

Budget Law 2023

Crypto assets

Focus on

In art. 1, paragraphs 126 to 147, Budget Law 202 introduces for the first time a set of rules aimed to regulate the tax aspects related to the income deriving from the holding of crypto assets and to allow taxpayers to regularize their position with the tax authorities due to breaches committed in relation to the statement of crypto assets held at 31 December 2021. The Law also provides a definition of crypto asset relevant for the purposes of income taxes regulation.

The main measures introduced on this issue are explained below.

Taxation of capital gain (para. 126-128 and 131)

Subjects who do not act within their business activity (paragraphs 126-128) - Art. 67, paragraph 1, lett. c-sexies of TUIR qualifies as “other income” the income deriving from the refund, transfer, exchange or possession of crypto assets, however defined, for an amount of at least Euro 2,000 in a single fiscal year.

The capital gain is determined as the difference between the consideration received, or the sum or the normal value of the crypto assets exchanged, and the purchase cost or value of the same, suitably documented with certain and precise elements (otherwise it is considered as equal to zero). Similar to what happens for capital gains deriving from the divestment of securities, currencies and shareholdings, the charges inherent to capital gain production, including any inheritance tax and gift tax paid and excluding interest expense, are relevant.

Also in this case, the capital losses deriving from crypto asset transactions can be deducted from the relative capital gains in the FY and the surplus can be carried forward for the four subsequent FYs only if the amount exceeds 2,000 Euro.

The exchange between crypto assets having the same characteristics and functions is considered irrelevant for tax purposes.

As a result of the changes made to Legislative Decree no. 461/1997, the capital gains thus determined are subject to the 26% substitute tax. By amending art. 67 of TUIR, the Law specifies that the spot transfers of currencies is presumed as onerous also for virtual currencies, in case of wallets whose overall average balance in the year exceeds Euro 51,645.69 for at least seven continuous working days and the withdrawal from the wallet is considered as equal to transfers against payment. Lacking a daily exchange rate of virtual currencies, the Law clarifies the relevant exchange rate to be applied.



Companies and other entities acting within a business activity

– As a result of the amendments made to art. 110 of TUIR, income and cost deriving from the valuation of crypto assets do not contribute to the calculation of IRES and IRAP taxable base, regardless of their allocation to the income statement.

Option for the asset administration and asset management regimes (paragraphs 128-130)

Taxpayers can exercise the option for the application of the asset administration and fund management regime also in relation to crypto assets.

In both cases, the taxable income deriving from crypto assets is subject to a withholding tax equal to 26%: in the case of asset administration, the withholding tax is applied to the result realized on a cash flow basis of accounting, while in the case of asset management it is applied to the result accrued in the reference period.

Virtual currency service providers and digital wallet service providers are included among the entities required to:

- directly pay the tax owed by the taxpayer, withholding it from the realized proceeds or receiving the fund from the taxpayer;
- notify the Tax Authorities, by the deadline set for the filing of withholding agent return, the total amount of capital gains and other income, as well as of the substitute taxes applied in the previous calendar year.

In case of application of the asset administration regime for the purposes of the payment of the substitute tax, should taxpayers not have data and information needed for its application to the income generated from crypto assets, they must deliver the relevant documentation (even as a copy). The possibility for taxpayers to provide a self-declaration certifying the above data is expressly excluded.

Given the possibility to opt for the asset management regime also in case of crypto assets, transactions carried out on the same contribute to the calculation of the income for the purposes of applying the relevant tax.

Furthermore, the provisions on the use and forwarding of capital losses, as well as the provisions on the presumed liquidation of assets transferred from the fund administration to the fund management regime are also confirmed for crypto assets, except for the cases already envisaged of crypto assets transferred due to inheritance or donation.

Redetermination of the value of crypto assets (para. 133-137)

The Law introduces the possibility to redetermine the value or purchase cost of each crypto asset held at 1 January 2023, thus aligning it to the “fair value” under art. 9 of TUIR, by paying a substitute tax equal to 14%.

The substitute tax is due by 30 June 2023 either in a single payment or in three yearly equal instalments, the first of which being due by 30 June 2023. Like in the case of the redetermination of the value of securities and land, 3% interest per year is applied on the following instalments.

The redetermined value is used for the purposes of the calculation of other income under art. 67, para. 1, letter c-sexies) of TUIR. Should the transfer of revaluated crypto assets give rise to a capital loss, this cannot be deducted from the total capital gains amount.

Regularization of committed breaches (para. 138-143)

Individuals, non-commercial entities and general partnerships and similar under art. 5 of TUIR who did not state in their return the crypto assets held by 31 December 2021 and income generated by the same date can regularize their position with the Revenue office by paying:

- a substitute tax equal to 3.5% of the value of crypto assets held at the end of each year or at the moment of realization, if this is earlier;

- a further amount as penalties and interest, equal to 0.5% of the value of crypto assets held at the end of each year (or at the moment of realization, if earlier) and for each year in which these assets were not stated in the RW section.

If crypto assets did not generate any income, the regularization is limited to the breach due to the omitted fulfilments of tax monitoring obligations and this can be regularized by filing a proper disclosure application and paying penalties equal to 0.5% of the value of assets at the end of the year, for each year in which the RW section was not submitted. The regularization occurs through the filing of a disclosure application, whose content, filing procedure and terms will be defined in a proper Order by the Director of the Revenue Office.

The Law specifies that, without prejudice to the proof of legitimacy of the amounts invested in crypto assets, the regularization applies only to income generated from crypto assets and for investment in crypto assets, explicitly referring – as regards the latter – to penalties under art. 5 of Legislative Decree no. 167/1990.

Stamp duty and relevance of the so-called “IVAFE” (para. 144-147)

The changes made to art. 13, Annex A of the Tariff under Presidential Decree no. 642/1997 introduced the obligation to apply a stamp duty in the amount of 2 per thousand per year to the value of crypto assets, under the same payment methods and terms provided for stamp duties on other financial investments. Furthermore, starting from 2023, instead of applying the stamp duty, IVAFE (tax on the value of financial assets held abroad) must be applied in the amount of 2 per thousand on the value of crypto assets held with non-resident intermediaries or stored on USB keys, personal computers and smartphones. This obligation exists for all subjects residing within the territory of the Italian State and not only for subjects obliged to comply with tax monitoring fulfilments. Therefore, subjects who carry out business activities and hold crypto assets with foreign intermediaries and on the other media listed above are also included.



Please feel free to contact us for further details and information on the above issues.

