient
In exchange of goods and services: Taxable u/s 115BBH	Mining rewards: Taxable event deferred to disposal. Taxed u/s 115BH
In exchange of another cryptocurrency: Taxable u/s 115BBH	Airdrops: Taxable u/s 56(2)(x) or section 28 for recipient



CERTAIN ISSUES

Cost of acquisition

When held as Capital assets: Whether indexed cost of acquisition also allowed? (3rd proviso to Section 48)

When held as Stock-in-trade: Cannot avail the deductions housed in sections 30 to section 44DB other than the cost of acquisition

Treated as intangibles as per accounting principles: Should cost of acquisition be Nil (Application of section 55 (as amended by Finance Act, 2023))

Withholding tax issues where applicable in case of payments to non-residents

- TDS deductions for non-residents are covered in section 195 – Implication of section 194S in such situations - POEM of foreign company in India!

Exclusion of foreign currency

- Definition of VDA excludes foreign currency from its scope
- What happens in situations where cryptocurrency is recognized as legal tender in some countries? (Reference to FEMA definition – Section 2 Foreign currency means any currency other than Indian currency); Currency is defined under the Indian foreign exchange laws to include all currency notes, postal notes, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit notes or such other similar instruments, as may be notified by the Reserve Bank

Valuation

- Valuation of cryptocurrencies for determining the cost basis for tax purposes
- Cost basis in cases of gift/ inheritance (FIFO?) (Deemed chronological order like FIFO in Spain, Specific identification of units in US, Denmark, Norway), Weighted average method – Sweden, basis pooling (United Kingdom)
- Reference to Section 2(22B)?
 - Taxpayers may use the information available in the market to determine the taxable value in Lithuania
 - Taxpayers may determine the taxable value by using the conversion rates provided by a reputable exchange with reasonable trading volume in New Zealand

CERTAIN POTENTIAL TAX TREATY ISSUES



- **Multiple tax treaty article can come into play depending on the transaction types. Some of them are discussed below:**
 - **Permanent establishment:** Server as PE? Can taxpayer (miner) hardware and physical infrastructure be regarded as PE in certain cases? (no server PE where there is an insufficient link between income and server)
 - **Business income:** Reward for mining/ forging could be regarded as business income and Article 7 can come into play?
If PE exists (fixed place PE, Server PE?) of account of miner activity then Article 7 to apply?
 - **Royalty article:** Download of digital products for use of IP?
 - **Capital Gain article?** For sale and trading activities
 - **Other income if not covered in above?**
 - **Different tax treatment of same item in domestic laws of different countries (would it be possible to claim of the foreign tax credit in case of double taxation?)**

VIRTUAL DIGITAL ASSETS – POLICY PERSPECTIVE



**Steps that can
be taken by
policy makers
around the
world**

**Simplified compliance
mechanism**

**Clear guidance on
taxable transactions
and other matters**

**Time to time review of
the policy in light of
emerging variants of
tokens and used cases**



THANK YOU

FOR QUESTIONS : CONTACT@NUPURJALAN.COM

WWW.NUPURJALAN.COM