

By Roberto M. Cagnazzo

Introduction

At this time, cryptocurrencies seem to represent one of the most intriguing elements in the national and international panorama. The vertiginous fluctuations of their value on the non-regulated markets are determining significant rises or drops in the purchasing power of many subjects worldwide.

Actually, cryptocurrencies are not “currencies” in the technical meaning since they are not issued by a central bank and they are not a legal tender. In effect, they are the result of extremely complex algorithms and their exchange takes place only on the trust of the market that considers them an instrument of payment.

Technical framework

From a practical standpoint, cryptocurrencies allow secure online payments using peer-to-peer technologies based on “blockchain” made up of users’ computers all over the world, on which special programmes that work as wallets are executed.

Cryptocurrency activities rely on the principles of asymmetric cryptography that allows transactions and money generation to be validated without any issuing authority.

Each person who owns cryptocurrencies is the owner of an arbitrary number of pairs of cryptographic keys, in which one is public, and the other is private. When user A transfers money to user B, he refuses the ownership of a certain amount of cryptocurrencies by adding

the public key of B (his address) to the alphanumeric string, which represents the sum of cryptocurrencies to be exchanged, and signing them with his private key. He transmits these coins in a specific message, and the “transaction” takes place through the peer-to-peer network. The rest of the nodes validate the alphanumeric string, the cryptographic signatures, and the amount transferred before accepting it by entering a time stamp (shown in cryptocurrencies as “confirmation”). A transaction, starting as “unconfirmed”, will become “confirmed” only when it will be verified by the blockchain through a list of timestamps managed collectively: only at that time it will enter in the shared database.

Legal framework

The set of rules offered by the Italian legal system today does not provide a complete framework for payment systems based on cryptocurrencies because of their technological origin.

What is a cryptocurrency from a legal standpoint? No one can answer this question now. Perhaps it would be better to start with what is “not” a cryptocurrency, and more specifically:

- It is not transferable security. Unlike shares or other investment instruments, the cryptocurrencies do not incorporate any rights, either of the issuer or of the holder: in other words, they do not constitute a debt instrument. The first judgment on cryptocurrencies in Italy said that the relationship, by virtue of which two parties conclude an online contract for the exchange of real currency with bitcoins, integrates a financial service if bitcoins are a financial instrument used to carry out a series of particular forms of online transactions consisting of a currency that can

be issued by any user and can be exploited to carry out transactions thanks to an open source software and a peer-to-peer network;

- It is not an electronic currency expressed in the same unit of account as the real currency (dollars, euros, etc.). The cryptocurrency is itself a store of value and a unit of account. Moreover, the system of surveillance rules, which characterises the electronic money, has no effect in the world of virtual money;
- It is not a currency. Although cryptocurrencies are used as a means of payment, they are not a legal tender or subject to surveillance, and they are subject to wide fluctuations in value that do not protect the regular execution of purchase and exchange operations.

Tax framework

In 2015, the EU Court of Justice decided that cryptocurrency commercialisation constitutes a financial activity if the parties have accepted the virtual currencies as an alternative means of payment to the traditional one. According to the Court of Justice, the activity would, therefore, be exempt for VAT purposes under the provisions of the Directive 2006/112/EC.

At the moment, Italy has no specific tax rules on cryptocurrency taxation. In 2016, the Italian Tax Authorities made some considerations on the taxation of cryptocurrencies by responding to a question asked by a company on the correct treatment of bitcoin purchase/sale transactions for income taxes and VAT purposes (Decision No.72/2016).

As far as VAT is concerned, the Tax Authorities confirmed the exemption regime provided for by Presidential Decree No.633/1972, agreeing with the

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position expressed by the EU Court of Justice that qualified the purchase/sale of bitcoins in exchange for traditional currency as a financial activity.

As far as income taxes are concerned, the Tax Authorities:

- qualified the income from the habitual activity of intermediation in the purchase/sale of bitcoins as business income subject to ordinary taxation for IRPEF (Personal Income Tax)/IRES (Corporate Income Tax) and IRAP (Regional Production Tax) purposes;
- assimilated the income of individuals from virtual currency purchases/sales with the corresponding income from foreign currency purchases/sales that do not generate income in absence of speculative purposes.

In 2018, the Italian Tax Authorities provided explanations on the tax regime applicable to the offering of digital tokens, with the aim of

raising funds for the realisation of a specific project (Answer No.14/2018). The Tax Authorities pointed out that the sale of tokens alone is not a transaction which is relevant for VAT purposes as it is, in fact, a mere financial movement. VAT will become chargeable only when the goods will be sold or the services provided with the spending of the tokens.

Anti-money laundering framework

The new EU Directive 2018/843 has outlined a legal framework that includes some virtual currencies' management activities.

In 2017, Italy acted promptly on the regulation of cryptocurrencies by issuing the Legislative Decree No.90/2017 that implemented some of the fundamental measures of the previously mentioned Fifth Directive. The aim of this legislative measure is to



interrupt the anonymity guaranteed by the alphanumeric sequence, expressed in bitcoins, in the virtual world.

In particular, the Legislative Decree introduced the key definitions of “virtual currency” and “service provider related to the use of virtual currency”.

The domestic legislator provided for the introduction of a public register in which the service providers relating to cryptocurrencies will be registered for the purpose of tracing the owner of the cryptocurrencies to intercept any possible signals of money laundering operations.

Conclusion

To conclude, as a direct consequence of the above highlights, there is an urgent and imperative need to regulate this matter in detail, from a legal and tax standpoint. It is necessary to avoid the risk of this phenomenon to completely escape the control of the institutions, and not participate in the financial needs of the State.

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Studio Tributario Cagnazzo is a “boutique” firm mainly focused on providing integrated tax advice and assistance all over Italy to corporations, banks, multinational groups and high-net-worth individuals on a wide range of domestic and international tax and corporate issues. The company provides its clients with



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