CRYPTOCURRENCIES, TAXES AND NIGERIA

The digital world is here to stay. It is the new normal. This realisation was responsible for the conclusion of the OECD that the digital economy cannot be ringfenced for tax purposes as digitalization has imprinted virtually every sector of the world's economies.[1] Digitalization has brought with it digital assets. The crucial role of digital assets in the global economy is easily discernible by the deliberate efforts of governments to regulate them. Cryptocurrencies occupy a remarkable space among digital assets and have in addition to forcing governments to take a stand on them, led to new regulations for their taxation. Notably, there is no uniform way of taxing cryptocurrency gains or income across borders with some jurisdictions taxing it as capital gains and others taxing it as income, but what is uniform is the deliberate effort to ensure revenue leaks are blocked by unreported crypto transactions.

The regulations on cryptocurrencies in Nigeria are the Central Bank of Nigeria's circular[2] to banks in January 2017 warning of the risks of transacting in Virtual Currencies; the further communication of the Central Bank of Nigeria to banks detailed in the circular of 5 February 2021 prohibiting banks from dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges[3] and most recently, the Rules of the Securities and Exchange Commission issued in May 2022 on the issuance, offering platforms and custody of digital assets. So, Nigerians may engage in crypto dealings but cannot pass their transactions through Nigerian banks; at least not visibly. Statistics suggest that Nigeria ranks high among countries whose citizens are deeply engaged in crypto trading. According to a report earlier this year, about $109.05 million was received and $151.12 million sent in crypto from Nigeria.[4]

With no regulations on taxation of cryptocurrencies, these trades most likely went unreported to the tax authorities and consequently untaxed. As aptly stated in the case of *Helvering v. Gregory*[5], *"there is not a patriotic duty to increase one's taxes…for nobody owes any public duty to pay more than the law demands"*. Clearly, if the Nigerian government does not demand taxes from crypto trades, Nigerian citizens are not likely to walk up to the tax offices to either declare crypto gains or make remittances on crypto income. With a tax to GDP ratio of about eight percent[6], Nigeria loses opportunities to improve tax collection and encourages her citizens to develop an apathy to self-assessing themselves on profits from crypto dealings. Clearly, when the country gets around to taxing crypto, there would be great resistance and high incidences on non-compliance.

Like Nigeria, several other countries took off from a stance of warning their citizens against crypto dealings and a dissociation from virtual currencies. Many countries have however progressed beyond that

[1] www.oecd.org/tax/beps/tax-and-digitalisation.pdf accessed 8 September 2022.
[2] AML January 2017 Circular to FIs on Virtual Currency.pdf (cbn.gov.ng) accessed 8 September 2022.
[3] CBN Update, ISSN No. 2695-2394 Vol. 3 No.21 February 2021 Untitled-1 (cbn.gov.ng) assessed 8 September 2022.
[4] Best Crypto Exchange Nigeria: Top, Regulated, Legal, Safest, Lowest Fee | Coincub.com accessed 7 September 2022.
[5] *69 F.2D 809 (2d Cir. 1934).*
[6] Nigeria's eight per cent tax-to-GDP ratio among world's lowest – Osinbajo - Punch Newspapers (punchng.com) accessed 8 September 2022.

point to studying virtual currencies and the underlying blockchain technology that supports it to regulate the space and levy taxes. This is done through publications of tax guidance and regulations. These cryptocurrency tax guidance and regulations across jurisdictions specify how tax liabilities may arise. Crypto is generally not regarded as fiat currency but as an asset or property. Tax liabilities are accordingly based on whether crypto gains are revenue or capital in nature. Usual crypto taxes include airdrop taxes, crypto income taxes, crypto mining taxes, hard fork taxes, capital gains taxes, staking taxes etc. Accordingly, persons engaged in crypto dealings in jurisdictions where regulations exist on taxing crypto assets have clarity on their reporting and tax obligations.

It is pertinent to note that jurisdictions taxing crypto assets do not necessarily have a firmer grasp of the concept but are simply committing to understanding it and ensuring that tax obligations do not lag far behind incomes and gains whether traditionally earned or digitally earned. In South Africa, the South African Revenue Service issued a statement clarifying the tax treatment of crypto assets as far back as 2018. Currently, income received from crypto dealings in South Africa could be taxed on revenue accounts under gross income or under the Capital Gains Tax Paradigm if capital in nature.[7] In the UK, the internal manual of the HMRC on crypto assets states that the tax treatment of cryptoassets continues to develop due to the evolving nature of the underlying technology and the areas in which cryptoassets are used. As such, the HMRC leaves room for their position to evolve to match the development of the sector which will be followed by publication of amended or supplementary guidance.[8] In the US, the IRS recently modified the crypto question asked on IRS Form 1040 for individuals. The form specifically asks whether taxpayers received as a reward, award or compensation, or sold, exchanged, gifted or otherwise disposed of a digital asset or a financial interest in a digital asset at any time during 2022. This is a deliberate effort to monitor digital assets of citizens more closely and to put taxpayers in a position where they are obliged to declare their financial interests in digital currencies.[9]

Indications and trends suggest digital assets are going to be around for a long while yet. Nigeria has ample jurisdictions to study to decide on how to approach tax regulations of digital assets including cryptocurrencies. There is need to block revenue leaks currently caused by unreported cryptocurrency transactions. There is also need to give local and foreign investors clarity on their tax liabilities in digital assets.

[7] Crypto Assets & Tax | South African Revenue Service (sars.gov.za) assessed 8 September 2022.

[8] Cryptoassets manual CRYPTO10000 - Introduction to cryptoassets: contents - HMRC internal manual - GOV.UK (www.gov.uk) accessed 6 September 2022.

[9] Compounding a disastrous year for Bitcoin and other cryptocurrency: IRS proposes controversial new question about digital assets - MarketWatch accessed 6 September 2022.

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