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A comparative study of VAT on cryptocurrencies

Abstract

The research landscape pertaining to cryptocurrencies has witnessed extensive exploration across various disciplines, including information technology, legality, accounting, and taxation. However, a noticeable shortage of comprehensive investigations exists regarding the challenges faced by tax regimes and jurisdictions in taxing cryptocurrencies. This study aims to bridge this gap by conducting a meticulous analysis of the characteristics of Bitcoin and the tax implications of cryptocurrencies in South Africa and other jurisdictions. Special attention will be devoted to scrutinizing the ramifications of Value-Added Tax (VAT) on cryptocurrency transactions.

Notably, existing literature sheds light on the challenges encountered by the South African Revenue Service (SARS) in revenue collection from cryptocurrency transactions. The necessity for SARS and the Treasury to refine prevailing legislation emerges as a critical consideration to curtail tax evasion in cryptocurrency transactions and ensure the effective collection of tax revenue.

Cryptocurrencies, as virtual currencies existing outside central bank control, have triggered varied responses from different jurisdictions. While some tax jurisdictions permit the use of cryptocurrencies, others outrightly prohibit them. In the South African context, the use of cryptocurrencies is not prohibited, and SARS has implemented VAT legislation specific to cryptocurrencies. Designating cryptocurrencies as financial services for VAT purposes renders them exempt from VAT, as financial services fall within the category of exempt supplies under Section 12 of the VAT Act 89 of 1991 (VAT Act). This exemption implies that neither standard nor zero rates are applicable to financial services.

The primary objective of this research is to explore alternative classifications for cryptocurrencies by SARS for VAT purposes. To achieve this, a comparative study was conducted, focusing on the VAT classifications of cryptocurrencies in Bahrain, Thailand, Colombia, and Ireland.
The research revealed that Thailand and Bahrain have adopted a categorization resulting in the imposition of actual VAT on cryptocurrency transactions. This

finding challenges the argument against levying VAT on cryptocurrencies, based on the perceived difficulty in determining their value and subsequently determining the appropriate VAT charges. Consequently, the study suggests that SARS should explore alternative approaches that may broaden the VAT tax base and enhance the effectiveness of VAT collection in the context of cryptocurrency transactions.

Key Words: Cryptocurrency, crypto asset, VAT, financial services, exempt supplies, tax regime, Tax Challenges

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Chapter 1: Introduction

1.1. Introduction

Cryptocurrencies have garnered significant adoption within the Republic of South Africa (RSA).[1] As of January 2022, RSA boasted 19.4% of internet users who were cryptocurrency owners, positioning RSA as the fourth highest country globally in terms of cryptocurrency ownership.[2] This substantial ownership among internet users indicates a burgeoning acceptance of cryptocurrencies within RSA.[3]

Cryptocurrency can be defined as a digital medium of exchange utilizing encryption techniques for unit creation and fund transfer authentication. Being intangible in nature, cryptocurrencies solely exist in digital formats within cyberspace.[4] Fundamentally, cryptocurrencies serve a purpose akin to traditional currencies, enabling virtual payments for goods and services without the necessity of a central trusted authority.[5]

Transactions involving cryptocurrencies are facilitated through a peer-to-peer system,[6] relying on cryptographic proof rather than trust.[7] These transactions, ensuring legitimacy and uniqueness, rely solely on digital information transmission and cryptographic techniques.[8] Operating in a completely decentralized manner, cryptocurrency transactions are verified independently of any central bank intervention,[9] with central banks unable to control

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[1] UKWUEZE, F. O. (2021). Cryptocurrency: Towards Regulating the Unruly Enigma of Fintech in Nigeria and South Africa. Potchefstroom Electronic Law Journal Vol. 24 No. 1, http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812021000100054.
[2] KEMP, S. (2022, January 26). DataReportal – Global Digital Insights. Retrieved from DIGITAL 2022: BIG RISE IN CRYPTOCURRENCY OWNERSHIP: https://datareportal.com/reports/digital-2022-big-rise-in-cryptocurrency-ownership?rq=cryptocurrency.
[3] DE VRIES, P. D. (September 2016). An Analysis of Cryptocurrency, Bitcoin, and the Future. International Journal of Business Management and Commerce Vol. 1 No. 2, 1-9.
[4] (UKWUEZE, 2021)
[5] FARREL, R. (2015). An analysis of the cryptocurrency industry. https://repository.upenn.edu/cgi/viewcontent.cgi?article=1133&context=wharton_research_scholars. Retrieved from https://repository.upenn.edu/cgi/viewcontent.cgi?article=1133&context=wharton_research_scholars.
[6] (DE VRIES, September 2016)
[7] (FARREL, 2015)
[8] (FARREL, 2015)
[9] TOMAS, P. (2017). Cryptocurrency 101: A Beginners Guide To Understanding Cryptocurrencies and how To Make Money From Trading. Pronoun.

cryptocurrency supply.[10] Notably, users engage in cryptocurrency transactions without disclosing their identities to one another, thus preserving anonymity and privacy.[11] [12]

In the context of this study, it is imperative to examine how regulators within RSA have responded to the increasing prevalence of cryptocurrency. The South African Reserve Bank (SARB), responsible for currency management within RSA, is the sole institution authorized to issue legal tender. Given this authority, cryptocurrency does not meet the criteria for legal tender in RSA, as it is limited to SARB-issued banknotes and coin.[13]

The South African Revenue Service (SARS) does not categorize cryptocurrencies as currency but rather deems them intangible assets for income tax purposes. Consequently, standard income tax rules apply to all crypto assets.[14] Cryptocurrency taxation is determined based on whether the receipt or accrual is considered revenue or capital in nature, with taxation governed by sections 1 and 26A of the Income Tax Act.[15] Additionally, cryptocurrencies are classified as financial services under Section 2 of the Value-Added Tax Act, exempting them from VAT under Section 12(a). As a result, cryptocurrency transactions carry no VAT implications, rendering them non-taxable supplies with neither output nor input tax levied or claimed.[16]

[10] GOHWONG, S. (2021). Comparative Non-government-based Cryptocurrencies Policy between Thailand and Argentina. Journal of contemporary governance and public policy Vol. 2 No. 2, https://journal.ppishk.org/index.php/jcgpp/article/view/44.

[11] KABWE, R. (2020). The VAT treatment of cryptocurrencies in South Africa : lessons from Australia. Sabinet African Journals Vol. 41 No. 4, https://journals.co.za/doi/abs/10.10520/ejc-obiter-v41-n4-a5.

[12] (UKWUEZE, 2021)

[13] SOUTH AFRICAN RESERVE BANK . (2014). Position Paper on Virtual Currencies. https://www.golegal.co.za/wp-content/uploads/2018/01/Virtual-Currencies-Position-Paper-Final_02of2014.pdf.

[14] SOUTH AFRICAN REVENUE SERVICE. (2018, April 06). SARS's stance on the tax treatment of cryptocurrencies. Retrieved from South African Revenue Service: https://www.sars.gov.za/media-release/6-april-2018-sarss-stance-on-the-tax-treatment-of-cryptocurrencies/.

[15] (SOUTH AFRICAN REVENUE SERVICE, 2018)

[16] VALUE-ADDED TAX ACT NO. 89 OF 1991. (n.d.).

1.2. Objective of the Research

1.2.1. Research Question

The goal of this research report based on a comparative study is to assess and compare the VAT implications of cryptocurrencies in RSA. The assessment will make use of comparing other tax jurisdictions to provide recommendations and amendments that can be made to the VAT treatment of cryptocurrencies in South Africa and the possible impact it might have on revenue collection. The research question to be addressed is: What is the impact of the current VAT exempt status of cryptocurrencies, and what proposals can be made to reassess the current VAT legislation?

1.2.2. The Sub-Questions

- What are cryptocurrencies and what are the hurdles SARS faces in taxing cryptocurrencies regarding VAT?
- Why were financial services in general declared exempt from VAT and when did SARS classify cryptocurrencies as financial services?
- How and why did SARS conclude that cryptocurrencies should be categorized as financial services?
- In the different jurisdictions selected, how are cryptocurrencies classified for VAT purposes and what implications does it have on VAT in other jurisdictions because of this classification?
- Should SARS change its present VAT legislation on cryptocurrency?

1.3. Delimitations and Scope of the Research Report

The purpose of this research report is to research the pertinence of classifying cryptocurrencies as financial services. How SARS decided on how to define cryptocurrency as financial services, is information that has not been made known to the public. The discussion in this report is limited to the aforementioned point. An evaluation of the characteristics of financial services and cryptocurrencies will be conducted, and SARS' decision is to be compared to other tax jurisdictions.

Only Bahrain, Thailand, Colombia and Ireland are included in this report, as a delimitation. South Africa's VAT laws are not to be contrasted to all the countries that have implemented tax guidance rules, as this report is restricted to examining the VAT treatment in the countries specified. Further, it is impossible to compare South Africa to all countries, as not all countries have issued guidance notes on the tax treatment of cryptocurrencies.

1.4. Research Method

The research will be qualitative. The research report will be completed by comparing South Africa's VAT treatment of cryptocurrencies with the VAT treatment of Thailand, Colombia, Ireland and the Kingdom of Bahrain. Legislation, websites, journal articles, discussion papers and books will be among the literature to be reviewed.

Chapter 2: Cryptocurrency as an asset and currency

2.1 Detailed discussion on cryptocurrencies and crypto assets

Cryptocurrencies emerged as a response to an economic deficiency or a void within the financial sector.[17] Traditionally, transactions necessitated the involvement of a third party to establish trust among transacting parties, resulting in the absorption of transaction costs by these entities.[18] Satoshi Nakamoto's seminal paper proposed a framework whereby individuals could engage in direct transactions, circumventing the need for traditional financial intermediaries.[19]

This suggests that transaction costs are low or non-existent.[20] Nakamoto's solution to the double-spending problem, achieved through a peer-to-peer network, effectively obviated the necessity for trusted third parties, thereby reducing transaction expenses significantly.[21] Consequently, the allure and adoption of cryptocurrencies can be attributed primarily to their ability to mitigate transaction costs.[22] This is the main reason why people choose and utilise cryptocurrency.[23]

To comprehend policymakers' responses to the utilization of cryptocurrencies, a thorough understanding of the nature of these digital assets is imperative. Cryptocurrency is defined as a virtual medium of exchange employing encryption techniques to regulate currency generation and transaction validation, without the oversight of a central authority.[24]

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[17] (DE VRIES, September 2016)
[18] NAKAMOTO, S. (2008). Bitcoin: A Peer-to-Peer Electronic Cash System.
[19] (NAKAMOTO, 2008)
[20] (FARREL, 2015)
[21] (NAKAMOTO, 2008)
[22] (FARREL, 2015)
[23] CARTON, J., & HARWICK, C. (2021). Cryptocurrency, Decentralized Finance, and the Evolution of Exchange: A Transaction Costs Approach. Sound Money Project Working Paper Series, file:///C:/Users/OEM/Downloads/SSRN-id3891593.pdf.
[24] (TOMAS, 2017)

These encryption techniques leverage mathematical and computer science principles to secure digital communications.[25] Functioning akin to conventional currencies, cryptocurrencies facilitate virtual transactions for goods and services but operate independently of central oversight, existing solely in digital form.[26]

It is important to note that a cryptocurrency functions like a standard currency, as it enables its users to make virtual payments for goods and services, but independent from a central trusted authority.[27] Their intangible nature renders them easily transferrable across international borders.[28]

In the realm of Regulatory Sandbox Approaches (RSA), cryptocurrencies are frequently categorized as crypto assets, a term used interchangeably with cryptocurrency herein. Crypto assets represent virtual value not issued by any central bank, but traded, transferred, and stored electronically by individuals and entities for various purposes, including investment and payment. Employing cryptographic methods in their underlying technology, crypto assets serve as a digital representation of value, distinct from sovereign currencies and devoid of legal tender status.[29]

The concept of crypto assets defies strict definition, yet an examination of their design and functionalities elucidates their diverse applications.[30] They function as mediums of payment, speculative trading instruments, and investment vehicles, offering a store of value to investors.[31]

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[25] RAM, A. (2018). Taxation of the Bitcoin: initial insights through a correspondence analysis. Emerald Insight, https://www.emerald.com/insight/content/doi/10.1108/MEDAR-10-2017-0229/full/html.
[26] (DE VRIES, September 2016)
[27] (FARREL, 2015)
[28] (RAM A. , 2018)
[29] INTER-GOVERNMENTAL FINTECH WORKING GROUP. (2021, June 11). National Treasury. Retrieved from National Treasury: https://www.treasury.gov.za/comm_media/press/2021/IFWG_CAR%20WG_Position%20paper%20on%20crypto%20assets_Final.pdf
[30] INTER-GOVERNMENTAL FINTECH WORKING GROUP (b). (2021, June 11). National Treasury. Retrieved from National Treasury: https://www.treasury.gov.za/comm_media/press/2021/IFWG_CAR%20WG_Crypto%20assets%20FAQs_Final.pdf
[31] RAM, A. J. (2019). Bitcoin as a new asset class. Emerald Insight, https://www.emerald.com/insight/content/doi/10.1108/MEDAR-11-2017-0241/full/html.

Moreover, crypto assets serve as vehicles for fundraising, as companies issue digital tokens to the public in exchange for other crypto assets.[32] Additionally, crypto assets underpin derivative products designed to mitigate risks associated with their volatility and market fluctuations.[33]

2.2 A Conceptual Framework for Peer-to-Peer Networking

Peer-to-Peer Networking, popularized by platforms like Napster, facilitates the sharing of files, notably MPEG Layer3 (mp3) compressed audio files. However, its scope extends beyond mere file exchange to encompass the establishment of multimedia communication networks and resource sharing based on Peer-to-Peer principles.[34]

A pervasive challenge encountered in academic discourse pertains to the diverse and sometimes conflicting usage of terminologies associated with Peer-to-Peer networking. Ambiguities arise when the term 'Peer-to-Peer' is employed without a clear and universally agreed-upon definition, leading to misunderstandings and contradictory interpretations.[35]

Peer-to-Peer networking has garnered attention for several years, prompting investigations into its architectural intricacies. Some scholars, define Peer-to-Peer networking as collections of heterogeneous distributed resources interconnected through a network. Others, define Peer-to-Peer networks in broader terms, considering them as the antithesis of Client/Server architectures.[36]

From Schollmeier’s perspective, the most salient disparity between Client/Server networking and Peer-to-Peer networking lies in the concept of a "Servent" employed in Peer-to-Peer networks. Coined from the combination of "server" and "client," a Servent denotes the capability of nodes within a Peer-to-Peer network

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[32] (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
[33] (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
[34] SCHOLLMEIER, R. (2001). A Definition of Peer-to-Peer Networking for the Classification of Peer-to Peer Architectures and Applications . Technische Universitat Munchen.
[35] (SCHOLLMEIER, 2001)
[36] (SCHOLLMEIER, 2001)

to function simultaneously as both server and client entities. This stands in stark contrast to Client/Server networks, where nodes are typically relegated to either server or client roles, but not both.

The aforementioned characteristics of Peer-to-Peer networks culminate in the following definition. In this context, "service" is understood in accordance with the definition provided in.

> *"A distributed network architecture may be called aPeer-to-Peer network, if the participants share a part of their own hardware resources (processing power, storage capacity, network link capacity, printers). These shared resources are necessary to provide the Service and content offered by the network (e.g. file sharing or shared workspaces for collaboration). They are accessible by other peers directly, without passing intermediary entities. The participants of such a network are thus resource (Service and content) providers as well as resource (Service and content) requestors (Servent-concept)".*[37]

2.3 How cryptocurrency transaction occurs.

Users of crypto assets engage in transactions via a decentralized peer-to-peer network, underpinned by cryptographic protocols rather than reliance on trust.[38] This underscores the dependence of crypto assets on the secure transfer of digital data, employing cryptographic methods to ensure the integrity of each transaction.[39] Such cryptographic techniques serve as authentication mechanisms, obviating the need for trust in the transaction process.[40]

A crypto asset represents a digital payment mechanism characterized by anonymity,[41] often referred to as a pseudo-anonymous currency.[42] Transacting parties remain anonymous, with crypto asset wallet owners' identities not directly ascertainable. Bitcoin, as the inaugural and most widely recognized crypto asset,

[37] (SCHOLLMEIER, 2001)
[38] (FARREL, 2015)
[39] (DE VRIES, September 2016)
[40] ERASMUS, D., & BOWDEN, S. (2020). A CRITICAL ANALYSIS OF SOUTHAFRICAN ANTI-MONEYLAUNDERING LEGISLATIONWITH REGARDTOCRYPTOCURRENCY. Sabinet Journals Vol.41 Issue.2, 309-327.
[41] LIEDEL, D. A. (2018). The Taxation of Bitcoin: How the IRS views Cryptocurrencies. Hein Online, https://heinonline.org/HOL/LandingPage?handle=hein.journals/drklr66&div=7&id=&page=.
[42] NAHEEM, M. A. (2018). Regulating virtual currencies – the challenges of applying fiat currency laws to digital technology services. Emerald Insight, https://www.emerald.com/insight/content/doi/10.1108/JFC-08-2016-0055/full/html?fullSc=1.

offers an ideal subject for studying the mechanics of crypto assets, including how the peer-to-peer system resolves the double-spending dilemma, facilitating a deeper comprehension of their functionality.[43]

Bitcoin operates on a distributed peer-to-peer network where each computer node functions autonomously.[44] Transactions within the network are grouped into blocks and appended to the blockchain, a decentralized public ledger recording all transactions and user balances.[45] The decentralized nature of the ledger ensures its integrity, as no single entity controls or owns the data, with each computer node maintaining its copy of the blockchain, thereby preventing tampering or alteration.[46]

Each node in the network validates new transactions and aggregates them into blocks, requiring a rigorous proof-of-work for verification.[47] Upon discovering a valid proof-of-work, the block is disseminated to all nodes, which collectively verify the authenticity of transactions and ensure the absence of double-spending. This process, exemplifying the reliance on data transmission over trust, demonstrates the operational dynamics of the peer-to-peer network.[48]

The transparency of the ledger allows anyone with internet access to view recorded transactions,[49] although the irreversible nature of Bitcoin transactions underscores the computational difficulty of reversing them.[50] Crypto assets can be acquired through mining or purchased with fiat currency.[51]

[43] (DE VRIES, September 2016)
[44] (RAM A. , 2018)
[45] (ERASMUS & BOWDEN, 2020)
[46] (RAM A. , 2018)
[47] RAM, A., MAROUN, W., & GARNETT, R. (2016). Accounting for the Bitcoin: accountability, neoliberalism and a correspondence analysis. Emerald Insight, https://www.emerald.com/insight/content/doi/10.1108/MEDAR-07-2015-0035/full/html.
[48] (NAKAMOTO, 2008)
[49] SYLVESTER, B. (2021). An overview of the regulation and management of cryptocurrency in South African inter vivos and testamentary trusts. University of Western Cape Scholar, https://etd.uwc.ac.za/xmlui/handle/11394/8140.
[50] (NAKAMOTO, 2008)
[51] (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)

Acquisition of bitcoin necessitates a digital wallet containing public and private keys, analogous to email addresses and PIN codes, respectively.[52] The combination of these keys facilitates transactions, with recipients' public keys and senders' private keys enabling the validation of transactions within the network.[53]

The process of validating and adding transactions to the blockchain, known as crypto asset mining, involves intricate mathematical problem-solving and rewards miners with bitcoin upon successful validation.[54] Miners play a dual role of transaction validation and token creation, contributing to the integrity and stability of the network.[55]

2.4 The value of cryptocurrency

The value attributed to gold is often deemed intrinsic due to its utility in crafting tangible goods such as jewellery, thereby possessing inherent worth.[56]

Conversely, the valuation of crypto assets is not anchored in any physical asset but rather in their technological sophistication and network infrastructure, thus lacking intrinsic value.[57] Consequently, the value of crypto assets is contingent upon economic principles of supply and demand.[58]

Value, being inherently subjective, is ascribed to items deemed useful or beneficial by individuals or societies. The increasing circulation of crypto assets, growing by an estimated ten units daily, underscores a rising demand for these digital assets, indicative of their assigned value within the market.[59]

[52] (ERASMUS & BOWDEN, 2020)
[53] (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
[54] (ERASMUS & BOWDEN, 2020)
[55] (SYLVESTER, 2021)
[56] (DE VRIES, September 2016)
[57] (INTER-GOVERNMENTAL FINTECH WORKING GROUP (b), 2021)
[58] (FARREL, 2015)
[59] (INTER-GOVERNMENTAL FINTECH WORKING GROUP (b), 2021)

Crypto assets are perceived as resistant to inflation spurred by governmental interventions, owing to their detachment from traditional macroeconomic factors such as interest rates and GDP, and their inability to be influenced by government controls.[60] [61]

Notably, in economies grappling with high inflation rates like Argentina, the utility of crypto assets becomes pronounced, offering a viable alternative to unstable national currencies. This burgeoning acceptance of crypto assets amidst economic instability underscores their value derived from market acceptability.[62]

Crypto assets fulfil a demand unmet by conventional financial mechanisms, enabling peer-to-peer fund transfers devoid of intermediary oversight and at minimal transaction costs.[63] Their decentralized nature contributes to expedited transaction processing, markedly faster than traditional financial systems, thereby enhancing their perceived value.[64]

Therefore, the utility of crypto assets in addressing market needs contributes to their assigned value. However, the value of crypto assets remains highly volatile, influenced by uncertainties surrounding their perceived worth, as exemplified by their varied acceptance across different economic contexts.[65]

The absence of uniform regulatory frameworks globally further exacerbates this volatility, with some nations considering cryptocurrency legislation while others opt for outright bans, contributing to fluctuating values.[66]

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[60] (DE VRIES, September 2016)
[61] (RAM, MAROUN, & GARNETT, 2016)
[62] (DE VRIES, September 2016)
[63] (CARTON & HARWICK, 2021)
[64] (RAM, MAROUN, & GARNETT, 2016)
[65] (KABWE, 2020)
[66] ADAM, Z. (2021). An overview of the regulation of Cryptocurrency in South Africa. Hein Online, https://heinonline.org/HOL/LandingPage?handle=hein.journals/pslr15&div=25&id=&page=.

The regulatory ambiguity coupled with the subjective nature of value appraisal complicates the valuation of crypto assets, rendering it a complex endeavour.[67]

2.5 Comparison between virtual currency and fiat currency

Virtual currency, defined as a digital representation of value not issued by central banks, financial institutions, or e-money entities, serves as a medium of exchange, unit of account, or store of value.[68] [69] However, from a legal standpoint, virtual currency does not meet the criteria to be classified as currency, lacking legal tender status.[70] [71]

Legal tender, as stipulated in the South African Reserve Bank Act 90 of 1989, typically encompasses coins, banknotes, and gold coins, though not expressly defined.[72]

In contrast, fiat currency, unlinked to the value of any commodity like gold, derives its value from governmental backing and recognition by central banks, possessing legal tender status.[73] Fiat currency, also referred to as electronic money or e-money when represented digitally, is regulated and issued by central authorities, distinguishing it from virtual currency.[74] [75] While both virtual currency and fiat currency are digital in nature, the crucial distinction lies in the issuance and regulation, with fiat currency overseen by central authorities and virtual currency decentralized and issued by individuals on peer-to-peer networks.[76] [77]

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[67] (INTER-GOVERNMENTAL FINTECH WORKING GROUP (b), 2021)
[68] EUROPEAN CENTRAL BANK. (2015). Virtual Currency schemes - a further analysis. Publications Office of the European Union, https://op.europa.eu/en/publication-detail/-/publication/96fe84e9-3d29-4790-a1a4-d89218c244ac/language-en.
[69] SOUTH AFRICAN RESERVE BANK . (2014). Position Paper on Virtual Currencies. https://www.golegal.co.za/wp-content/uploads/2018/01/Virtual-Currencies-Position-Paper-Final_02of2014.pdf.
[70] (EUROPEAN CENTRAL BANK, 2015)
[71] (SOUTH AFRICAN RESERVE BANK , 2014)
[72] (KABWE, 2020)
[73] (NAHEEM, 2018)
[74] (NAHEEM, 2018)
[75] (KABWE, 2020)
[76] (RAM A. , 2018)
[77] (KABWE, 2020)

Considering the regulatory framework in South Africa, where only registered, South African banks are authorized to issue e-money according to the National Payment Systems Act 78 of 1998, it becomes evident that crypto assets, issued by individuals rather than registered banks, do not meet the criteria to be classified as e-money or fiat currency. Consequently, crypto assets lack legal tender status in South Africa, meaning no legal obligation exists for their acceptance as a means of payment, although their utilization as such is not precluded.[78]

However, it is crucial to avoid conflating crypto assets with traditional money, as their value lacks intrinsic backing and governmental support, precluding their classification as fiat currency.[79] [80]

Given the absence of legal tender status and governmental backing, crypto assets align more closely with the characteristics of virtual currency, thereby warranting their classification as such.[81]

2.6 How cryptocurrencies are regulated.

Crypto assets operate within a decentralized framework, where transactions are verified autonomously without the involvement of central banking institutions.[82] This decentralization implies the absence of singular authority controlling crypto assets, owing to their foundation on software algorithms.[83]

While perceptions often depict crypto assets as unregulated, this characterization is nuanced due to the decentralized nature of peer-to-peer networks which inherently self-regulate transactions. Hence, it is more accurate to describe the regulatory status of the peer-to-peer network and associated technologies as

[78] (INTER-GOVERNMENTAL FINTECH WORKING GROUP (b), 2021)
[79] (FARREL, 2015)
[80] (KABWE, 2020)
[81] (FARREL, 2015)
[82] (TOMAS, 2017)
[83] DE CASTRO, A. L. (2024, March 13). The Ebb of Fiat and the Flow of Cryptocurrency. Retrieved from https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&as_ylo=2018&q=The+Ebb+of+Fiat+and+the+Flow+of+Cryptocurrency&btnG

ambiguous.[84]

Existing legal and financial structures are ill-suited to accommodate the technological intricacies of crypto assets, prompting varied responses from governments worldwide, ranging from outright bans to regulatory embracement.[85] In the context of South Africa, the South African Reserve Bank (SARB) does not exercise oversight over crypto asset systems or intermediaries, clarifying that crypto assets fall beyond its regulatory purview.[86]

Given the global scale of crypto asset operations and their potential involvement in diverse economic activities, the necessity for regulatory frameworks becomes apparent, particularly in mitigating risks associated with criminal activities such as money laundering. The decentralized nature of crypto assets challenges traditional regulatory approaches, necessitating innovative strategies to uphold regulatory objectives.[87]

To address regulatory gaps, South Africa established the Intergovernmental Fintech Working Group (IFWG) in 2016, comprising various regulatory bodies, with objectives including financial system stability, consumer protection, and combating illicit financial activities.[88]

The measures the group proposed involve registration procedures for crypto asset service providers, paving the way for potential legal recognition and authorization within South Africa.[89]

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[84] (ERASMUS & BOWDEN, 2020)
[85] (ADAM, 2021)
[86] (SOUTH AFRICAN RESERVE BANK , 2014)
[87] (ERASMUS & BOWDEN, 2020)
[88] INTER-GOVERNMENTAL FINTECH WORKING GROUP. (2019). National Treasury. Retrieved from National Treasury: https://www.treasury.gov.za/comm_media/press/2019/CAR%20WG%20Consultation%20paper%20on%20crypto%20assets_final.pdf
[89] (INTER-GOVERNMENTAL FINTECH WORKING GROUP, 2019)

Moreover, the Tax Administration Act (TAA) grants the South African Revenue Service (SARS) authority to access information from third parties, including crypto asset exchanges, to ensure tax compliance.[90] Major crypto asset exchanges in South Africa, such as Luno and IceCubed, already adhere to Know Your Customer regulations, underscoring the potential for regulating exchanges to enhance regulatory oversight.[91]

In light of these developments, the regulation of crypto asset exchanges emerges as a crucial aspect of ensuring transparency and compliance within the crypto asset ecosystem.[92]

Chapter 3: VAT, financial services and cryptocurrencies in South Africa

3.1 Background on VAT in RSA.

The implementation of the VAT system in South Africa in 1991 marked a significant fiscal policy change, facilitated by the enactment of the Value-Added Tax Act 89 of 1991, which came into effect on September 30 of that year, setting the statutory rate at 10%.[93]

The sections referenced herein pertain specifically to the provisions outlined in the Value-Added Tax Act No. 89 of 1991, unless expressly stated otherwise. This transition to a VAT system aimed to replace the existing General Sales Tax framework[94]. Subsequent to its initiation, the statutory rate experienced an increment to 14% in 1993, which remained stable until April 1, 2018, when a further 1% increase was implemented.[95]

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[90] Scheepers, J. (2019). Analysis of cryptocurrency verification challenges faced by the South African Revenue Service and tax authorities in other BRICS countries and whether SARS' powers to gather information relating to cryptocurrency transactions are on par. University of Western Cape Scholar, https://open.uct.ac.za/handle/11427/31231.
[91] (ERASMUS & BOWDEN, 2020)
[92] (ERASMUS & BOWDEN, 2020)
[93] GARDINER, C. (2019). Tax policy analysis of the value added tax hike in South Africa. Pretoria: University of Pretoria.
[94] (GARDINER, 2019)
[95] BREEDT, J.-A. (2020). A systematised review of the literature related to the implementation of VAT zero-ratings as a relief measure for the poor. Pretoria: University of Pretoria.

This adjustment was necessitated by the governmental imperative for increased revenue generation, with estimations indicating an additional R22.9 billion would be accrued as a result.[96] Since this alteration, the VAT rate has remained constant at 15%.[97]

The VAT regime, recognized globally for its widespread adoption and institutional legitimacy, constitutes a substantial portion of tax revenue in numerous jurisdictions, exceeding one-quarter of total tax income in many cases.[98]

Despite its nomenclature, VAT functions as a consumption tax rather than a true value-added tax, with the ultimate burden borne by consumers.[99] As an indirect tax, VAT entails the collection of funds from sellers (i.e., firms) rather than the direct imposition of economic burden on consumers.[100]

This indirect tax characteristic distinguishes VAT from direct taxes, such as income tax, which are levied directly on taxpayers' income.[101] It is evident that the structure of VAT is designed to ensure that the ultimate consumer bears the cost of VAT.[102]

Conceptually, VAT is defined as a broad-based tax levied on the sale of commodities, extending at least up to the manufacturing stage, with provisions for systematic offsetting of tax charges on input commodities against those on

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96 WOOLARD, I., CAWE, A., JANSEN, A., LEOKA, T., MAKGETHA, N., MOENG-MAHLANGU, L., . . . VALODIA, I. (2018). Recommendations on Zero Ratings in the Value-Added Tax System. Independent panel of experts for the review of Zero Rating in South Africa.

97 THE MINISTER OF FINANCE. (2022). REMARKS BY THE MINISTER OF FINANCE, ENOCH GONDONGWANA. BUDGET VOTE 8 SPEECH, (pp. https://www.treasury.gov.za/comm_media/speeches/2022/2022051801%20Minister%20of%20Finance%20Speech%20-%20Budget%20Vote%208%202022.pdf).

98 THE DAVIS TAX COMMITTEE. (2018). Final report on the Value-Added Tax (VAT) for the Minister of Finance., (pp. https://www.sataxguide.co.za/wp-content/uploads/2018/05/20180329-Final-DTC-VAT-Report-to-the-Minister.pdf).

99 EBRILL, L., KEEN, M., BODIN, J.-P., & SUMMERS, V. (2001). The Modern VAT. Washington DC: International Monetary Fund.

100 (GARDINER, 2019)

101 COETZEE, R. (2013). The vat treatment of financial services linked to credit cards. Pretoria: University of Pretoria.

102 VON BERG, D. (2020). The impact of the 2018 VAT rate increase on South African tax policy on the zero-rating of merit goods. Cape Town: University of Cape Town.

output commodities.[103] In the South African context, VAT operates on a destination-based principle, meaning that it is levied at the point of consumption of goods and services.[104]

Section 7 of the Value-Added Tax Act No. 89 of 1991 mandates the imposition of VAT on goods or services supplied by vendors in the course of their business operations from the commencement date stipulated by the Act. Additionally, VAT is applicable to the importation of goods into South Africa and imported services by any entity.[105]

This underscores the principle that VAT is levied based on the destination of consumption, justifying its imposition in the context of imported goods and services.

It is imperative to note that Section 7 provides for the imposition of VAT at a rate of 15% on the value of supply or importation, subject to specific exemptions, exceptions, deductions, and adjustments delineated within the VAT Act. Zero-rated supplies, as per Section 11, and exempt supplies, as per Section 12, constitute distinct categories within the VAT framework.[106] Zero-rated supplies are taxable but are levied at a 0% rate, whereas exempt supplies do not attract VAT at any rate.[107] Consequently, zero-rated and exempt supplies alleviate the VAT liability for end-users.[108]

The VAT system employs a subtractive or credit-input mechanism, permitting vendors to offset taxes paid on input purchases against taxes collected on output supplies, thereby aligning with standard VAT practices.[109] Generally, VAT levied on inputs qualifies as input tax for recipients, provided the goods or services

[103] (EBRILL, KEEN, BODIN, & SUMMERS, 2001)
[104] SOUTH AFRICAN REVENUE SERVICES. (2016, December 12). Value-Added Tax: Guide for Short-Term Insurance. South Africa.
[105] (VALUE-ADDED TAX ACT NO. 89 OF 1991.)
[106] (VALUE-ADDED TAX ACT NO. 89 OF 1991.)
[107] (COETZEE, 2013)
[108] KHUZWAYO, M. F. (2019). The South African Value-Added Tax Rate Increase: Is it justifiable? Pretoria: University of Pretoria.
[109] (EBRILL, KEEN, BODIN, & SUMMERS, 2001)

acquired were utilized in generating taxable supplies in the context of a business enterprise, or subject to the restrictions outlined in Section 17.

Notably, Section 2 of the Value-Added Tax Act No. 89 of 1991 categorizes crypto assets as financial services, underscoring their unique treatment within the VAT framework. Subsequent sections elaborate on the VAT implications for financial services, particularly in relation to crypto assets.[110]

3.2 Financial services VAT implications

The Value-Added Tax Act No. 89 of 1991 stipulates that financial services are exempt from VAT under section 12(a), unless zero-rated under section 11. However, in the case of exported financial services, section 11 supersedes section 12(a).[111] This exemption and zero-rating mechanism diminishes the tax base, resulting in income loss for the South African Revenue Service.[112]

Despite VAT being the second largest revenue contributor in South Africa, with an estimated collection of R439.76 billion for the fiscal year 2022/23, the decision to exempt financial services holds significance.[113] Consequently, understanding why SARS opted to exempt financial services, despite VAT being perceived as a prime source of additional government revenue, is of critical importance.[114]

This section aims to explore the rationale behind SARS's decision to exempt financial services.

[110] (VALUE-ADDED TAX ACT NO. 89 OF 1991.)
[111] (SOUTH AFRICAN REVENUE SERVICE, 2016)
[112] (THE DAVIS TAX COMMITTEE, 2018)
[113] (THE MINISTER OF FINANCE, 2022)
[114] (BREEDT, 2020)

Section 2 of the Value-Added Tax Act No. 89 of 1991 defines financial services as the following activities:

a. "The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise).

b. The issue, payment, collection or transfer of ownership of a cheque or letter of credit.

c. The issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debit security.

d. The issue, allotment or transfer of ownership of an equity security or participatory security.

e. ....

f. The provision by any person of credit under an agreement by which money or money's worth is provided by that person to another person who agrees to pay in the future a sum or sums exceeding in aggregate the amount of such money or money's worth.

g. ...

h. ...

i. The provision, or transfer of ownership, of a long-term insurance policy, the provision or transfer of ownership of reinsurance in respect of such a policy: Provided that such an activity shall not be deemed to be a financial service to the extent that it includes the management of a superannuation scheme.

j. The provision, or transfer of ownership, of an interest in superannuation scheme.

k. The buying or selling of any derivative or the granting of an option: Provided that where the supply of the underlying goods or services takes place, that supply shall be deemed to be a separate supply of goods or services at the open market value thereof: Provided further that the open market value of those goods or services shall not be deemed to be consideration for a financial service as contemplated in this paragraph.

L. ....

m. ....

n. ....

o. The issue, acquisition, collection, buying or selling or transfer of ownership of cryptocurrency".[115]

The treatment of financial services under VAT has long been recognized as one of the most challenging and complex issues in public finance.[116] While the primary objective of levying VAT is to tax consumer expenditure, financial services present unique challenges due to their intermediary nature.[117]

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[115] (VALUE-ADDED TAX ACT NO. 89 OF 1991.)

[116] BAYDUR, I., & YILMAZ, F. (2014). VAT Treatment of the Financial Services: Implications for the Real Economy. Journal of Money, Credit and Banking Vol.53 No.8, https://onlinelibrary.wiley.com/doi/10.1111/jmcb.12780.

[117] WURTS, B., & FENTON, F. (2002). Indirect taxes on financial services. International Tax Review, https://www.proquest.com/docview/230186388/fulltext/2ED4E0F34F314FEDPQ/1?accountid=15083.

Although in theory, VAT should apply to the consumption of financial services similar to other goods and services, the inherent differences in the nature of financial services have led to divergent theoretical perspectives.[118] To elucidate these complexities, examples will be provided to highlight the distinct characteristics of financial services compared to other transactions.

Financial services are not acquired primarily for their consumption value but rather as intermediary transactions facilitating eventual consumption. This aligns with the production efficiency theorem, suggesting that financial services, as intermediate transactions enabling ultimate consumption, should not be subject to taxation.[119]

For instance, banks act as intermediaries by channelling funds from depositors to borrowers based on varying risk and liquidity preferences.[120] The difference between the interest paid to depositors and received from borrowers represents the earnings of banks for providing intermediary services.[121]

It is argued that VAT should be exclusively charged on final consumption, not on intermediate transactions like those provided by banks.[122] Some scholars argue that financial services, closely linked to savings, should be exempt from VAT as savings are related to future consumption. Alternatively, it has been suggested that financial services should be taxed under a separate tax regime.[123]

Since capital assets are consumed over time, VAT is imposed upon purchase, not over the consumption period. Therefore, the supply of financial services should

[118] (COETZEE, 2013)
[119] FIRTH, M., & MCKENZIE, K. J. (2017). The GST and Financial Services: Pausing for Perspective. The School of Public Policy Publications, Volume 5, Issue 29, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3076984.
[120] SCHENK, A. (2009). Taxation of Financial Services(Including Insurance) under a U.S. Value-Added Tax. Hein Online, https://heinonline.org/HOL/LandingPage?handle=hein.journals/taxlr63&div=23&id=&page=.
[121] (SCHENK, 2009)
[122] (FIRTH & MCKENZIE, 2017)
[123] BENEDICT, K. (2011). The Australian GST regime and financial services: How did we get here and where are we going? Hein Online Vol.9 No.2, https://heinonline.org/HOL/LandingPage?handle=hein.journals/ejotaxrs9&div=16&id=&page=.

be considered a taxable supply, regardless of whether consumption is deferred to the future.[124] However, determining the value-added aspect poses a challenge if VAT is to be levied on financial services.[125]

Unlike most goods and services with explicit prices, financial services often entail implicit charges, complicating VAT assessment on individual transactions.[126] This complexity is further exacerbated by bundling practices adopted by financial intermediaries, where multiple services are provided under a single fee.[127]

For example, banks earn revenue through interest rate differentials, comprising implicit fees, risk premiums, and time value of money considerations, making it challenging to ascertain the specific value-added component subject to VAT.[128]

The application of VAT to financial services presents significant technical challenges for tax policymakers and administrators. SARS's decision to exempt financial services is grounded in the recognition of the difficulty and potential inequity of taxing these transactions, given their high level of integration in the economy.[129]

Taxing financial services would pose both conceptual and practical challenges, as financial organizations do not charge VAT on their supplies and thus cannot obtain input credits for VAT paid on input purchases due to the exemption status of financial services.[130]

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124 GRUBERT, H., & KREVER, R. (2011). VAT and financial services: Competing perspectives on what should be taxed. Hein Online, https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/taxlr65&id=208&men_tab=srchresults.

125 (FIRTH & MCKENZIE, 2017)

126 (WURTS & FENTON, 2002)

127 (COETZEE, 2013)

128 MERRILL, P. R. (2011). VAT treatment of the financial sector. Tax Analysts, https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.190.6301&rep=rep1&type=pdf.

129 (WURTS & FENTON, 2002)

130 (BAYDUR & YILMAZ, 2014)

3.3 Crypto assets' VAT implications

The preceding discourse on financial services underscores the challenge of determining the value-added, rendering the classification of cryptocurrencies as appropriate.[131] It is imperative to highlight that this paper's objective is not an exhaustive evaluation but rather a comparison with the chosen jurisdiction.

When a vendor engages in the supply of goods or services within the scope of their enterprise, they are obligated to impose output tax on said supply. Output tax pertains to the tax levied on such supplies.[132] Pursuant to section 12(a) of the Value-Added Tax Act No. 89 of 1991, the provision of any cryptocurrency is classified as an exempt supply.

Consequently, activities such as acquisition, issuance, collection, purchase, sale, or transfer of ownership of cryptocurrencies are deemed exempt supplies under the VAT Act (Value-Added Tax Act No. 89 of 1991), aligning with their classification as financial services and thereby alleviating any VAT implications for cryptocurrency transactions.[133]

Given the absence of specific SARS recommendations regarding the VAT treatment of particular uses of crypto assets, it is recommended that the South African VAT treatment of a given transaction be examined in line with the VAT principles delineated in the VAT Act.[134] This study will primarily address the most prevalent use cases of crypto assets and ascertain the VAT implications by applying VAT principles as stipulated in the VAT Act, employing examples for illustrative purposes where applicable.

In a barter transaction, one party procures goods or services and remunerates with another good or service instead of currency.[135] Goods and services, as defined by

[131] (KABWE, 2020)
[132] (GARDINER, 2019)
[133] PRICEWATERHOUSECOOPERS. (2021). PwC Annaul Global Crypto Tax Report 2021. https://www.pwc.com/gx/en/insights/pwc-annual-global-crypto-tax-report-2021.pdf.
[134] (PRICEWATERHOUSECOOPERS, 2021)
[135] MANS, E. (2019). An analysis of the value added tax implications on crypto currency transactions.

section 1 of the Value-Added Tax Act No. 89 of 1991, exclude money. Therefore, in a barter transaction, the consideration received is non-monetary for both transacting parties.[136] This is exemplified by the scenario where Co XX, a VAT vendor, acquires product A from Co YY, transferring crypto assets as payment.

Since crypto assets do not qualify as legal tender in the Republic or any other country, they are classified as goods.[137] Consequently, this transaction falls under the purview of barter, necessitating consideration of VAT implications for both parties.

From Co XX's perspective, the supply of crypto assets incurs no VAT as it is categorized as a financial service, constituting an exempt supply.

Conversely, Co YY, as the supplier of product A, must levy output tax on the transaction, with the value of supply being the open market value of the crypto assets received. Output tax is computed accordingly, and Co YY is obliged to remit this to SARS. Co YY is also considered to have acquired crypto assets, yet no input tax can be claimed as no VAT was imposed by Co XX. Input tax can only be claimed by Co XX to the extent that the acquired product will be utilized in furtherance of an enterprise.

In the context of trading and selling cryptocurrencies, when an individual engages in such activities, the cryptocurrencies are regarded as inventory.[138] Notably, there are no VAT implications since this trade does not constitute an enterprise as defined in the VAT Act, specifically excluding businesses making exempt supplies such as financial services.[139] Consequently, no VAT is levied on the purchase of cryptocurrencies. This exemption extends even if the transactions

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https://repository.nwu.ac.za/handle/10394/33018: North-West University.

136 (MANS, 2019)

137 (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)

138 BASSON, R. (2020). An analysis of issues relating to the taxation of cryptocurrencies as financial instruments. Sabinet African Journals Vol.13 No.1, https://journals.co.za/doi/abs/10.4102/jef.v13i1.487?utm_source=TrendMD&utm_medium=cpc&utm_campaign=Journal_of_Economic_and_Financial_Sciences_TrendMD_0.

139 (VALUE-ADDED TAX ACT NO. 89 OF 1991.)

involve purposes other than trading due to the non-fulfilment of the enterprise definition.

Regarding crypto asset mining, the VAT Act does not expressly address the VAT consequences for cryptocurrency miners, necessitating an examination of whether the services rendered by miners satisfy the VAT requirements stipulated in the VAT Act. To impose output tax on mining services, miners must engage in the supply of services in furtherance of an enterprise as defined in the VAT Act.[140]

By validating transactions in the public ledger computationally, miners essentially provide a transaction validation service to the cryptocurrency network.[141] It is contended that the broad definition of services encompasses crypto asset mining, thereby making miners liable for VAT purposes.[142]

However, the enterprise definition explicitly excludes activities involving the provision of exempt supplies. Since miners create cryptocurrencies,[143] which are considered exempt supplies, they are precluded from registering as VAT vendors, thus unable to claim input tax.[144]

Consequently, miners cannot levy VAT on the mining services they provide, given their ineligibility to register for VAT for cryptocurrency production purposes. Nonetheless, if a miner is a registered VAT vendor concerning a taxable supply, input tax may be claimed to the extent that the goods or services are not utilized in the mining process.

[140] GREEFF, C. (2019). An investigation into the output tax consequences of bitcoin transactions for a South African value-added tax vendor. Sabinet African Journals Vol.22 No.1, https://journals.co.za/doi/abs/10.4102/sajems.v22i1.2162.
[141] (BASSON, 2020)
[142] (KABWE, 2020)
[143] (KABWE, 2020)
[144] (SOUTH AFRICAN REVENUE SERVICE, 2016)

Chapter 4: VAT on cryptocurrencies in other jurisdictions

4.1 VAT on cryptocurrencies in Bahrain

On January 1, 2022, the National Bureau for Revenue (NBR) issued an updated version of the Financial Services VAT Guide, providing clarification on the VAT treatment of cryptocurrency transactions.[145] The NBR, a governmental body in Bahrain responsible for VAT implementation and administration, oversees such regulatory measures.[146] Bahrain introduced VAT on January 1, 2019, at a standard rate of 5%, which was subsequently increased to 10% on January 1, 2022. While certain goods and services are zero-rated, others are deemed exempt supplies under Bahrain's VAT regime.[147]

Crypto assets, as defined, encompass tokens or digital assets operating on a blockchain network, encrypted for security. Bahrain recognizes four types of tokens: ***payment***, ***utility***, ***asset***, and ***hybrid*** tokens.[148]

Hybrid tokens, a combination of payment, utility, and asset tokens, require individualized VAT treatment. ***Asset tokens***, resembling bonds, derivatives, or equities, reflecting debt or equity claims, are considered exempt supplies of financial services. However, if supplied for an additional explicit charge or commission, their VAT treatment shifts to taxable.[149]

Payment tokens, constituting virtual currencies intended for transactions of goods or services, value transfer, or monetary transactions, are subject to distinct VAT implications.[150]

[145] CHANDRA, V., & ATHAVALE, A. (2022). Guidance issued on VAT treatment of cryptocurrency transactions. https://www.bdo.global/en-gb/microsites/tax-newsletters/indirect-tax-news/issue-2-2022/bahrain-guidance-issued-on-vat-treatment-of-cryptocurrency-transactions: Binder Dijker Otte(BDO).
[146] NATIONAL BUREAU FOR REVENUE. (2019). VAT Financial Services Guide – Version 1.0. National Bureau for Revenue.
[147] NATIONAL BUREAU FOR REVENUE. (2021). VAT General Guide – Version 1.5. National Bureau for Revenue.
[148] NATIONAL BUREAU FOR REVENUE. (2022). VAT Financial Services Guide – Version 1.1. National Bureau for Revenue.
[149] (NATIONAL BUREAU FOR REVENUE, 2022)
[150] (NATIONAL BUREAU FOR REVENUE, 2022)

Mining services lack customers capable of receiving them due to an insufficient relationship between mining activities and the consideration received, namely the tokens. Consequently, tokens acquired by miners from mining activities fall beyond the scope of VAT, exempting miners from imposing any output tax on such activities.[151]

The exchange of tokens for legal tender or other tokens does not incur VAT consequences, as it constitutes a supply of financial services. These transactions are thereby categorized as exempt supplies.[152]

When tokens are utilized to purchase goods or services, it does not constitute a supply of the token itself, thus falling outside the VAT scope, as the token merely serves as a means of payment. In this context, VAT is disregarded from the purchaser's standpoint.[153]

Transactions where suppliers receive tokens in exchange for goods or services should be treated analogously to transactions remunerated in traditional currency. The value of these supplies will be denominated in tokens, with VAT levied based on the taxable nature of the supply at the standard rate of 10%, zero-rated, exempt, or outside the VAT scope.[154]

When consideration is expressed in tokens, the VAT value equates to the amount in Bahrain Dinar (Bahrain's local currency) at the transaction time. The exchange rate for this conversion should be sourced from the rate published on the Central Bank of Bahrain website, or, if unavailable, the open market exchange rate. Consistency in rate sourcing is advised for all transactions involving payment tokens.[155]

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[151] (NATIONAL BUREAU FOR REVENUE, 2022)
[152] (NATIONAL BUREAU FOR REVENUE, 2022)
[153] (NATIONAL BUREAU FOR REVENUE, 2021)
[154] (NATIONAL BUREAU FOR REVENUE, 2021)
[155] (NATIONAL BUREAU FOR REVENUE, 2022)

Charges exceeding the value of payment tokens for organizing a payment token transaction are exempt from VAT. However, if remuneration for the service is explicitly specified as a fee, commission, or commercial discount, VAT would be applicable to the supply.[156]

The VAT treatment of ***utility tokens*** mirrors the VAT consequences applicable to vouchers. Utility tokens share similarities with vouchers, as they are designed to facilitate access to specific applications or services but lack the capability to redeem access to alternative applications or services. When utility tokens are restricted to exchanges for supplies governed by the same VAT treatment, they are classified as single-purpose vouchers, with the date of issue serving as the date of supply.[157]

Overall VAT is assessed based on the consideration paid for the token at the time of supply. Therefore, utility tokens, which are classified as multi-purpose vouchers which enable exchanges for supplies with varied VAT treatment, incur VAT upon delivery of goods or services traded for the token, with VAT levied based on the value of consideration paid for the token. In cases where the value of goods or services is unspecified, the face value of the utility token serves as the value of supply.[158] [159]

As the cryptocurrency industry undergoes advancement and global proliferation, the Central Bank of Bahrain (CBB) instituted regulations in 2019 to govern crypto asset usage, aimed at mitigating financial crime risks and unauthorized use. These regulations delineate criteria for licensing and monitoring of regulated crypto-asset services, permitting licensees to utilize payment tokens solely for delivering regulated crypto-asset services. Notably, these regulations exclusively pertain to payment tokens and not the other three categories of crypto assets.[160]

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[156] (NATIONAL BUREAU FOR REVENUE, 2022)
[157] (NATIONAL BUREAU FOR REVENUE, 2022)
[158] (NATIONAL BUREAU FOR REVENUE, 2021)
[159] (NATIONAL BUREAU FOR REVENUE, 2022)
[160] GOUD, S. (2019). Central Bank of Bahrain Issues Regulations governing Crypto-Asset Services. https://www.tamimi.com/law-update-articles/central-bank-of-bahrain-issues-regulations-governing-crypto-asset-services/: Al Tamini & Co.

Prospective entities intending to provide regulated crypto-asset services within or from Bahrain must secure licencing from the CBB. Eligible applicants include Bahraini joint stock companies or branches of foreign companies lawfully incorporated under respective jurisdictional rules. Additionally, overseas crypto asset service licensure in Bahrain is attainable, facilitated by the CBB's legal framework accommodating international organizations operating abroad.[161]

A non-refundable application fee of BHD 100 is requisite, with licensees mandated to pay an annual licensing fee equivalent to 0.25 percent of their operational costs. Depending on the scale of activities, this fee may vary between BHD 2,000 and BHD 6,000. Applicants may select from various categories contingent upon the regulated crypto-asset services they intend to offer, each mandating a minimum capital requirement upheld by all licensees.[162]

The minimum capital requirements for various categories of regulated crypto-asset services within Bahrain are outlined as follows:

- For entities engaged in receiving and sending orders alongside offering investment advice services, the prescribed minimum capital to be maintained is BHD 25,000.[163]
- Entities involved in trading recognized crypto assets acting as an agent, managing portfolios, providing custody services for crypto assets, and offering investment advice must uphold a minimum capital of BHD 100,000.164
- Enterprises engaged in trading recognized crypto assets as an agent or principal, providing investment advice services, offering custody services for crypto assets, and managing portfolios are mandated to maintain a minimum capital of BHD 200,000.165
- Entities managing a registered crypto asset exchange along with providing custody services for crypto assets must maintain a minimum capital of

[161] (GOUD, 2019)
[162] (GOUD, 2019)
[163] (GOUD, 2019)
[164] (GOUD, 2019)
[165] (GOUD, 2019)

BHD 300,000.[166]

To facilitate the provision of regulated crypto asset services, an agreement between the crypto asset service licensee and eligible investors is requisite. Key elements to be encompassed within this agreement include the licensee's name and address, along with those of the ultimate holding corporation, should the licensee represent a branch of an international cryptocurrency exchange.[167]

Additionally, the agreement should delineate the licensee's regulatory status and disclose risks associated with cryptocurrency assets. It is imperative to acknowledge that this list is non-exhaustive. An eligible investor pertains to a natural person aged 21 years or older, or a juristic person—a legally established company—either within the Kingdom of Bahrain or abroad.[168]

4.2 VAT on cryptocurrencies in Thailand

Cryptocurrencies hold legal recognition in Thailand; however, they are neither deemed legal currencies nor legal tender.[169] Within the Thai legal framework, cryptocurrencies are categorized as digital assets,[170] with regulatory oversight governed by the Royal Decree on Digital Asset Businesses.[171]

According to the Royal Decree, cryptocurrency is defined as "a unit of data messages created on an electronic system or network for use as a medium of exchange, with a view to acquiring goods, services, or any other rights or exchanging digital assets, and shall also include a unit of any other data messages prescribed under the Notification of the Securities and Exchange Commission of Thailand" (Blandin et al., 2019).

166 (GOUD, 2019)
167 (GOUD, 2019)
168 (GOUD, 2019)
169 BUNYAMISSARA, P. (2021). Cryptocurrencies: Digital Asset Laws in Thailand. https://www.nishimura.com/en/knowledge/publications/20210727-62791: Nihimura & Asahi.
170 (BUNYAMISSARA, 2021)
171 ASIAN DEVELOPMENT BANK. (2022). Fintech Policy Tool Kit for Regulators and policy makers in Asia and the Pacific. https://www.adb.org/sites/default/files/publication/780806/fintech-policy-tool-kit-regulators-policy-makers.pdf: Asian Development Bank.

The implementation of VAT on cryptocurrency transactions was announced by Thailand's Minister of Finance on March 28, 2018, at a standard rate of 7%.[172]

VAT, a tax levied on the value added to all products and services acquired by individuals or legal entities monthly, encompasses both the acquisition and sale of cryptocurrencies. However, transactions conducted through Thai exchanges, registered with the Minister of Finance, are exempt from VAT, effective from April 1, 2022, until December 31, 2023.[173]

This exemption aims to stimulate cryptocurrency trading on regulated exchanges under the supervision of entities such as the Securities and Exchange Commission (SEC).[174]

All digital asset enterprises in Thailand, encompassing digital asset brokers, exchanges, and dealers, are classified as financial institutions and must obtain licensing from the Minister of Finance while adhering to regulatory requirements set forth by the SEC.[175]

These requirements mandate that the applicant be a company incorporated in Thailand, fulfil capital requirements, cover application costs, implement robust systems for client fund protection, and establish a reliable IT infrastructure.[176]

4.3 VAT on cryptocurrencies in Colombia

VAT in Colombia is administered by the National Directorate of Taxes and Customs (DIAN). Goods and services supplied in Colombia may be subject to VAT at different rates: the standard rate of 19%, a reduced rate of 5%, or zero-

[172] DAVID, T. C. (2019). Bitcoin Transactions: The New Frontier of Income Tax Evasion in Thailand.
[173] TASSEV, L. (2022, May 25). Thailand Exempts Crypto Transfers From VAT Until End of 2023. Retrieved from Bitcoin.com: https://news.bitcoin.com/thailand-exempts-crypto-transfers-from-vat-until-end-of-2023/
[174] (TASSEV, 2022)
[175] BLANDIN, A., CLOOTS, A. S., HUSSAIN, H., MICHEL, R., SALEUDDIN, R., ALLEN, J. G., . . . CLOUD, K. (2019). Global Cryptoasset Regulatory Landscape Study. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3379219: University of Cambridge.
[176] (BLANDIN, et al., 2019)

rated at 0%, provided they are not excluded supplies.[177]

When VAT is zero-rated, it is classified as an exempt supply. VAT vendors acquiring exempt supplies may be eligible for input credits for VAT paid on inputs, potentially resulting in VAT balances in their favour that are refundable. Excluded supplies, however, are not subject to VAT, and input tax cannot be claimed on them.[178]

VAT applies to various transactions falling within the tax scope, including the sale of movable physical assets, transfer, or sale of rights over intangibles related to industrial property, supply of services in Colombia, supply of services from abroad if the recipient is in Colombia, importation of movable goods into Colombia, and services rendered in the operation of games of chance or sale of tickets for such games.[179]

In 2017, the Colombian Tax Office provided guidance on the VAT treatment of crypto assets. Crypto assets, defined as intangible assets not connected to intellectual property, are considered sales of intangible assets unrelated to industrial property, placing them outside the VAT scope. Hence, there are no VAT implications on crypto asset transactions.[180]

However, when providers of goods or services accept crypto assets as payment, VAT implications arise only to the extent that VAT is chargeable on the supply of those goods or services. While vendors accepting crypto assets cannot charge VAT on the transfer of these assets, they must pay VAT on goods or services purchased from VAT vendors.[181]

In a joint declaration by the Colombian monetary, exchange, and credit authority, Banco de la República, and the Superintendencia Financiera de Colombia, it was

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[177] ERNST & YOUNG GLOBAL LIMITED. (2022). Worldwide VAT, GST and Sales Tax Guide 2022. Ernst & Young.
[178] (ERNST & YOUNG GLOBAL LIMITED, 2022)
[179] (ERNST & YOUNG GLOBAL LIMITED, 2022)
[180] (PRICEWATERHOUSECOOPERS, 2021)
[181] (PRICEWATERHOUSECOOPERS, 2021)

stated that companies are prohibited from advising or managing cryptocurrency investments, as cryptocurrencies are neither legal tender nor lawful investments for regulated firms.[182]

Moreover, banks are prohibited from providing financial services to cryptocurrency businesses. Although there is no specific law or regulation banning cryptocurrency use, government warnings have prompted banks to deactivate accounts linked to them, posing challenges for cryptocurrency-focused businesses.[183]

4.4 VAT on cryptocurrencies in Ireland

The Central Bank of Ireland has issued warnings regarding the risks associated with cryptocurrencies, such as Bitcoin and Ether. It emphasizes their unregulated nature, particularly cautioning against Initial Coin Offerings (ICOs). Cryptocurrencies are not recognized as legal tender or equivalent to fiat currency in Ireland, and they lack backing from either the Irish government or the Central Bank.[184]

Ireland has adopted a cautious stance, opting for a "wait-and-see" approach to domestic crypto regulation, instead relying on guidance from international regulators, particularly EU supervisory authorities.[185]

In an effort to establish a coordinated approach to crypto regulation, Ireland's Department of Finance has proposed the formation of a new blockchain working group. This group has published a report titled "Virtual Currencies and Blockchain Technology." Moreover, Ireland has joined the European Blockchain Partnership and has committed to compliance with the Fifth Anti-Money

[182] HAMMOND, S., & EHRET, T. (2022). Cryptocurrency Regulations by Country. https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/04/Cryptos-Report-Compendium-2022.pdf: Thomson Reuters.
[183] (HAMMOND & EHRET, 2022)
[184] (HAMMOND & EHRET, 2022)
[185] (HAMMOND & EHRET, 2022)

Laundering Directive (AMLD5).[186]

The Office of the Revenue Commissioners in Ireland has issued a manual regarding the tax treatment of various transactions involving cryptocurrencies. The manual clarifies that ordinary tax rules apply, and typically, cryptocurrency mining is not subject to VAT.[187]

The intricacies inherent in the underlying innovative technology and the complexity of transactions involved contribute significantly to the depth of taxation issues associated with the utilization of Bitcoin and, by extension, other cryptocurrencies sharing similar characteristics. Moreover, it is noteworthy that the decentralized and anonymous nature of the Bitcoin system precludes the existence of a clearly defined fact pattern.[188]

Given the absence of specific legislation delineating how cryptocurrency activity should be treated for Irish tax purposes, it is unsurprising that this area continues to be fraught with confusion and subject to ongoing debate. It is not uncommon to encounter divergent perspectives regarding whether Bitcoin is simply VAT exempt or subject to a positive VAT rate.[189]

However, the precise implications of such statements often remain ambiguous. One might question the specific aspects to which these statements refer, including but not limited to:[190]

- transactions involving the provision of goods and/or services compensated through Bitcoin.
- activities related to the facilitation of transactions using Bitcoin.
- activities associated with the validation of transactions in Bitcoin, commonly

[186] (HAMMOND & EHRET, 2022)
[187] (HAMMOND & EHRET, 2022)
[188] WALSH, C., & MCDAID, R. (2018). Interest continues to grow in cryptocurrencies but what are they and what are the VAT considerations associated with them. Deloitte.
[189] (WALSH & MCDAID, 2018)
[190] (WALSH & MCDAID, 2018)

known as mining activities; and/or

- activities pertaining to the exchange of Bitcoin.

All of the aforementioned issues, which warrant careful consideration, have been subject to examination by the EU VAT Committee, with several potential treatments discussed in its published working papers. While the committee operates solely in an advisory capacity without legislative powers, it provides valuable insight and guidance on the potential application of the EU VAT Directive which has been transposed into the national legislation of EU Member States.[191]

Additionally, the VAT treatment of services rendered by exchange platforms has previously prompted a referral from the Swedish national courts to the Court of Justice of the European Union (CJEU), highlighting the complexity and legal nuances inherent in the taxation of cryptocurrency-related services.[192]

The EU VAT Directive includes a VAT exemption for currency exchange activities, which, prima facie, applies solely to currencies recognized as legal tender. This specific exemption has been incorporated into Irish VAT legislation. However, in the case of *Skatteverket v David Hedqvist* (C-264/14), the Court of Justice of the European Union (CJEU) was tasked with determining whether this VAT exemption extended to Bitcoin exchange activities despite Bitcoin not being considered legal tender.[193]

On October 22, 2015, the CJEU affirmed that the margin earned by the exchange on the price difference between purchase and sale constituted a VAT-exempt service. It is crucial to recognize that the CJEU does not serve as a final arbiter but rather offers interpretations of European law in response to inquiries from national courts.[194]

[191] (WALSH & MCDAID, 2018)
[192] (WALSH & MCDAID, 2018)
[193] (WALSH & MCDAID, 2018)
[194] (WALSH & MCDAID, 2018)

Nevertheless, as the CJEU's interpretations influence the application of the EU VAT Directive across member states, decisions rendered by the CJEU hold relevance for all EU jurisdictions. Therefore, notwithstanding that the queries in this instance originated from Swedish national courts, the principles elucidated by the CJEU should uniformly apply throughout the EU.[195]

It is noteworthy that the aforementioned case pertains solely to a specific facet of the Bitcoin realm—services provided by exchange platforms. Consequently, while the judgment provides valuable insights, it does not furnish a comprehensive resolution to the VAT treatment of all Bitcoin-related activities.[196]

On May 15, 2018, the Irish Revenue released eBrief No. 88/18, delineating its stance on the taxation of cryptocurrency transactions. Regarding the legal status of Bitcoin and analogous cryptocurrencies, Irish Revenue asserts that they are deemed 'negotiable instruments' for VAT purposes and are exempt from VAT under Paragraph 6(1)(c) of Schedule 1 of the VAT Consolidation Act 2010. This aligns with one of the six potential approaches explored by the EU VAT Committee in its working paper of July 29, 2014, wherein it was observed that certain Member States supported this position.[197]

In the realm of supplies remunerated through cryptocurrency, Irish Revenue maintains that goods and services subject to VAT, compensated via Bitcoin or similar cryptocurrencies, should be treated akin to any other supplies for VAT purposes, a stance that is logically sound and not subject to reasonable dispute.[198]

However, determining the taxable amount for VAT purposes, when consideration is expressed in cryptocurrency, poses challenges due to the dynamic nature of exchange markets for Bitcoin. The absence of a centralized authority and a standardized foreign exchange reference rate complicates matters further, leading to variability in Bitcoin's value across different exchange platforms and currencies. Irish Revenue acknowledges this complexity, advocating for a

[195] (WALSH & MCDAID, 2018)
[196] (WALSH & MCDAID, 2018)
[197] (WALSH & MCDAID, 2018)
[198] (WALSH & MCDAID, 2018)

reasonable effort to employ an appropriate valuation for transactions involving cryptocurrencies.[199]

Regarding exchange activities involving Bitcoin and fiat currency, Irish Revenue categorizes such transactions as VAT-exempt, provided the business conducting the exchange operates as the principal entity, consistent with Paragraph 6(1)(d) of Schedule 1 of the VAT Consolidation Act 2010. This aligns with the CJEU ruling in *Skatteverket v David Hedqvist* (C-264/14), as discussed earlier.[200]

Regarding cryptocurrency mining activities, Irish Revenue opines that income derived from such endeavours generally falls outside the scope of VAT, as it does not constitute an economic activity for VAT purposes.[201]

In conclusion, while this report highlights some of the VAT issues associated with cryptocurrencies, it is imperative to recognize that considerations such as Corporation Tax, Income Tax, Capital Gains Tax, Stamp Duty, and Capital Acquisitions Tax also merit attention for parties engaged in cryptocurrency transactions. Furthermore, parties contemplating capital raising through Initial Coin Offerings (ICOs) must carefully evaluate the taxation implications thereof, with similar diligence required for individuals acquiring such tokens.[202]

Chapter 5: The International Monetary Fund's opinion on Cryptocurrencies and VAT

5.1 Introduction

Policymakers face considerable challenges in integrating cryptocurrencies into tax frameworks that were not originally designed to accommodate them. This chapter critically examines the resulting issues according to the International Monetary Fund. One of the primary hurdles lies in implementation, where the quasi-anonymous nature of cryptocurrencies presents an inherent barrier to effective third-party reporting.[203]

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[199] (WALSH & MCDAID, 2018)
[200] (WALSH & MCDAID, 2018)
[201] (WALSH & MCDAID, 2018)
[202] (WALSH & MCDAID, 2018)
[203] BAER, K., DE MOOIJ, R., HEBOUS, S., & KEEN, M. (2023). Taxing Cryptocurrencies.

Compounding this challenge are design complexities arising from the dual role of cryptocurrencies as both investment assets and mediums of exchange. Of particular concern is the compelling argument for implementing corrective taxation measures to address the carbon-intensive nature of cryptocurrency mining activities.[204]

Additionally, ownership of cryptocurrencies is disproportionately concentrated among a select few, yet a significant portion of crypto investors have only moderate incomes. While the potential revenue from capital gains taxes on cryptocurrencies may amount to tens of billions of dollars globally, the more profound implications may emerge in the realm of VAT and sales taxes.[205]

5.2 Tax Evasion and Crypto

The assessment of tax evasion facilitated by illegal activities typically encompasses some degree of tax evasion, as proceeds from illegal endeavours are generally taxable. However, for severe crimes, tax evasion often serves as a secondary consequence rather than a primary objective. Notably, extensive money laundering in cryptocurrencies aims to legitimize illicit gains, potentially rendering them subject to taxation.[206]

From a tax perspective, three primary issues warrant consideration. Firstly, the incentives driving the utilization of cryptocurrencies to evade taxes on otherwise lawful transactions, such as the provision of legal goods or services or payment of salaries, must be examined. Secondly, the extent of current and potential future utilization of cryptocurrencies for tax evasion purposes requires evaluation. Thirdly, the adherence to tax obligations concerning earnings from crypto asset activities, such as mining or trading, necessitates scrutiny. However, limited empirical evidence exists on these matters.[207]

International Monetary Fund.
[204] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[205] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[206] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[207] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)

Regarding the first issue, the fundamental considerations influencing decisions to engage in tax evasion remain consistent with existing literature, emphasizing the balance between potential tax savings and risks associated with detection. Cryptocurrencies' anonymity inherently lowers the perceived risk of detection, enhancing their appeal for tax evasion. Nevertheless, other factors, such as transaction costs and the risk of fraud or theft due to cryptocurrency price volatility, may influence the decision-making process.[208]

Quantitative data on the extent of crypto-enabled tax evasion is scarce. However, instances of cryptocurrency-related tax evasion have been reported, predominantly concerning VAT rather than income tax. The prevalence of compliance with tax obligations related to cryptocurrency transactions varies among jurisdictions. While some evidence suggests a degree of compliance, there are indications of non-compliance, potentially stemming from lack of understanding or intentional evasion.[209]

An analyses of tax compliance among US-based crypto owners by investigating tax loss harvesting behaviour around year-end was done. They observed an increase in such transactions following public statements by the Internal Revenue Service (IRS) regarding tax obligations on crypto transactions, indicating a degree of responsiveness to policy announcements. However, the overall level of compliance remains mixed, suggesting a persistent element of non-compliance, whether intentional or due to ignorance of tax obligations.[210]

5.3 VAT and Sales Taxation

The utilization of cryptocurrencies should theoretically present no significant challenge to the fundamental structure of existing taxes, as these taxes typically frame transactions in terms of supply being conducted not solely for legal tender but for broader "consideration," a term flexible enough to encompass crypto assets, drawing parallels with barter transactions.[211]

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[208] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[209] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[210] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[211] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)

Nonetheless, practical complexities may arise in applying this principle, stemming from factors such as price volatility, which can complicate the precise determination of transaction timing, susceptibility to fraudulent activities, and integration into cross-border regulatory frameworks.[212]

To prevent the imposition of VAT on the mere acquisition of cryptocurrency using fiat currency, several jurisdictions, including Australia, Japan, and South Africa, have implemented explicit VAT exemptions. Similarly, in the European Union (EU), the Court of Justice ruled in 2015 that VAT should not be levied on such transactions.[213]

The VAT treatment of fees and newly generated cryptocurrencies received by miners necessitates a clear policy stance. In theory, there appears to be no inherent reason why these components should not be subject to VAT, with corresponding entitlement to claim VAT credits on input expenses, barring any intentional disincentive measures.[214]

However, it is worth noting that many VAT systems exempt fees associated with financial services. This discrepancy could lead to a scenario of over-taxation on business utilization of cryptocurrencies due to miners' inability to recover input VAT, coupled with under-taxation on individual usage.[215]

The current utilization of cryptocurrencies for direct acquisition of goods and services appears to be relatively limited and not yet integrated into everyday transactions, even in jurisdictions where Bitcoin is recognized as legal tender. However, existing tax regulations may pose obstacles to its widespread adoption as a medium of exchange. Nevertheless, if cryptocurrency usage were to become more pervasive, it could pose significant risks to the integrity of VAT and sales tax systems.[216]

[212] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[213] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[214] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[215] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[216] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)

A prominent risk is that the widespread adoption of cryptocurrencies may facilitate underreporting of final sales, a longstanding concern in tax administration, particularly concerning cash transactions. While tax authorities have traditionally addressed this risk with some success, the emergence of cryptocurrencies introduces new and intricate challenges.[217]

One approach to address this issue is the imposition of legal requirements mandating businesses to report large cryptocurrency transactions, a measure already in effect in the United States and contemplated by the Organisation for Economic Co-operation and Development (OECD). However, such regulations alone may not be adequate to mitigate the aforementioned risks, as they lack self-enforcement mechanisms and may not encompass all relevant transactions. Nevertheless, they play a crucial role in flagging suspicious activities, providing audit clues, and elevating the consequences of non-compliance.[218]

In the context of VAT, additional challenges may arise from the potential exploitation of cryptocurrencies for fraudulent activities, such as carousel schemes aimed at claiming tax refunds for unpaid taxes. While this is not a novel concern, the use of cryptocurrencies may present novel manifestations of this issue.[219]

To date, there appears to be limited systematic consideration given to safeguarding sales taxation, including VAT, against these emerging challenges. Currently, the risks associated with cryptocurrency usage for tax evasion seem more latent than imminent. However, the dynamic nature of the cryptocurrency landscape suggests that this situation could evolve over time, underscoring the importance of proactive measures to address these potential threats.[220]

[217] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[218] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[219] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[220] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)

5.5 Conclusion

The future trajectory of cryptocurrencies remains highly uncertain, with divergent perspectives ranging from predictions of an eventual collapse to assertions of their role as catalysts for transformative innovations in decentralized finance. Nevertheless, regardless of the outcome, tax systems must adapt to accommodate cryptocurrencies with coherence, clarity, and efficacy, attributes they presently lack due to their inception without consideration for crypto assets. This necessity becomes more pronounced amidst ongoing rapid and intricate innovations, against a backdrop of limited information, and while striving to strike a balance between securing efficiency, fairness, and revenue in taxation, and the risk of impeding innovation. These challenges span both conceptual and practical domains.[221]

Conceptually, the dual functionality of cryptocurrencies as both investment assets and mediums of exchange, with the latter being a primary purpose of their inception, presents potential complexities in capturing capital gains and losses without hindering their utility as currency. In the realm of VAT and sales taxes, ensuring parity in the treatment of cryptocurrencies with national currencies is paramount. However, the specific requirements for income tax purposes, such as exemptions for reasonable personal use as currency, hinge on existing national frameworks for gains, losses, and foreign currency transactions.[222]

Furthermore, questions arise regarding the potential role of taxation in rectifying issues associated with cryptocurrency usage, whether to address internalities linked to gambling or as a temporary measure pending the enactment of effective regulations. A clearer case exists for implementing charges, preferably as part of broader carbon taxation or as sector-specific levies, to mitigate the significant environmental impact of proof-of-work consensus mechanisms.[223]

[221] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[222] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[223] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)

Implementation poses the most formidable challenges due to cryptocurrencies' intrinsic aim to circumvent reliance on centralized institutions capable of furnishing information to tax authorities or imposing withholding taxes. Despite this, governments must enforce anti-money laundering (AML) regulations and third-party reporting requirements, as done recently by the United States. However, there remains a risk of transactions migrating to decentralized or peer-to-peer platforms beyond the purview of third-party oversight. Ironically, investors may come to trust well-regulated institutions over decentralized trading platforms, aligning with the original vision of cryptocurrency. Alternatively, miners, who oversee transactions in non-stablecoins, could potentially play a role in tax reporting or withholding, reflecting the principle of favouring tax collection at upstream points where feasible.[224]

The complexities are further compounded by the ease of conducting cross-border crypto transactions, which could lead to trades shifting to non-reporting platforms abroad, despite efforts by organizations like the OECD to extend current cross-border information arrangements to cryptocurrencies. Assessing the extent of crypto-facilitated tax evasion beyond criminal activities is challenging, although there are indications of compliance issues, particularly in the United States. Rough estimates suggest substantial revenue potential from taxing accrued capital gains, albeit subject to fluctuations due to market volatility.[225]

Moreover, evidence suggests that crypto wealth is highly concentrated among a select few, possibly extending beyond billionaires to encompass affluent individuals deriving wealth from other sources. However, a significant portion of cryptocurrency holders may not belong to high-income brackets, underscoring the diverse socioeconomic profiles of crypto investors.[226]

[224] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[225] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[226] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)

Existing literature on cryptocurrency taxation primarily focuses on income tax aspects, overlooking implications for sales taxation and VAT, which may be profound. Cryptocurrencies pose challenges akin to those associated with cash usage, exacerbating longstanding VAT dilemmas, and potentially introducing new avenues for fraud. Consequently, the risks posed to existing tax systems by cryptocurrencies are most pronounced, particularly in emerging and developing economies characterized by robust crypto demand and relatively weak tax administration infrastructure.[227]

Chapter 6: The OECD opinion on Cryptocurrencies and VAT

6.1 Introduction

The engagement in mining, exchange, or disposal of virtual currencies can trigger VAT implications. In the realm of income taxation, the precise delineation of these assets holds significant sway in determining their VAT treatment. In contrast to income tax regimes, virtual currencies are commonly regarded as equivalent to fiat currencies concerning VAT treatment during transactions involving their exchange or disposal. This classification is predominantly motivated by pragmatic considerations, which stem from the ramifications of categorizing these assets as barter transactions.[228]

Particularly within the European Union (EU), this treatment has been markedly influenced by a decision rendered by the European Court of Justice (ECJ). There exists a fairly unanimous consensus among nations regarding the VAT treatment pertaining to transactions involving virtual currencies. However, there is a notable variance among jurisdictions concerning the treatment of ancillary services, such as online wallet services and exchange services. This chapter delves into the OECD opinion on VAT and cryptocurrencies and the evolution of VAT treatment concerning virtual currencies within EU member states, followed by an exploration of their treatment across other legal jurisdictions.[229]

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[227] (BAER, DE MOOIJ, HEBOUS, & KEEN, 2023)
[228] OECD. (2020). Taxing Virtual Currencies: An Overview Of Tax Treatments And Emerging Tax Policy Issues. https://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf: OECD.
[229] (OECD, 2020)

6.2 The VAT treatment in the European Union

The EU VAT Directive of 2006 serves as the regulatory framework governing VAT systems across member countries of the European Union. Its primary objective is to standardize VAT systems within the EU VAT area, delineating taxable transactions, specifying exemptions, setting parameters for applicable standard and reduced rates, and establishing the legal underpinnings of VAT systems and their implementation.[230]

In 2014, the EU Group on the Future of VAT, comprising representatives from tax authorities of EU Member States, deliberated on the treatment of virtual currencies, notably Bitcoin, under the EU VAT Directive. Depending on their characterization, transactions involving virtual currencies may fall outside the scope of VAT, be within the scope but exempt, or be taxable. For instance, if classified as electronic money, currency, negotiable instruments, or securities, they could potentially qualify for exemption under Article 135(1) of the Directive.[231]

The Group opined that virtual currencies were unlikely to meet the criteria of e-money, currency, security, or voucher, though uncertainties persisted regarding their classification as digital products or negotiable instruments. Subsequent to this, a 2015 paper from the EU Value-Added Tax Committee explored the implications of characterizing virtual currencies as digital products or negotiable instruments. This discussion encompassed various challenges associated with each characterization, including exchange rate complexities, compliance intricacies in barter transactions, anonymity concerns, determination of place of supply, potential VAT liability for users, and risks of fraudulent activities.[232]

Following a thorough analysis of these potential characterizations and associated challenges, the 2015 paper concluded that virtual currencies were best treated as negotiable assets, thus qualifying for exemption under Article 135(1)(d) of the

[230] (OECD, 2020)
[231] (OECD, 2020)
[232] (OECD, 2020)

EU VAT Directive. In October 2015, the European Court of Justice (ECJ) delivered a significant ruling on these matters in the case of Skatteverket v Hedqvist. The case concerned the provision of exchange services between virtual currencies, particularly Bitcoin, and fiat currency through an online platform and company structure. The ECJ deliberated on whether such exchanges constituted taxable supplies under Article 2(1) of the EU VAT Directive and, if so, whether they were exempt under Article 135(1) of the Directive.[233]

The ECJ determined that the transactions in question indeed constituted supplies of services for consideration under Article 2(1) of the Directive. In assessing their exemption status under Article 135(1), the ECJ underscored the need for a strict interpretation of exemptions, aimed at aligning VAT systems and ensuring fiscal neutrality. After examining the various subsections pertaining to financial transactions, the ECJ concluded that virtual currencies were akin to fiat currencies in their function as a medium of exchange and, therefore, transactions involving them were exempt from VAT under Article 135(1)(e) of the EU VAT Directive.[234]

In the wake of the Hedqvist decision, the EU Value-Added Tax Committee revisited its stance. Having addressed the exchange of virtual currencies for fiat currency, the Committee extended its examination to scenarios involving the use of virtual currencies for remunerating supplies of goods and services, digital wallet services, verification of transactions (mining), and intermediary services provided by exchange platforms for consideration.[235]

In contrast to the legally binding nature of judgments rendered by the ECJ, the recommendations put forth by the European Union's Value-Added Tax Committee do not hold the same legal weight across Member States. Consequently, Member States retain the authority to deviate from the analyses provided by the EU's Value-Added Tax Committee in their practical

[233] (OECD, 2020)
[234] (OECD, 2020)
[235] (OECD, 2020)

implementation or legislative measures. However, a majority of Member States appear to align with the analyses articulated by the EU's Value-Added Tax Committee, as evidenced by the minutes of the Committee meeting held in September 2016.[236]

The ramifications of the Hedqvist decision and the subsequent deliberations within the EU's VAT Committee have resulted in the VAT treatment being applied to virtual currencies within EU Member States. Post these deliberations, there emerges a relative consistency in the VAT treatment of exchanges involving virtual currencies across EU Member States. Nonetheless, disparities persist in the treatment of mining income and related services.[237]

For instance, mining activities are commonly perceived as falling outside the purview of VAT in several jurisdictions, such as Germany, Ireland, Slovenia, and Sweden, as both the mining rewards and transaction fees are deemed to lack sufficient nexus between the payment and the activity. Conversely, France considers revenue derived from mining activities as taxable income, categorized as a supply of services.[238]

Divergence exists among EU Member States regarding the taxation of associated services. For example, Germany subjects the provision of wallet services for consideration and exchange services offered to third parties to VAT, whereas other nations grant exemptions for one or both of these services.[239]

Slovenia regards the provision of wallet services as closely linked to the exchange of virtual currencies and thus exempts them from VAT, while taxing the provision of online exchange services at the standard VAT rate, exchange services are exempt from VAT, consistent with the treatment of other foreign currencies.[240]

[236] (OECD, 2020)
[237] (OECD, 2020)
[238] (OECD, 2020)
[239] (OECD, 2020)
[240] (OECD, 2020)

It is noteworthy that other crypto-assets may undergo disparate treatment for VAT purposes within the EU. The differentiation between payment instruments and vouchers holds significance in EU Member States, impacting the VAT treatment of associated services, with payment services being exempt. Hence, the demarcation between payment instruments and vouchers assumes relevance when characterizing and delineating various token types, particularly between payment and voucher-like utility tokens.[241]

Furthermore, in line with the established legal precedent of the ECJ, a supply of services rendered for consideration becomes subject to VAT when a direct link can be established between the service provided and the consideration received. For instance, in scenarios like Initial Coin Offerings (ICOs) or airdrops where utility tokens are issued, identifying the connection between the service rendered and the corresponding price may pose challenges.[242]

6.3 The VAT treatment in other tax jurisdictions

In numerous jurisdictions outside the European Union (EU), a comparable approach is observed whereby exchanges involving virtual currencies for fiat currency or other virtual currencies are not construed as VAT events. While in the EU, this interpretation stems from the Hedqvist decision, the rationales behind similar approaches in other jurisdictions are not always explicitly articulated. Frequently, no explicit justification is provided for this approach, although pragmatic considerations likely play a significant role in its adoption.[243]

Furthermore, in these jurisdictions, the treatment of mining activities and related services exhibits greater diversity compared to the treatment of exchanges. Among non-EU European countries, the VAT treatment of virtual currencies largely mirrors the precedent set by the Hedqvist decision.[244]

[241] (OECD, 2020)
[242] (OECD, 2020)
[243] (OECD, 2020)
[244] (OECD, 2020)

In the United Kingdom, mining activities are considered outside the scope of VAT due to the absence of a direct link between the services rendered and the consideration received, and exchanges in virtual currencies are similarly treated as out of scope. However, VAT remains applicable to the supply of goods or services for which virtual currencies are exchanged. Additionally, services provided by exchange platforms are exempt, consistent with the broader treatment of financial services.[245]

In Norway, the utilization of virtual currencies as a medium of payment, along with the exchange of virtual currencies, typically falls under the VAT exemption for financial services, provided that the virtual currency is utilized as an alternative means of payment. Rewards from mining are also exempt from VAT, whereas individuals selling computing power to facilitate mining activities are not exempt, as the provision of computing power does not fall under the financial services exemption. Norway's approach was adopted subsequent to the Hedqvist decision, following a previous stance where Norway did not recognize a VAT exemption for virtual currencies.[246]

In Switzerland, transactions involving virtual currencies are considered out of the scope of VAT if exchanged for other virtual currencies or fiat currency. Similarly, exchanges involving other goods and services are subject to VAT solely on the supply of the goods or services, without being classified as barter transactions.[247]

Beyond Europe, most countries adopt a similar stance by excluding exchanges involving virtual currencies from VAT and refraining from categorizing the purchase of goods and services with virtual currencies as barter events. Instead, such transactions are treated as taxable sales.[248]

[245] (OECD, 2020)
[246] (OECD, 2020)
[247] (OECD, 2020)
[248] (OECD, 2020)

In Australia, the previous treatment of virtual currency use as a taxable barter event was revised in July 2017, with purchases of goods and services using virtual currencies no longer being regarded as barter events. Additionally, exchanges involving virtual currencies and/or fiat currency are exempt from Goods and Services Tax (GST) as financial services.[249]

In Colombia, only the intermediation fee from sales involving virtual currencies is subject to VAT, with virtual currencies treated as personal property and therefore exempt from VAT.[250]

In Israel, individual investors in virtual currencies are not subject to VAT, but those engaged in mining are classified as dealers and may be subject to VAT. Businesses trading in virtual currencies are considered financial institutions for tax purposes and are exempt from VAT, with VAT on expenses not being deductible and an additional 17% wage and profit tax being applied.[251]

In Japan, prior to July 2017, sales of virtual currencies were subject to VAT if the transferor was located in Japan. However, since July 2017, exchanges involving virtual currencies are not subject to VAT, provided the relevant token meets the definition of a crypto asset under the relevant law, aligning virtual currencies with sovereign currencies regarding VAT treatment.[252]

In Singapore, the treatment of virtual currencies shifted in January 2020, with exchanges involving virtual currencies now considered exempt from GST when exchanged for other virtual currencies or fiat currencies. However, the supply of goods and services exchanged for virtual currencies remains subject to GST, as do services provided by intermediaries and mining services rendered for consideration.[253]

In South Africa, crypto-assets are encompassed under the financial services

[249] (OECD, 2020)
[250] (OECD, 2020)
[251] (OECD, 2020)
[252] (OECD, 2020)
[253] (OECD, 2020)

exemption, rendering activities such as issuance, acquisition, collection, buying, selling, or transfer of ownership exempt from VAT, as clarified by guidance from the South African Reserve Bank.[254]

New Zealand deviates from the prevailing approach to VAT treatment of virtual currencies, opting for a case-by-case determination of the GST treatment of traded or sold crypto-assets. These assets may be fully taxed, exempt, or zero-rated based on individual circumstances. However, discussions are underway to potentially exempt exchanges in cryptocurrencies from GST, with feedback sought on whether this should apply universally or solely to transactions involving New Zealand-resident recipients. Additionally, related services not constituting supplies of crypto-assets, such as mining or exchange services, remain subject to existing GST rules, either being taxed at the standard rate for residents or treated as zero-rated supplies for non-residents.[255]

6.4 Conclusion

In conclusion, the treatment of virtual currencies under VAT regimes exhibits a complex and evolving landscape, influenced by legal precedents, regulatory frameworks, and pragmatic considerations. Within the European Union (EU), the landmark Hedqvist decision by the European Court of Justice (ECJ) played a pivotal role in shaping VAT treatment, establishing virtual currencies' exemption from VAT in transactions involving their exchange for fiat currency. This decision, alongside subsequent deliberations within the EU's Value-Added Tax Committee, has fostered a degree of consistency in VAT treatment across EU Member States, although disparities persist in the taxation of ancillary services.[256]

Outside the EU, a similar trend is observed, with many jurisdictions excluding exchanges involving virtual currencies from VAT, while treating purchases of goods and services with virtual currencies as taxable sales. The rationale behind these approaches varies, with pragmatic considerations often cited as a driving

[254] (OECD, 2020)
[255] (OECD, 2020)
[256] (OECD, 2020)

factor. Furthermore, the treatment of mining activities and related services varies across jurisdictions, contributing to the heterogeneous landscape of VAT treatment for virtual currencies globally.[257]

Overall, this analysis underscores the intricate interplay between legal frameworks, regulatory interpretations, and pragmatic considerations in shaping VAT treatment for virtual currencies. As the landscape continues to evolve, ongoing dialogue and collaboration among stakeholders will be essential to ensure coherence and effectiveness in VAT regimes governing virtual currencies worldwide.[258]

Chapter 7: Comparison of the VAT treatment of cryptocurrencies in different tax jurisdictions

7.1 Comparison

The following section delineates the similarities and discrepancies among South Africa, Bahrain, Thailand, Colombia and Ireland. The discussion incorporates illustrative examples to elucidate the variations and commonalities in the VAT treatment of cryptocurrencies. It is important to note that this analysis solely focuses on output tax considerations, without delving into input tax assessments.

7.1.1 Definition of Cryptocurrencies

South Africa

Cryptocurrencies in South African law are classified as crypto assets. These are virtual representations of value not issued by any central bank, but traded, transferred, and stored electronically by legal and natural entities for investment and payment purposes.[259]

Bahrain

In Bahrain, crypto assets are defined as tokens or digital assets operating on blockchain networks and encrypted.[260]

[257] (OECD, 2020)
[258] (OECD, 2020)
[259] (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
[260] (NATIONAL BUREAU FOR REVENUE, 2022)

Thailand

The Royal Decree in Thailand defines cryptocurrencies as unit data messages created on electronic systems or networks for use as a medium of exchange or for acquiring goods, services, or digital assets. They employ cryptographic methods.[261]

Columbia

The Colombian government has not officially defined cryptocurrencies, according to available information.[262]

Ireland

A virtual currency can be defined as a form of unregulated digital currency, typically issued and controlled by its developers, and circulated and accepted within a specific virtual community.[263]

7.1.2 Legal Status

South Africa

Crypto assets are not considered legal tender or fiat currency in South Africa.[264]

Bahrain

Similarly, crypto assets do not qualify as legal tender in Bahrain.[265]

Thailand

Cryptocurrencies are not recognized as legal currencies or legal tender in Thailand.[266]

Columbia

Colombia does not acknowledge cryptocurrencies as money or legal tender.[267]

Ireland

Crypto assets are not considered legal tender or fiat currency in Ireland.[268]

261 (BLANDIN, et al., 2019)
262 (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
263 (WALSH & MCDAID, 2018)
264 (INTER-GOVERNMENTAL FINTECH WORKING GROUP (b), 2021)
265 (NATIONAL BUREAU FOR REVENUE, 2022)
266 (BUNYAMISSARA, 2021)
267 (HAMMOND & EHRET, 2022)
268 (WALSH & MCDAID, 2018)

7.1.2 Regulation

South Africa

South Africa is poised to introduce registration protocols for all crypto asset service providers.[269]

Bahrain

In Bahrain, entities engaging in regulated crypto asset services must obtain licenses from the Central Bank of Bahrain.[270]

Thailand

Financial institutions in Thailand must acquire licenses from the Minister of Finance to operate as digital asset firms.[271]

Columbia

Cryptocurrencies remain unregulated in Colombia, albeit subject to certain restrictions.[272]

Ireland

Irish Revenue regards the exchange of Bitcoin for fiat currency as qualifying for VAT exemption under paragraph 6(1)(d) of Schedule 1 of the VAT Consolidation Act 2010, provided that the business conducting the exchange operates as the principal entity, engaging in the buying and selling of Bitcoin as the owner of the virtual currency.[273]

7.1.3 VAT Classification

South Africa

Cryptocurrencies are deemed financial services under the Value-Added Tax Act No. 89 of 1991 in South Africa.[274]

Bahrain

In Bahrain, payment, asset, utility, and hybrid tokens are classified as financial

[269] (INTER-GOVERNMENTAL FINTECH WORKING GROUP, 2019)
[270] (GOUD, 2019)
[271] (ASIAN DEVELOPMENT BANK, 2022)
[272] (HAMMOND & EHRET, 2022)
[273] (WALSH & MCDAID, 2018)
[274] (VALUE-ADDED TAX ACT NO. 89 OF 1991.)

services and are thus exempt supplies.[275]

Thailand

Thailand categorizes cryptocurrencies as intangible property for VAT purposes.[276]

Columbia

Cryptocurrencies in Colombia are treated as intangible assets unrelated to intellectual property, with no VAT implications.[277]

Ireland

According to the perspective of the Irish Revenue, Bitcoin and analogous cryptocurrencies are considered 'negotiable instruments' for VAT purposes. As such, they are exempt from VAT obligations as outlined in Paragraph 6(1)(c) of Schedule 1 of the VAT Consolidation Act 2010.[278]

7.1.4 VAT Implications

South Africa

The supply of cryptocurrencies is considered an exempt supply under Section 12(a) of the Value-Added Tax Act No. 89 of 1991 in South Africa.

Bahrain

Asset tokens qualify as financial services and are exempt supplies in Bahrain. Utility tokens are subject to a standard VAT rate of 10%, while no VAT implications apply to payment tokens.[279]

Thailand

In Thailand, VAT at a standard rate of 7% is imposed on the sale of goods and services exchanged for cryptocurrencies.[280]

Columbia

The sale or transfer of cryptocurrencies falls outside the scope of VAT in

[275] (NATIONAL BUREAU FOR REVENUE, 2022)
[276] (DAVID, 2019)
[277] (PRICEWATERHOUSECOOPERS, 2021)
[278] (WALSH & MCDAID, 2018)
[279] (NATIONAL BUREAU FOR REVENUE, 2022)
[280] (DAVID, 2019)

Colombia, resulting in no VAT implications.[281]

Ireland

Cryptocurrencies are considered 'negotiable instruments' for VAT purposes. As such, they are exempt from VAT obligations.[282]

These insights provide a comprehensive understanding of the VAT treatment of cryptocurrencies across diverse jurisdictions, shedding light on the nuanced approaches adopted by each country. Please refer to the comparison in tabular format for ease of reference as **Appendix A** of the report.

7.2 Discussion

Cryptocurrencies are subject to varying classifications across the jurisdictions analysed in this study. In South Africa (RSA), the classification of cryptocurrencies as financial assets stems from the challenges in determining the value-added from cryptocurrency transactions, complicating the taxation of cryptocurrencies for VAT purposes.[283] Notably, the Thailand and Bahrain governments have managed to establish mechanisms for taxing cryptocurrencies for VAT purposes.

In Colombia, cryptocurrencies are categorized as intangible property, falling outside the scope of VAT.[284] Despite differing classification from South Africa, the VAT implications remain the same.[285] However, this classification does not significantly contribute to the study's objectives, which do not focus on critiquing or exploring new cryptocurrency classifications. Rather, the aim is to identify a jurisdiction that effectively classifies cryptocurrencies to generate government revenue. As there is no VAT applied, the Colombian government has not expanded its VAT base through cryptocurrency-related transactions.

281 (PRICEWATERHOUSECOOPERS, 2021)
282 (WALSH & MCDAID, 2018)
283 (KABWE, 2020)
284 (PRICEWATERHOUSECOOPERS, 2021)
285 (PRICEWATERHOUSECOOPERS, 2021)

Thus, there is no actionable insight that South Africa can glean from Colombia, as neither jurisdiction has utilized cryptocurrencies to broaden the VAT base and address issues of high inequality. Bahrain adopts a broader classification of cryptocurrencies, each carrying implications for VAT purposes. Classification as asset tokens mirrors South Africa, resulting in no VAT imposition due to exemption as financial services.[286]

Conversely, designating cryptocurrencies as utility tokens leads to VAT consequences, with NBR equating utility tokens to vouchers, subjecting them to VAT rules governing vouchers. Similar considerations apply to utility tokens and vouchers under the VAT system.[287] Payment tokens, like in South Africa, entail no VAT implications when exchanged for goods, services, or legal tender. However, NBR has issued guidelines on barter transactions, specifying consideration determination, and exchange rates to maintain coherence in the face of cryptocurrency price fluctuations.[288]

Bahrain's VAT imposition lacks a unified approach, instead focusing on the functionalities of cryptocurrencies. When cryptocurrencies serve as means of payment, there are no VAT consequences, ensuring coherence in the VAT system.[289] Likewise, VAT implications align with the treatment of money transfers, maintaining system coherence.[290] Conversely, utility tokens incur VAT consequences, consistent with voucher taxation. Bahrain's functional approach acknowledges the complexity of cryptocurrencies, allowing for varied classifications under different economic activities.[291]

In Thailand, cryptocurrencies are classified as intangible property, subject to VAT on both the sale of goods and services for cryptocurrencies and the sale of cryptocurrencies themselves. The Thai Revenue Department has established a consistent VAT taxation method, subjecting all cryptocurrency transactions to

[286] (NATIONAL BUREAU FOR REVENUE, 2022)
[287] (NATIONAL BUREAU FOR REVENUE, 2022)
[288] (DE VRIES, September 2016)
[289] (EBRILL, KEEN, BODIN, & SUMMERS, 2001)
[290] (EBRILL, KEEN, BODIN, & SUMMERS, 2001)
[291] (ADAM, 2021)

VAT.[292] This approach diverges not only from South Africa but also from Bahrain's approach.

Insufficient information is available from Bahrain or Thailand to elucidate VAT imposition methods. This poses a significant concern since cryptocurrency transactions are anonymous.[293] It remains unclear how Thailand identifies transacting parties for all transactions. Presumably, the licensing requirement serves as a mechanism for user identification in Thailand, supported by the Thai government's VAT exemption strategy to incentivize cryptocurrency trading through local exchanges. Such measures enable governmental oversight of cryptocurrency transactions, facilitating identification of transacting parties subject to VAT.[294]

The Central Bank of Ireland cautions against the risks associated with cryptocurrencies, highlighting their unregulated nature and lack of legal tender status. Despite this, Ireland has adopted a cautious approach to domestic crypto regulation, relying on guidance from international regulators and proposing the formation of a blockchain working group.[295]

The Office of the Revenue Commissioners in Ireland has issued guidance on the tax treatment of cryptocurrency transactions, clarifying that ordinary tax rules apply and typically, cryptocurrency mining is not subject to VAT. However, the dynamic nature of cryptocurrency markets poses challenges in determining taxable amounts for VAT purposes.[296]

Irish Revenue categorizes exchange activities involving cryptocurrencies and fiat currency as VAT-exempt, consistent with EU directives and that of South African legislation.[297]

[292] (DAVID, 2019)
[293] (ADAM, 2021)
[294] (TASSEV, 2022)
[295] (WALSH & MCDAID, 2018)
[296] (WALSH & MCDAID, 2018)
[297] (WALSH & MCDAID, 2018)

7.3 Recommendations

The preceding discourse highlights the potential for the South African Revenue Service (SARS) to assimilate the tax regulations of Bahrain and Thailand. This section elucidates the aspects that SARS could integrate from these jurisdictions, alongside the attendant advantages and challenges associated with such endeavours.

A fundamental obstacle confronting regulators and policymakers in the burgeoning cryptocurrency industry is the absence of precise and consistent terminology. The multiplicity of terms used interchangeably without clear definitions complicates the formulation of coherent regulatory frameworks. Even the term "crypto asset" has drawn criticism for its ambiguity. Scholars suggest that each jurisdiction should define its terminology explicitly and consistently to align with its regulatory objectives.[298]

South African regulatory authorities have adopted a functional approach, defining cryptocurrencies based on their economic functions rather than their legal status. Consequently, the term "crypto assets" has been proposed to encompass these functions, although inconsistencies persist in its usage across official declarations. Notably, the South African Reserve Bank (SARB) has refrained from employing the term "currency" due to cryptocurrencies' status as digital assets, diverging from the terminology used in the VAT Act, thereby warranting a need for terminological consistency.[299]

The absence of a formal definition of cryptocurrencies poses significant challenges, particularly concerning VAT levying. The lack of clarity allows individuals to define cryptocurrencies arbitrarily, potentially leading to disputes between taxpayers and SARS. Thus, a clear definition of crypto assets is imperative to establish a straightforward and comprehensible VAT system.[300]

[298] (BLANDIN, et al., 2019)
[299] (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
[300] (KABWE, 2020)

Incorporating a legal definition of crypto assets into Section 1 of the VAT Act is crucial to providing clarity and consistency. The suggested definition, endorsed by regulatory authorities, delineates crypto assets as digital representations of value, excluding sovereign currencies, and clarifies their non-recognition as legal tender or public money.[301]

Bahrain's VAT framework offers a comprehensive approach by classifying crypto assets based on their utility, thereby determining VAT consequences accordingly. In contrast, South Africa recognizes various types of crypto assets, including exchange or payment tokens, security tokens, and utility tokens. Aligning with Bahrain's approach could enhance clarity and consistency in South Africa's VAT Act.[302]

However, the classification of crypto assets may introduce compliance and administrative burdens, potentially enabling evasion. To mitigate such risks, a streamlined approach akin to Thailand's, which deems crypto asset transactions as supplies of goods, could be more favourable. Yet, challenges persist due to the anonymity of transactions and the volatile nature of crypto asset values.[303]

Regulating the crypto asset sector through specific registration requirements for service providers could enhance VAT collection and compliance. Given the volatile nature of crypto asset values, mandatory registration could provide a mechanism for SARS to track and regulate transactions more effectively.[304] This approach aligns with South Africa's broader efforts to govern the cryptocurrency industry and ensure tax compliance.[305] [306]

In conclusion, while adopting VAT regulations from Bahrain and Thailand offers potential benefits for South Africa, careful consideration of the associated

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301 (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
302 (INTER-GOVERNMENTAL FINTECH WORKING GROUP., 2021)
303 (ERASMUS & BOWDEN, 2020)
304 (THE DAVIS TAX COMMITTEE, 2018)
305 (INTER-GOVERNMENTAL FINTECH WORKING GROUP, 2019)
306 (DAVID, 2019)

challenges is essential. Balancing regulatory clarity with administrative feasibility is crucial in devising effective taxation frameworks for the evolving cryptocurrency landscape.

Chapter 8: Conclusion

Policymakers must remain vigilant in adapting policies and regulations to keep pace with the dynamic economic landscape. The advent of cryptocurrencies in 2008 continues to challenge policymakers, necessitating adjustments to accommodate this novel paradigm of virtual currency.[307] The decentralization inherent in cryptocurrencies, eliminating the need for intermediaries, has fundamentally reshaped the financial services sector. Initially conceived as a medium of exchange akin to traditional currencies, cryptocurrencies have evolved to encompass a diverse array of economic activities, including investment, trading, and utility token usage by various stakeholders.

In response to the emergence of cryptocurrencies as a digital asset or currency, SARS opted in 2018 to classify them as a supply of financial services, rendering them exempt from VAT. However, the multifaceted nature of cryptocurrencies and their increasing adoption in South Africa have prompted reconsideration. This led to an exploration of whether reclassifying cryptocurrency transactions could broaden the VAT base and augment government revenue. A comparative analysis of crypto asset classification in Thailand, Bahrain, Colombia and Ireland yielded significant insights.

In Colombia, cryptocurrencies were designated as intangible assets exempt from VAT, with no effort to leverage their growing usage to expand the tax base and mitigate inequality. Notably, while Colombia imposes a standard VAT rate of 19%, South Africa's rate stands at 15%, suggesting potential differences in revenue implications.[308] Bahrain, on the other hand, introduced VAT in 2019 and provided comprehensive guidance on its application to crypto assets in 2022. By aligning VAT treatment with the utilization of crypto assets in the economy,

[307] (ADAM, 2021)
[308] (ADAM, 2021)

Bahrain ensured consistency in its VAT system, primarily impacting utility tokens.[309]

In Thailand, crypto assets are classified as intangible property subject to a 7% VAT on all transactions, contrasting sharply with SARS' approach of not levying VAT on crypto assets.

It is the perspective of the Irish Revenue that Bitcoin and analogous cryptocurrencies are classified as 'negotiable instruments' for VAT purposes and are exempt from VAT under Paragraph 6(1)(c) of Schedule 1 of the VAT Consolidation Act 2010. This stance aligns with one of the six potential approaches outlined by the EU VAT Committee in its working paper dated 29 July 2014, where it was acknowledged that certain Member States endorsed this interpretation.[310]

Regarding supplies of goods and/or services compensated through cryptocurrency, the Irish Revenue asserts that such transactions should be treated similarly to other remunerated supplies for VAT purposes, irrespective of whether the payment is made in Bitcoin or any other similar cryptocurrencies.[311]

While Thailand's approach offers revenue generation potential, it may entail administrative challenges due to the anonymity of crypto asset transactions. Addressing this would require costly and potentially complex measures for SARS to identify transaction participants, highlighting the need for regulatory frameworks and licensing requirements.[312]

As South African authorities develop a licensing regulatory framework, mandating VAT registration for all crypto asset service providers could ensure VAT compliance across transactions. Future research avenues could explore the

[309] (ADAM, 2021)
[310] (WALSH & MCDAID, 2018)
[311] (WALSH & MCDAID, 2018)
[312] (ADAM, 2021)

efficacy of such measures, broaden the comparative scope to include additional jurisdictions, and assess the optimal treatment under South African VAT law, considering the classification as financial services. These endeavours are crucial for enhancing regulatory clarity and optimizing revenue streams in the evolving landscape of crypto asset taxation.

Furthermore, it is imperative for policymakers to recognize the broader implications of crypto asset taxation beyond revenue generation. As cryptocurrencies continue to gain traction globally, their regulatory treatment can influence investor confidence, market stability, and technological innovation. Therefore, in addition to revenue considerations, policymakers should prioritize fostering a regulatory environment that promotes investor protection, market integrity, and innovation while addressing potential risks such as money laundering and terrorism financing.

Moreover, collaboration and information-sharing among regulatory authorities across jurisdictions are essential to address the transnational nature of crypto assets effectively. Given the borderless nature of cryptocurrency transactions, international cooperation is crucial to develop harmonized regulatory frameworks that prevent regulatory arbitrage and ensure a level playing field for market participants.

In conclusion, navigating the complexities of crypto asset taxation requires a multifaceted approach that balances revenue objectives with broader regulatory goals. By engaging in ongoing dialogue, conducting empirical research, and leveraging international best practices, policymakers can develop robust regulatory frameworks that foster innovation, safeguard investor interests, and optimize revenue collection in the rapidly evolving landscape of crypto asset taxation.

Appendix A

Definition of Cryptocurrencies	South Africa	Bahrain	Thailand	Columbia	Ireland
	Cryptocurrencies in South African law are classified as crypto assets. These are virtual representations of value not issued by any central bank, but traded, transferred, and stored electronically by legal and natural entities for investment and payment purposes.	In Bahrain, crypto assets are defined as tokens or digital assets operating on blockchain networks and encrypted.	The Royal Decree in Thailand defines cryptocurrencies as unit data messages created on electronic systems or networks for use as a medium of exchange or for acquiring goods, services, or digital assets. They employ cryptographic methods.	The Colombian government has not officially defined cryptocurrencies, according to available information.	A virtual currency can be defined as a form of unregulated digital currency, typically issued and controlled by its developers, and circulated and accepted within a specific virtual community.
Legal Status	South Africa	Bahrain	Thailand	Columbia	Ireland
	Crypto assets are not considered legal tender or fiat currency in South Africa.	Similarly, crypto assets do not qualify as legal tender in Bahrain.	Cryptocurrencies are not recognized as legal currencies or legal tender in Thailand.	Colombia does not acknowledge cryptocurrencies as money or legal tender.	Crypto assets are not considered legal tender or fiat currency in Ireland.
Regulation	South Africa	Bahrain	Thailand	Columbia	Ireland
	South Africa is poised to introduce registration protocols for all crypto asset service providers.	In Bahrain, entities engaging in regulated crypto asset services must obtain licenses from the Central Bank of Bahrain.	Financial institutions in Thailand must acquire licenses from the Minister of Finance to operate as digital asset firms.	Cryptocurrencies remain unregulated in Colombia, albeit subject to certain restrictions.	Irish Revenue regards the exchange of Bitcoin for fiat currency as qualifying for VAT exemption under paragraph 6(1)(d) of Schedule 1 of the VAT Consolidation Act 2010, provided that the business conducting the exchange operates as the principal entity, engaging in the buying and selling of Bitcoin as the owner of the virtual currency.
VAT Classification	South Africa	Bahrain	Thailand	Columbia	Ireland
	Cryptocurrencies are deemed financial services under the Value-Added Tax Act No. 89 of 1991 in South Africa.	In Bahrain, payment, asset, utility, and hybrid tokens are classified as financial services and are thus exempt supplies.	Thailand categorizes cryptocurrencies as intangible property for VAT purposes.	Cryptocurrencies in Colombia are treated as intangible assets unrelated to intellectual property, with no VAT implications.	According to the perspective of the Irish Revenue, Bitcoin and analogous cryptocurrencies are considered 'negotiable instruments' for VAT (Value Added Tax) purposes. As such, they are exempt from VAT obligations as outlined in Paragraph 6(1)(c) of Schedule 1 of the VAT Consolidation Act 2010.
VAT Implications	South Africa	Bahrain	Thailand	Columbia	Ireland
	The supply of cryptocurrencies is considered an exempt supply under Section 12(a) of the Value-Added Tax Act No. 89 of 1991 in South Africa.	Asset tokens qualify as financial services and are exempt supplies in Bahrain. Utility tokens are subject to a standard VAT rate of 10%, while no VAT implications apply to payment tokens.	In Thailand, VAT at a standard rate of 7% is imposed on the sale of goods and services exchanged for cryptocurrencies.	The sale or transfer of cryptocurrencies falls outside the scope of VAT in Colombia, resulting in no VAT implications.	Cryptocurrencies are considered 'negotiable instruments' for VAT (Value Added Tax) purposes. As such, they are exempt from VAT obligations.

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