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THE TAXATION OF CRYPTO-ASSETS AND THE SUSTAINABLE DEVELOPMENT GOALS¹

Abstract

The aim of the article is to determine whether the principles of crypto-asset taxation are compatible with the sustainable development goals. The article uses the formal-legal and the comparative-legal methods, both of which are appropriate for legal studies. The article draws the following conclusions. Only to a limited extent do the goals of the 2030 Agenda explicitly refer to tightening tax systems and introducing stable and transparent taxation rules. One of the goals of the 2030 Agenda is to support innovation and promote sustainable, stable and inclusive economic growth. Currently, the efforts of states and international organisations are mainly focused on tightening tax systems and taxing Internet activities, including the taxation of crypto-asset trading. It should be emphasised that these actions are necessary and essential to avoid the erosion of the tax system and the use of new technologies by taxpayers to evade tax. However, there are no measures to protect the taxpayer operating in the crypto-asset market. Indeed, only the tightening of tax systems in relation to the development of this type of technology is sought. For the sustainable development goals of the 2030 Agenda, this is not sufficient. Sustainable development requires stable and transparent taxation rules, including the taxation of crypto-asset trading.

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1. Introduction

Crypto-assets are becoming increasingly important in the digital economy. Over the last few years, distributed ledger technology has been used for settlements between entrepreneurs in business transactions.

The crypto-asset market also remains of considerable importance in non-professional trading. It has been popularised primarily through cryptocurrencies. For some private investors, they provide an opportunity to place capital in the “digital world”. Some of them also use cryptocurrencies as a substitute means of payment to replace fiat money.

It seems that in all likelihood the crypto-asset market will grow gradually in the years to come. The use of distributed ledger technology for settlement and investment purposes raises problems in determining the nature of such transactions under tax law.

This is a problem that the tax authorities of individual countries and, above all, legislators must face. Tax law must keep pace with the development of the digital economy and determine in a stable manner the tax consequences of the specific behaviour of entrepreneurs and investors also in the online sphere.

In the context of adopting a specific crypto-asset taxation model, the concept of sustainable development, which has played a leading role in the activities of States and international organisations in recent years, is important. The aim of the article is to determine whether the principles of crypto-asset taxation are compatible with the sustainable development goals.

The article uses the formal-legal and the comparative-legal methods, both of which are appropriate for legal studies.

2. The sustainable development goals

The issue of sustainable development of States, societies, large-scale economic operators as well as other individuals has become increasingly important in recent decades.

A number of initiatives has been developed to mobilise States and societies to take all possible measures to pursue sustainable development in most aspects of economic and social life, including caring for the future of humanity and the planet.

The sustainable development goals adopted by the United Nations General Assembly Resolution of 25 September 2015 are currently of the greatest importance in the context of sustainable development (Resolution adopted by the United Nations General Assembly on 25 September 2015 No. 70/1 Transforming our world: the 2030 Agenda for Sustainable Development (A/RES, 70/1))². The Agenda is intended as a blueprint for action for the benefit of people, planet and prosperity. Its objective is to strengthen universal peace under conditions of greater freedom. The Agenda was introduced for 15 years and UN Member States undertook to take action arising from it until 2030. It has now passed the halfway point of the binding force. From a temporal perspective, the United Nations is therefore halfway to achieving its goals.

UN Member States committed themselves to pursue the implementation the 17 goals and 169 targets arising from the 2030 Agenda. In particular, the goals of the 2030 Agenda include eradicating poverty in all its forms worldwide, eradicating hunger, achieving food security and improved nutrition and promoting sustainable agriculture, ensuring a healthy life and quality education for all people of all ages, ensuring access to water and sanitation for all through the sustainable management of water resources, ensure access to stable, sustainable and affordable modern energy, reduce inequalities within and between countries, ensure sustainable consumption and production patterns, protect oceans, seas, marine resources and use them sustainably, restore sustainable use of terrestrial ecosystems and counteract climate change.

From an economic perspective, the 2030 Agenda also includes among its sustainable development goals the promotion of sustainable, stable and inclusive economic growth and full and productive employment, the building of stable infrastructure and support for innovation, the strengthening of implementation measures and the reinvigoration of global partnerships for sustainable development, and making cities and human settlements safe, stable and sustainable.

² Hereinafter referred to as the 2030 Agenda.

The sustainable development goals are linked to 169 specific targets. Each goal contains a catalogue of specific tasks to be undertaken in order to achieve that goal. For example, in the context of the fight against poverty (Goal No. 1), the UN aims, *inter alia*, to eradicate extreme poverty for all people worldwide, currently defined as living on less than USD 1.25 a day. In terms of Goal No. 4 (ensuring quality education for all), one of the targets is to ensure primary and secondary education for all.

From the point of view of the content of this article, it is important to emphasise that only two goals have targets concerning taxation issues. None of the goals raise tax aspects in their title. It is significant that the vast majority of the sustainable development goals deal primarily with public spending. The 2030 Agenda assumes that its goals are to be achieved mainly by States' actions to redistribute accumulated public resources. The Agenda does not indicate how public funds, which are the main tool for achieving the goals, are to be acquired.

Goal 12, which covers ensuring sustainable consumption and production patterns, emphasises the need to rationalise inefficient fossil fuel subsidies that encourage unnecessary consumption by removing market failures, in line with national circumstances, including by restructuring taxes and phasing out harmful subsidies. However, it is difficult to link this target to the crypto-asset market.

However, the main task aimed at achieving Goal 17 of the 2030 Agenda (Strengthening the Global Partnership for Sustainable Development) may be important from the point of view of this article. It is intended to increase the mobilisation of domestic resources, including through international support to developing countries, to improve the collection of taxes and other revenues.

A characteristic feature of crypto-assets is their considerable anonymity. In practice, there may be difficulties in identifying their owner. Consequently, this may make it impossible to correctly identify the taxpayer who is liable for the tax. Improving tax collection as part of the 2030 Agenda is therefore relevant to the need for countries to take action to regulate the crypto-asset market from the legal and tax perspective.

It should also be remembered that crypto-asset and, more broadly understood, blockchain technology can be used to achieve the sustainable development goals [Parmetola et al. 2022: 210].

3. Crypto-assets as a legal category

There is no legal definition of crypto-assets, let alone of distributed ledger technology. However, it is important to point to a number of efforts by States and international organisations in recent years to regulate the crypto-asset market, particularly in the context of introducing public oversight of its functioning. Attempts of this kind have been made, *inter alia*, in the USA, Japan and in some European countries (e.g. Malta and Liechtenstein).

Within the category of crypto-assets, cryptocurrencies can be distinguished among others. They are currently the most popular type of crypto-asset used by businesses, but also by individuals to invest funds and partly to make payments.

Under European Union law, work has been completed on a Regulation of the EU Parliament and of the Council on the Markets in Crypto-assets and amending Directive (EU) 2019/1937. The entry into force of the draft regulation will significantly regulate the legal aspects of crypto-assets. It is indicated that this is an important step in the regulation of crypto-assets in EU law [van der Linden, Shirazi 2023: 25].

The recitals of the MiCA Regulation indicate that „the lack of an overall Union framework for crypto-assets can lead to a lack of users' confidence in those assets, which could significantly hinder the development of a market in those assets and can lead to missed opportunities in terms of innovative digital services, alternative payment instruments or new funding sources for Union companies. In addition, companies using crypto-assets would have no legal certainty on how their crypto-assets would be treated in the different Member States, which would undermine their efforts to use crypto-assets for digital innovation. The lack of an overall Union framework on crypto-assets could also lead to regulatory fragmentation, which would distort competition in the Single Market, make it more difficult for crypto-asset service providers to scale up their activities on a crossborder basis and would give rise to regulatory arbitrage.” One should agree with the drafter of the Regulation and conclude that it is necessary to regulate the legal framework of the crypto-asset market in order to ensure the safety of its participants and the certainty of trading.

The MiCA Regulation is intended to apply to persons involved in the issuance of crypto-assets or providing services related to them in the European Union and to introduce a legal definition of crypto-assets³. According to Article 3(1)(2) of the Regulation, a “crypto-asset” means a digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology. Distributed Ledger Technology (DLT) is to be defined as a type of technology supporting the distributed recording of encrypted data (MiCA Regulation, Art. 3(1)(1)). The Regulation envisages dividing crypto-assets into at least three categories: asset-referenced tokens, tokens which are electronic money (e-money tokens) and utility tokens [Boćánek 2021: 40–41]. Under Article 3(1)(3) of the MiCA Regulation, asset-referenced tokens are a type of crypto-asset that purports to maintain a stable value by referencing to any other value or right or a combination thereof, including one or more official currencies.

Electronic money tokens are a type of crypto-asset to be used primarily as a means of exchange and to maintain a stable value by being linked to a fiat currency that is legal tender (MiCA Regulation, Art. 3(1)(4)). According to Article 3(1)(5), utility tokens are to be understood as crypto-assets that are intended to provide digital access to a given good or service, accessible via distributed ledger technology, accepted only by the issuer of that token.

Crypto-assets also include cryptocurrencies, which are not tokens within the meaning of the MiCA Regulation.

Under European Union law, there is also a definition of virtual currencies, which may include crypto-assets in its objective scope. It stems from the Directive on the prevention of the use of the financial system for the purpose of money laundering or financing terrorism⁴.

According to Article 3(18) of the Directive, virtual currencies shall mean digital representations of value that are not issued or guaranteed by a central bank or public authority, are not necessarily linked to a legally binding currency and do not have the legal status of currency or money, but which are accepted by natural or legal persons as a means of exchange and may be transferred, stored or sold electronically.

³ Significantly, the Regulation will not apply to, *inter alia*, crypto-assets which are financial instruments and to electronic money.

⁴ Hereinafter referred to as the AML Directive.

It has been implemented into Polish law by the provisions of the Act on the Prevention of Money Laundering and Financing Terrorism. According to Article 2(2)(26) of this Act, virtual currencies are understood to be a digital representation of value that is not, *inter alia*, legal tender issued by the National Bank of Poland, foreign central banks or other public administration bodies, an international unit of account, electronic money, a financial instrument, a bill of exchange or a cheque, and is exchangeable in economic transactions for legal tender and accepted as a means of exchange, and may be electronically stored or transferred or may be the subject of electronic commerce. This definition also applies under Polish tax law, in particular under the Act on Personal Income Tax, the Act on Corporate Income and the Act on Tax on Civil Law Transactions, which, with regard to defining virtual currencies, explicitly refer to the Act on the Prevention of Money Laundering and Financing Terrorism.

4. Activities of States and international organisations

As a result of the development of new technologies, including the crypto-to-asset market, States and their tax authorities are taking certain measures to tighten the tax system.

The crypto-asset market, characterised by a fairly extensive anonymisation of its participants, causes significant problems in terms of tax collection and the identification of tax subjects (Makarov & Schoar, (2022: 176).

Under Polish law, income from trading in virtual currencies is taxed within the meaning of the AML Directive. Pursuant to Article 17(1)(11) of the Act on the Personal Income Tax, revenue from the disposal against payment of virtual currency is included in revenue from monetary capital. Significantly, the disposal against payment of virtual currency is understood as the exchange of a virtual currency for legal tender, goods, services or a property right other than virtual currency, or the settlement of other obligations with virtual a currency (Article 17(1f) of the Act on the Personal Income Tax.) Income from the disposal of virtual currencies against payment is subject to income tax of 19% of the income earned. A similar regulation also exists in corporate income tax⁵.

⁵ The rules of income taxation with Polish income taxes were introduced by the Act of 23 October 2018 amending the Act on Personal Income Tax, the Act on Corporate Income Tax, the Tax Ordinance Act and certain other acts (Journal of Laws, item 2193, as amended) and have been in force since 1 January 2019.

There are also international efforts to tighten the tax system due to the development of crypto-assets and the spread of distributed ledger technology. The Organisation for Economic Co-operation and Development (OECD) prepared a crypto-asset reporting framework in 2022. The reporting framework provides for an obligation to report tax information on transactions involving crypto-assets. The obligation applies to the exchange of crypto-assets for legal tender or their exchange for other crypto-assets. The reporting obligation covers entities that provide crypto-asset exchange services to or on behalf of their clients in the course of their business. However, the reporting framework does not constitute universally binding law.

In terms of the legal and tax regulation of the crypto-asset market, European Union bodies are also taking specific steps. It is worth noting the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled *Shaping Europe's Digital Future*. The communication points out, *inter alia*, that “Ensuring fairness in the digital economy is a major challenge. In the borderless digital world, a handful of companies with the largest market share get the bulk of the profits on the value that is created in a data-based economy. Those profits are often not taxed where they are generated as a result of outdated corporate tax rules, distorting competition. This is why the Commission will look to address the tax challenges arising from the digitisation of the economy”.

The Commission also states that “in the digital age, ensuring a level playing field for businesses, big and small, is more important than ever. This suggests that rules applying offline – from competition and single market rules, consumer protection, to intellectual property, taxation and workers' rights – should also apply online. This undoubtedly also applies to the crypto-asset market, which operates on the basis of the Internet and digital solutions. However, it must be borne in mind that the Communication from the Commission only informs about the proposed actions to be taken in relation to the development of digital technologies and does not constitute universally binding law.

In the context of crypto-asset taxation, the European Union is taking – in addition to proposals – specific actions. This is primarily exemplified by the EU Commission's draft DAC8 Directive. By Directive DAC8 the European Commission proposes to amend Council Directive 2011/16/EU of 15 February

2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC. Crypto-assets as alternative means of payment and investment could undermine the tax transparency developed in recent years, according to the creators of the draft. Crypto-assets may also increase tax avoidance.

The essence of the draft Directive amounts to the introduction of an obligation to report income generated through crypto-asset investments and to exchange such information. Service providers in the crypto-asset market are to be required to collect and verify information in accordance with specified due diligence procedures. Service providers will be required to provide information to the competent authorities on entities using the provider's services to trade and exchange crypto-assets. This information will then be forwarded to the competent authority of the relevant Member State where the user of the reported crypto-assets is resident.

The above amounts to the need to identify the taxpayer and, consequently, to significantly reduce the anonymity of crypto-assets. The DAC8 Directive is expected to enter into force on 1 January 2026.

5. Conclusion

The 2030 Agenda introduced a very ambitious plan of action by UN states for sustainable development in all aspects of societies' lives, including caring for the planet, gender equality, healthcare, education and economic growth.

It focuses around precisely defined actions which involve the spending of public funds by individual States. The goals of the 2030 Agenda should also be pursued by entities of the private sector spending private funds. Making public expenditures requires the prior accumulation of disposable funds. The vast majority of these come from the collection of public levies, primarily taxes.

Only to a limited extent do the goals of the 2030 Agenda explicitly refer to tightening tax systems and introducing stable and transparent taxation rules. One of the goals of the 2030 Agenda is to support innovation and promote sustainable, stable and inclusive economic growth. The Agenda encourages entrepreneurs to undertake innovative solutions, promotes the digital economy, but at the same time does not mention the need to introduce legal solutions that guarantee innovative entrepreneurs and entities using new

technologies a stable tax system, in which taxpayers will be able to recognise the tax consequences of their activity before they undertake it.

Currently, the efforts of states and international organisations are mainly focused on tightening tax systems and taxing Internet activities, including the taxation of crypto-asset trading. It should be emphasised that these actions are necessary and essential to avoid the erosion of the tax system and the use of new technologies by taxpayers to evade tax. Above all, the actions of the European Union and the OECD outlined in this article, which are attempting to make reporting of crypto-asset trading compulsory and to reduce anonymity in this regard, are aimed at this. Such actions deserve approval.

However, there are no measures to protect the taxpayer operating in the crypto-asset market. Indeed, only the tightening of tax systems in relation to the development of this type of technology is sought. For the sustainable development goals of the 2030 Agenda, this is not sufficient. There is a lack of significant action on the fiscal regulation of the crypto-asset market, including regulation of an international nature. Individual States are trying, to a greater or lesser extent, to cope with the changing reality by introducing partial solutions for the taxation of crypto-assets.

Sustainable development requires stable and transparent taxation rules, including the taxation of crypto-asset trading. One of the goals of the 2030 Agenda is to support innovation. Taxpayers are therefore encouraged to innovate in the digital economy, yet there is no action by the legislator to regulate the taxation of the crypto-asset market.

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