

NEW TAX REGULARISATION PROCEDURE OF CRYPTOCURRENCIES (AND CRYPTO-ASSETS)**Foreword**

As part of a major tax reform of the Italian tax regime of cryptocurrencies (and other crypto-assets), effective from 1st January 2023, the Italian Revenue Agency has recently issued some important regulations to allow taxpayers to settle their Italian tax obligations from years 2016 to 2021 concerning cryptocurrencies (or other crypto-assets) through a regularisation procedure, available **until 30 November 2023**.

Subject to a case-by-case analysis, this new regularisation procedure may offer opportunities, for instance to eligible taxpayers who have recently exchanged their cryptocurrencies with fiat currencies (i.e. a “cash out”) or used them to purchase goods/services or are considering to do so in the future.

The legal framework

Until 2022 included, the tax treatment of cryptocurrencies has been inferred from existing legislation by the Italian tax authorities through some official and non-official guidelines reaching conclusions often criticised by practitioners, scholars and taxpayers (the “**Tax Authorities’ Approach**”). The Tax Authorities’ Approach considered cryptocurrencies akin to foreign currencies and, as far as individuals and non-commercial entities resident in Italy are concerned, required to: (i) report the countervalue in euro of cryptocurrencies held during the year in the annual tax return and (ii) apply a final substitutive tax of 26% on income arising from the exchange of cryptocurrencies (with other cryptocurrencies, fiat currencies or goods/services), with some exceptions.

From 1st January 2023, Law no. 197/2022 sets out a brand-new tax regime of crypto-assets (broadly defined and including cryptocurrencies) which partially overcomes the doubts and concerns arising from the Tax Authorities’ Approach. In a nutshell, as far as individuals and non-commercial entities resident in Italy are concerned: (i) income deriving from a broad range of transactions concerning crypto-assets (excluding certain crypto-to-crypto transaction) is subject to a final 26% substitutive tax, (ii) the countervalue in euro of the crypto-assets held during the year must be reported in the annual tax return, (iii) an annual wealth tax equal to 0.2% applies to the countervalue in euro of crypto-assets (with some limitations). The regime includes specific rules concerning business income.

The tax regularisation procedure

The new procedure can be started by individuals, non-commercial entities and alike, resident in Italy, who have been holding and exchanging cryptocurrencies (and other crypto-assets, with some exceptions) in years from 2016 to 2021 and have not followed the Tax Authorities’ Approach.

The tax burden of the procedure varies depending on the type of regularisation. In detail, **by 30 November 2023**, applicants are required to pay the following amounts:

- (i) For settling omitted tax reporting in the tax return, a reduced penalty equal to 0.5% of the countervalue in euro of the cryptocurrencies held;
- (ii) For settling omitted income in the tax return, a substitutive tax equal to 3.5% of the countervalue in euro of the cryptocurrencies held.

By 30 November 2023 the applicant must fill in and submit to the tax authorities a regularisation form and a report describing how the values shown in the form are determined and providing satisfactory evidence that the funds used to purchase/exchange cryptocurrencies do not derive from crimes, including tax crimes and money laundering, such as: bank account statements, wallet addresses, transaction ID numbers and any other documentation issued by intermediaries involved. Indeed, the most complex cases will require mapping investments and transactions made over the years, using, for example, the services of specialised intermediaries.

Opportunities

According to new tax authorities’ guidelines, still in draft version as at today, the tax cost of the crypto-assets covered by the regularisation procedure is the value shown in the regularisation form. Once the procedure is finalized and subject to a case-by-case analysis including the volatility of cryptocurrencies in recent years, this approach may be of interest for those applicants who, for example:

- (i) Are considering a full/partial cash out of their cryptocurrencies; and/or
- (ii) Have already fully/partially cashed out their cryptocurrencies in 2022 and are considering the most appropriate approach to follow in their annual tax return.

How we can help

In this new regulatory environment, holders of cryptocurrencies (or other crypto-assets) resident in Italy should carefully reconsider the possible tax implications of investments and transactions made in the past years and planned for the future, in order to:

- (i) Identify the most appropriate tax strategy for their case;
- (ii) Regularise any tax liabilities for the years past until 2021;
- (iii) Assess the direct and indirect benefits arising from the regularisation procedure.

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