EDITORIAL

Taxation of Crypto Assets

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There is never a dull moment in crypto. Transformative reforms were seen in the past year including the introduction of regulatory frameworks for stablecoins, a push for real-world-asset tokenization, and expanded public access to crypto, among others. Many of these have been promoted by the US administration which publicly stated that 'the digital asset industry plays a crucial role in innovation and economic development in the United States, as well as our Nation's international leadership'.[1] With the United States pushing the envelope, other countries have taken similar steps by implementing regulatory reforms for crypto.

Tax-related issues involving crypto are becoming increasingly important with the increasing use of this type of assets. Some of the relevant tax issues concern the substantive tax rules. Other issues involve information reporting and measures to ensure compliance and reduce tax evasion risks. The Crypto-Asset Reporting Framework (CARF) and domestic reforms in various countries aim to address tax challenges involving crypto.

This special issue features several cutting-edge articles on this rapidly evolving field. Omri Marian's article – 'Not "Super Tax Havens" After All' – represents a reversal of Marian's previous position in his influential essay from 2013 ('Are Cryptocurrencies "Super" Tax Havens?').[2] Marian's 2013 essay, written when the Bitcoin price was USD 139, warned about the heightened tax evasion risks arising from crypto. However, Marian's new article finds that this tax-enforcement doomsday scenario has not materialized. He explains that crypto assets are not 'super' tax havens after all because crypto markets are neither disintermediated, nor decentralized, nor anonymous. Therefore, Marian contends that governments' failure to enforce tax laws in this context is a policy choice and not an inevitable result of the special characteristics of digital asset technology.

While Marian's article provides encouragement regarding governments' ability to counter crypto-related tax evasion risks, these risks are not going away anytime soon, and the magnitude of this problem might increase with mass adoption of crypto.[3] The OECD has introduced the CARF to increase tax transparency to deter and detect tax evasion using this asset class. However, it is not a panacea for crypto-related tax evasion.

Paul Millen's article – 'CARF's Impact on the Crypto Marketplace: An Equal and Opposite Reaction?' – questions the effectiveness of the CARF. This article explores its potential impact on the crypto marketplace including crypto investors, centralized exchanges, decentralized finance (DeFi) platforms, and intermediaries in non-CARF jurisdictions. Millen criticizes its insufficient guidance on how jurisdictions should counter CARF avoidance strategies. He further outlines several proposals to address the problems in this framework and mitigate risks of market participants circumventing reporting.

Bob Michel's article – 'Exchange of Crypto Information in the "Pre-AEOI Phase": Can Non-CARF Countries Use Group Requests to Obtain Information from Foreign CASPs?' – points out that many jurisdictions in the Global South are unlikely to implement the CARF due to administrative capacity or other reasons. As an alternative to it, Michel's article explores the possibility of obtaining crypto-related information from offshore crypto service providers through group requests. The article analyses the legal basis for these under information exchange provisions in comprehensive bilateral tax treaties, tax information exchange agreements, and the Multilateral Convention on Administrative Assistance in Tax Matters.

Christina Allen and Shaun Parsons' article – 'Sixteen Years of Bitcoin: Resolved and Unresolved Issues in the Taxation of Crypto Assets' – provides a comprehensive discussion on key tax challenges arising from crypto. After

Notes

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1 Exec. Order No. 14178, 90 Fed. Reg. 8647 (23 Jan. 2025).

2 Omri Marian, *Are Cryptocurrencies 'Super' Tax Havens?*, 112 Mich. L. Rev. First Impressions 38 (2013).

3 Financial Action Task Force (FATF), Virtual Assets and Virtual Asset Service Providers 17 (Oct. 2021) (observing that mass adoption increases risks of money laundering and terrorist financing).

discussing the debate on whether it should be classified as money, the article explores four unresolved tax issues: the characterization of mining rewards, the tax treatment of staking rewards, taxing blockchain hard forks, and classifying collateral use of crypto in DeFi transactions. This analysis is enriched by examining the relevant tax rules in various jurisdictions including Australia, the European Union, South Africa, the United Kingdom, the United States, and others. Allen and Parsons stress the importance of 'clarity, consistency, and functional approaches to ensure that taxation keeps pace with technological innovation'.

Antonio Lopo Martinez's article – 'Crypto-asset Taxation and Accounting: Aligning Standards for Cross-Border Clarity and Compliance' – examines crypto tax challenges arising from differences in the accounting treatment under the IFRS, US GAAP, and accounting standards in offshore jurisdictions. The article identifies three friction points: differences in classifying crypto assets, timing mismatches between accrual-based and realization-based rules, and differences between valuation methods. To resolve these issues, Martinez proposes the Tax-Accounting Alignment Framework that aims to achieve a more harmonized approach to the taxation and accounting of crypto assets based on economic substance principles.

The articles in this special issue examine the tax challenges posed by crypto assets and show how these have been evolving alongside the crypto market's maturation and advancing regulation. They identify key issues, assess existing policies, and propose pathways for future development.