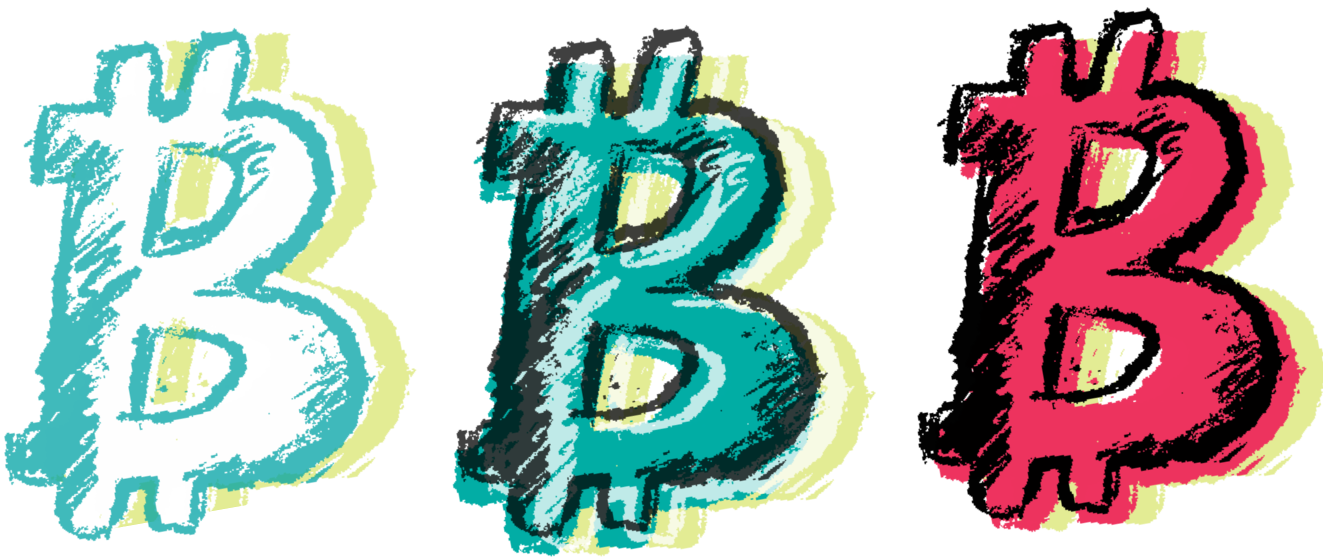
Crypto coins and cryptic taxation

BLOCKCHAIN, BANKING AND TAXATION



Dave van Moppes and Baptistin Alaime

TX
TUERLINCKX
TAX LAWYERS

CRYPTO COINS AND CRYPTIC TAXATION

BLOCKCHAIN, BANKS & TAXES

DAVE VAN MOPPES
BAPTISTIN ALAIME

TUERLINCKX TAX LAWYERS

ANTWERPEN CHARLEROI HASSELT WESTERLO

Cryptic Introduction

Crypto coins and cryptic taxation. A cryptic title, you say? Well it is, but we chose this title not only for its high literary value. No, this title is also 100% accurate. After all, there is a great deal of secrecy or, at the very least, ambiguity surrounding the way crypto currencies are taxed. It is, shall we say, a little cryptic.

The barriers to investing in crypto are extremely low. However, that's not to say it is simple. An ING poll, for example, showed that 25% of investors under 45 years old identified crypto currencies as the best investment for 2022. In addition, a quarter of Belgian SMEs say they are open to accepting crypto-currency payments. However, the relative simplicity and accessibility of crypto currencies is in stark contrast to the terribly unclear legal framework governing the taxation surrounding these particular investments! Cryptic issues are resolved with clarity and we will do our best to provide that with this practical guide.

cryp-tic *(adjective, adverb)* **1** hidden, secretive

Now, we don't want to sound jaded in this investment context, but the reality is that Tuerlinckx Tax Lawyers have been caught up in this legal tangle for several years. The knowledge we have gathered in the process since 2017 has been compiled in this little gem. We have gained this experience during many consultations organised for our, initially, pioneering and gradually more experienced crypto investment clients. Our accumulated expertise has come about thanks to them. So thanks for that!

The purpose of this guide is to provide an understanding of all the financial and tax ground rules involved in managing a digital asset. Indeed, we must assume that the readers of this fount of knowledge will have already ventured into the wonderful world of crypto investing. And more to the point, that you enjoy the experience and are now wondering how to manage those investments correctly. Or that you harbour ambitions to venture into this wonderful world with your own investments.

So, can we can provide all the answers to all your questions? Doubtful. Although we will do our best, of course. The tax and financial spectrum of crypto investments is, however, evolving rapidly. But one thing is certain, without a clear framework, it will always remain... cryptic. This is the framework which we offer you on the following pages.

In the world of bitcoins, banking and taxation, we focus on the tax rules around capital gains from the purchase and sale of crypto currencies and those relating to income in crypto currencies. Indeed, capital gains and revenues are two separate issues. The financial rules surrounding crypto currencies and *compliance* in the financial sector around crypto currencies will also be covered. These four elements are all crucial in any crypto dossier. So it is essential to ensure that all 'cryptic' elements are stripped out.

The basic principles of the Belgian Income Tax Code were introduced just after the First World War. So, it is immediately clear why applying these rules to a modern and rapidly developing phenomenon like the *blockchain* can lead to incredible difficulties. Unfortunately, Belgian crypto-currency investors have no choice but to conform as best they can to Belgium's as yet very unclear - read, cryptic - legislation. Unless you emigrate, of course.

1946: Belgian Income Tax Code introduced
2009: very first crypto currency, Bitcoin
????: Belgian Income Tax Code that discovers existence of crypto currencies

It is also important to stress that some of the propositions we postulate here find no immediate support in the applicable case law or legal doctrine. The reason is simple: at the time of writing, no court ruling on crypto currencies has yet been published. But just because it doesn't exist doesn't mean you shouldn't follow the tax rules! And if you can understand that, you can understand anything! And that is precisely what Tuerlinckx Tax Lawyers aims to do. Our practical experience, knowledge and ‘feel’ for tax matters means we have a good overview of the situation and can therefore guide you through the labyrinth.

A practical guide, however, should not get lost in too much theorising. That said, the lack of overly clear rules means we can only substantiate some views theoretically. Where we do this, we clearly indicate this position and also counter with possible alternatives. Then you can make your own informed judgements. And until there is a solid legal basis regarding the taxation of crypto investments, those who can decipher all the 'cryptic’ will be best equipped to deal with the issues.

I Capital gains in crypto currencies

1 Capital gains are not revenue

And words matter. Clarity is the greatest antidote to overly 'cryptic' information. It is essential to distinguish between capital gains and income.

WHAT ARE CAPITAL GAINS?

The increase in the value of a crypto currency while it is in the investor's possession.

ARE CAPITAL GAINS TAXED?

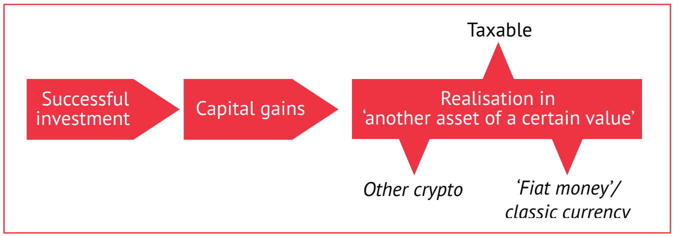
Well, what do you think? However, capital gains are only taxable under Belgian tax law if they are realised. In other words, **there is a taxable event only when the capital gain is expressed**.

WHEN ARE CAPITAL GAINS REALISED OR WHEN ARE THEY EXPRESSED?

The moment you, as an investor, exchange the crypto currency that has risen in value for another asset with a certain value.

SO, WHEN YOU CONVERT CRYPTO CURRENCY BACK INTO CASH?

No... and here's the catch! **'Another asset of a certain value' does not necessarily have to be traditional currencies, such as dollar or euro, for example.** (This is also called fiat money, by the way) No, it could also be another crypto currency.



THE CONCLUSION?

Both the sale of crypto currencies into so-called fiat money and the 'conversion' of one currency into another can give rise to taxes.

SO HOW ARE THESE CAPITAL GAINS TAXED?

There are three possible systems into which capital gains can fall: the system of

1. professional income,
2. miscellaneous income, and
3. the normal management of private assets (which does not lead to taxation).

Capital gains ≠ Revenues

WHAT IS THE DIFFERENCE BETWEEN INCOME/REVENUE AND CAPITAL GAINS?

In the ever-evolving world of *blockchain* you can be granted revenue in the form of crypto coins. This may be nothing to do with an investment. The difference between revenues and capital gains determines which tax rules apply.

SO HOW ARE REVENUES TAXED?

There are several systems under which revenue can be taxed: the system of

1. professional income,
2. miscellaneous income,
3. the normal management of private assets,
4. the movable income or…

Not taxed at all! (5)

TUERLINCKX TAX LAWYERS

2 Different tax regimes

WHICH TAX REGIME APPLIES TO ME?

This, of course, is the most pressing question: which tax regime applies to your crypto investments? The answer to that question depends on how you made your investments.

ARE YOU A 'PRO'?

If your investment activities reach the threshold of a professional activity, capital gains are taxable under the professional income regime **professional income**. If the taxpayer's investment profile fits within the framework of normal management of private assets, then capital gains are **not taxable**.

THE QUESTION = HOW do you invest?

Professional activity **or** 'normal management of private assets'

or

'miscellaneous income'

WHERE IS THE LINE BETWEEN PROFESSIONAL ACTIVITY AND THE NORMAL MANAGEMENT OF PRIVATE ASSETS?

It is indeed important that the definition is very precise, because any investment profile that cannot be classified under either of those two categories falls under **miscellaneous income**.

However, the Belgian Income Tax Code fails to define the concepts of professional activity and normal management of private assets! So, who knows! Additional explanations must therefore be sought in case law and legal doctrine. An area not unfamiliar to us...

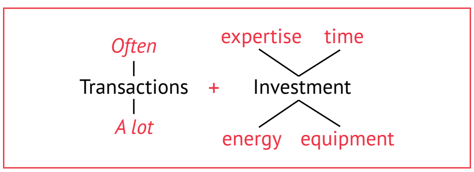
3 The tax regime for a professional activity

GIVE ME A DEFINITION!

The Supreme Court defined a professional activity as ‘a set of operations occurring frequently enough and sufficiently connected to each other to give rise to continuous and ordinary activity’.

Huh? We must therefore **analyse the 'intensity' of the taxpayer's investment activity** to see whether this is a professional activity. Specifically, the notion of a professional activity requires:

1. a set of interrelated transactions carried out with sufficient frequency;
2. an investment in equipment, knowledge, time and/or energy that facilitates that set of interconnected transactions.



INVESTING IS NOT MY JOB, YA' KNOW!

'I do have a real day-job. And my pay is already subject to professional income!' This is a comment we do often hear from clients. By which they mean to say that they **cannot possibly** be dealing in crypto currencies on a professional basis. This is a completely reasonable response. However, the tax authorities might think otherwise... Whether or not a taxpayer is professionally active outside the sphere of crypto currencies is, strictly speaking, irrelevant.

HOW CAN SOMETHING BE PROFESSIONAL IF IT IS NOT MY JOB?

The question posed by the tax authorities is whether investments were made in crypto currencies in such a way that these investments could be considered a professional activity. And no, it is not impossible to carry out **multiple professional activities at the same time**.

It is also not inconceivable that a court or the tax authorities may include any other professional activity in their assessment of the facts.

Investing as a professional activity	≠	Investing is my profession

WHAT ELEMENTS MIGHT INDICATE A PROFESSIONAL INVESTMENT PROFILE?

There are several elements that may be considered. Consider the following:

1. a very high frequency of transactions (e.g. multiple transactions daily);
2. professional or academic knowledge about crypto currencies or *blockchain*;
3. the level of organisation required by the investor's operations;
4. the use of borrowed money;
5. the need for heavy investment for the activity (such as the purchase of ASIC computers for *mining*);
6. investing in the name and/or on the account of other persons; or
7. providing financial advice to third parties.

If a particular person takes out a loan from the bank so that he has capital to advertise his services, which consist of investing crypto coins on behalf of his customers, has undergone specific training for that purpose and markets himself as such, there will be little dispute that the person concerned is investing in crypto coins professionally.

4 The tax regime governing the normal management of private assets

GIVE ME A DEFINITION!

Unfortunately, the law does not provide one. And that is particularly unfortunate, because the normal management of private assets is the absolute antithesis of a professional job. If you fall under it, the capital gains you realise as an investor are **not subject to personal income tax**!

LONG LIVE THE GOOD FAMILY MAN!

The tax law refers to 'acts performed by a prudent man for the day-to-day management, but also with a view to the profit, monetisation and reinvestment of assets, i.e. assets acquired by inheritance, donation or own savings, or as reinvestment of alienated assets'.

You may have to read that very carefully a few times to understand. As a normal, prudent and reasonable private person, the 'good family man' strives to perpetuate and build on his private wealth. He does so without excessive risk or by employing professional means or techniques.

In other words, there is nothing wrong with the **intention to make a profit**, or with the transaction being made in an intelligent or perhaps surprising way. This does not necessarily mean that the transaction would fall outside the normal management of private assets.

Investing as a 'good family man'

=

The tax regime governing the normal management of private assets

TUERLINCKX TAX LAWYERS

WHAT COULD INDICATE SUCH NORMAL MANAGEMENT?

There are several elements that can be considered, specifically for crypto currencies:

1. a (very) low number of transactions;
2. a long period between buying and selling the coins (*buy-and-hold*);
3. the fact that only a limited share of the taxpayer's movable assets were invested in crypto currencies.

In fact, these criteria can be summarised under the heading of the risk the investor takes on his movable assets. A good family man does not take excessive risks with regard to his assets.

Some background: Kafka criteria!

THE CRITERIA ARE TOO VAGUE!

Of course they are! And that actually makes them completely useless. Because there is no clear manual or guideline, you cannot assess the relative 'weighting' of the various criteria. So what else is there? Some 30 published *rulings* (prior decisions made by the tax authorities on the tax consequences of a particular transaction). But if you thought these would provide greater clarity, I'm afraid you might be disappointed.

WHAT DO THE RULINGS TELL US?

Applying classic tax rules to crypto currencies leads to absurd situations. Take, for example **the criterion of the relative proportion** of the investor's moveable assets invested in crypto currencies.

In almost every ruling, the ruling commission writes that the investor has invested a 'limited' or a 'very limited' portion of his movable assets. There are three rulings that do show a percentage, but that percentage fluctuates between 0.5% and 20% of movable assets invested. Which is not to say that 20% of movable assets is the absolute upper limit the good family man may invest.

The same applies to **the criterion of the duration of possession** of the crypto currency. The shortest period between buying and selling crypto currencies that led the ruling commission to conclude that it was normal management of private assets was (almost) one year. Which does not necessarily mean, however, that any sale made after at least one year can be considered normal management. It goes without saying that this would lead to a lot more certainty. *But this is Belgium.*

Even more striking is **the criterion of frequencies of transactions**. Both in the limited legal doctrine and for the ruling commission, this seems to be an important criterion. However, no one provides a concrete number. Incidentally, the ruling committee does not have the authority to do this either. It may not take decisions on operations that were (partly) performed. What number of transactions then indicates miscellaneous, or even professional income? That has everyone guessing!

A CAR IS NOT A HOUSE!

A CLASSIC INVESTMENT IS NOT A CRYPTO INVESTMENT!

It seems obvious to us that as far as crypto-currency trading is concerned, the ease of trading these coins should be taken into account. A good householder does not buy and sell three properties in one year. The administration and bureaucratic hurdles take about three months for buying or selling a property.

For cars, the situation is different. Administrative thresholds are lower: the purchase or sale of a car takes about three weeks. A taxpayer may therefore buy and sell more cars than immovable property before he will lose the status of a good householder.

The analogy with crypto-currency investments is easily made. **Administrative barriers are virtually non-existent with crypto currencies.** An investor with a verified account on an *exchange* can buy and sell crypto coins to their heart's content. It is not unrealistic for someone to enter about 50 transaction orders while waiting for the next bus or tram.

The concept of the normal management of private assets was created in the 1960s when stock market transactions were left to professional intermediaries. This obviously took more time than today. The criterion of frequency of transactions should therefore be much less pertinent, in our view.

Crypto currencies are also associated with the **democratisation of financial investment**. Knowledge about the functioning of the market is accumulated over time by the crypto community, which consists mainly of individuals. Thus, on the basis of their special knowledge, they **need not** have to rely **on a professional intermediary**. In other words, a classic investment is not a crypto investment. So, dear tax office, don't force them into that pattern. But, as long as it does, we will try to conform as efficiently as possible!

5 Which tax regime suits me best?

ROCKET SCIENCE!

So, it is clear that deciding whether your investment activities fall under the heading of ‘professional activity’ or ‘normal management of private assets’ is no mean feat. However **as a taxpayer, you are indeed expected to fully know and understand the tax law.** After all, you have to declare capital gains and income yourself in the personal income tax return. So, you have to choose the right system yourself.

HELP, WHICH SYSTEM SHOULD I CHOOSE?

Let’s go back to the starting point for a moment. If you have invested in such a way that your investment activity can constitute a professional activity, then your profits are taxable as professional income. If they fall within the scope of normal management of private assets, then your profits are not taxed. If the activities exceed the normal management of private assets but do not constitute a professional activity, the profits are taxable as miscellaneous income.

I CHOOSE THE SIMPLEST THEN!

What do most taxpayers do? Because they are not sure or because they just 'want to eliminate the question', they tend to go for 'miscellaneous income'. However, unless you are really convinced that your activities as an investor actually fall between professional activity and the normal management of private assets, this is not advisable at all.

Miscellaneous income
≠
Safe choice

OH MY GOODNESS, 33% TAXES!

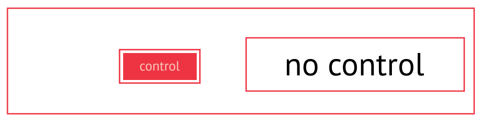
The 'personal income tax' return is subject to a presumption of accuracy. What you declare in the return is considered accurate unless the tax records prove otherwise. If you declare your profits as miscellaneous income, they will be taxed at a rate of 33% unless the taxman believes there is reason to tax them at the professional income rate.

It is advisable to consider the investment activity as normal management of private assets when in doubt between miscellaneous income and normal management of private assets. In other words, don't declare profits. Why not? Well, because you can’t! The 'personal income tax' return does not contain a code for exempt profits.

THE ODDS ARE CURRENTLY SLIM...

The burden of proof of investment activity beyond the normal management of private assets lies with the tax authorities. They must first conduct a check of your tax situation. However, the tax authorities can only establish an additional assessment within a period of three years from January 1 of the assessment year, and they check only 1-2% of taxpayers every year. So, as you can see, the chances are pretty slim that the tax authorities will have any chance at all to challenge the tax treatment you are defending.

In time, once the DAC8 directive has been implemented, it is more likely that large-scale controls will be set up. More on this in Chapter III.



A RATHER SMALL RAP ON THE KNUCKLES

Assuming you are one of those 1-2 per cent 'lucky' ones, it's worth knowing that the 'penalties' (more accurately: tax increases) are relatively low. If you never filed an erroneous return before, the tax authorities will impose a **tax increase of 10%** if they feel they still need to assess. This tax increase is calculated on the amount of tax due.

Specifically: You made EUR 100 profit on your investments. However, unlike you, the tax authorities believe that this EUR 100 was not acquired within the normal management of private assets, but rather as miscellaneous income. Then the taxman will send an assessment notice for EUR 33 + EUR 3.30 = EUR 36.30. So the risk you run is only limited to 10% of the tax you would have owed if you had followed the more highly taxed option just to be on the safe side!

Tip: As a precaution, place 36.3% of your profits in a fixed-term account until the three-year term is over.

Penalty = Tax increase → 10% on amount of tax due

HOWEVER, DO NOT RUN TOO BEFORE YOU CAN WALK!

You should only take the above advice seriously if you can reasonably argue that your profits were realised within the scope of normal management of private assets. After all, if you fail to declare your profits in bad faith or with intent to harm the 'treasury', you are committing **tax fraud**.

In this case, the tax authorities are allowed to examine and additionally assess for seven rather than three years. Moreover, the tax increases - or 'penalties' - in cases of tax fraud are a whole lot higher, ranging from 50% to... 200%.

AM I REALLY A TAX CHEAT?

You can be deemed a fraud sooner than you think. Thanks to the Belgian tax administration, which sometimes applies a very **very low threshold of tax fraud**. But forewarned is forearmed. You must prepare your file in such a way that the taxman finds it very difficult to accuse you of tax fraud. And we'll tell you how in a few pages.

6 How does the professional income regime work?

WHAT IS TAXED?

If your investment activities are such that they constitute a professional activity, the **profits are taxable as professional income**. In that case, the taxable amount is formed by the net profits.

Net profit = Gross amount − cost losses

WHAT ARE THE NET PROFITS?

Reduce the gross amount (see point 8) of profits by any costs, such as the purchase of a *hardware wallet*, *hardware* for *mining*, or transaction fees, and with any losses.

However, expenses are deductible only if they

1. were made in the income year your file concerns;
2. related to your investment activity;
3. are 'provable' and linked to your investment activity.

HOW 'PROVABLE' SHOULD COSTS BE?

The **burden of proof for the deductibility of expenses lies with the taxpayer** who wishes to apply the deduction. This means using purchase invoices, purchase receipts, settlements, transaction extracts or any other document to prove the amount and timing of expenses.

Note: If those costs could be interpreted as being incurred privately, you must be able to show that they were indeed incurred with the intention of making (or retaining) taxable profits through investments in crypto currencies.

HOW HEAVILY ARE THEY TAXED?

The taxable amount under professional income is subject to the so-called '**progressive' rate.** The tax due depends on the amount of profit you made and the other professional income you earn.

Let's simplify things. The bottom line is that the overall tax burden increases as global revenues rise. There are tax brackets, to determine the applicable rate. For the 2021 revenue, these were:

0 – 13,540.00	25%
13,540.01 – 23,900.00	40%
23,900.01 – 41,360.00	45%
41,360.01 and more	50%

THE MYTH BUSTED!

There is a persistent myth about progressive personal income tax rates. That myth was generated as a result of a misunderstanding of how the system really works. It is not the case that your entire income is taxed at the higher rate when you exceed any of the limits mentioned above. The income tranches are gradually 'filled up'.

DO THE MATH!

Suppose you, as a taxpayer, received EUR 30,000 in wages in a given year and earned EUR 20,000 in income from professional investments. In total, you earned EUR 50,000 in professional income.

The resulting tax liability is calculated as follows:

13,540 x 25% + 10,360 x 40% +
17,460 x 45% + 8,640 x 50%
= EUR 19,706.

So the total tax burden on professional income in our example is EUR 19,706, or just under 40%. The overall tax burden will approach 50% with the increase in revenue, but will never reach 50%.

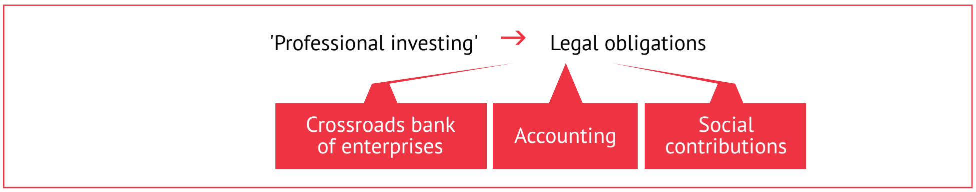
(Now that you understand how progressive rates are calculated, you immediately realise that refusing a pay rise because you would fall into a higher tax bracket is pretty silly!)

WHAT IF I MAKE A LOSS?

Good news! Well, the good news is that if you make losses, those **losses are indefinitely transferable** over time. The losses will be offset for tax purposes against any future profits you make, or even against other professional income you make in the same or a subsequent year.

GET LEGAL COUNSEL!

If you believe that the gains from your investments are taxable under the professional income regime, we advise you to seek legal advice. After all, investing in crypto currencies in a professional manner brings **more legal obligations** than mere tax obligations.



ARE THERE SO MANY OBLIGATIONS I HAVE TO FULFIL?

We're afraid so. You are required, for example, to register in the **crossroads bank of enterprises**, you will have to maintain **accounts** and you will have to pay **social contributions**.

7 How does the miscellaneous income regime work?

WHAT IS TAXED?

If your profits are taxable under the miscellaneous income system, the taxable amount is formed by reducing the gross profits by any expenses (e.g. transaction costs) and any capital losses or losses.

HOW 'PROVABLE' SHOULD COSTS BE?

Tax law requires you, the taxpayer, to provide proof of the expenses you want to deduct. Thus, you must be able to demonstrate that the costs:

1. were incurred or borne in the relevant income year;
2. were made with the intention of obtaining or maintaining various revenues.

WHAT IF I MAKE A LOSS?

Losses are deductible, but unlike professional income, they are time-limited. **Losses are transferable for a maximum of five years**.

DO THE MATH!

Suppose you made a loss of EUR 100,000 in year X and declare that as such. If you then make a profit of EUR 40,000 in year X+1, this profit will be set against the loss you made in year X. In this hypothesis, you transfer EUR 60,000 of losses to year X+2. So you have until year X+5 to use the EUR 100,000 losses.

8 How do you calculate gross profit?

SURELY YOU JUST DEDUCT COSTS AND/OR LOSSES?

In both miscellaneous income and professional income, the taxable base is indeed formed by reducing gross profit by expenses and/or losses or capital losses. But… And there is always a but. There are no fewer than **three different valuation methods**:

1. Last In First Out (LIFO);
2. First in First Out (FIFO);
3. the weighted average method.

WHICH OF THESE VALUATION METHODS SHOULD I CHOOSE?

The tax administration accepts that the taxpayer has free choice in the most appropriate valuation method. As long as he/she applies the valuation method consistently over the years.

In the **LIFO method** the notional assumption is that the last goods purchased (= last in) are sold first (= first out). The **FIFO method** is the antithesis of this: the assumption here is that the first goods purchased (first in), are sold first (first out).

The **weighted average** method counts the weighted average of the purchase price of goods sold. 'Weighted' in this context means taking into account the number of coins purchased. After all, if you purchase 1,000 coins at a very low price and one (the same) coin at a very high price, an 'ordinary' average will give a distorted picture.

Each of these methods for calculating realised capital gains thus relies on the premise that you, as a taxpayer, purchased the same currency at different times.

DO THE MATH!

Say you bought five bitcoin on 1 January 2020 at EUR 6,400 per bitcoin and then on 30 June 2020 you buy another five bitcoin, this time at EUR 8,100 per bitcoin. Then, on 1 November 2021, you sell two bitcoin at EUR 54,000 per bitcoin.

How much profit did you make?
Well, that depends on the valuation method you use.

According to the LIFO method, you realised a capital gain of EUR 91,800, because you reduce the sale price (EUR 54,000 x 2 = EUR 108,000) by the purchase price of the last bitcoin purchased (2 x EUR 8,100 = EUR 16,200).

According to the FIFO method, you realised a capital gain of EUR95,200. You reduce the sale price (EUR 54,000 x 2 = EUR 108,000) by the purchase price of the first bitcoin purchased (EUR 6,400 x 2 = EUR 12,800).

To calculate the weighted average, you have to work your way through some punishing arithmetic. After all, you have to calculate **sum the product of the quantity purchased and the unit price at the time of purchase and then divide this sum by the total coins purchased**.

Applied to our example, you end up with:

$$\text{gewogen gemiddelde} = \frac{(5 \times 6.400) + (5 \times 8.100)}{10}$$

The weighted average purchase price of one bitcoin thus comes to EUR 7,250 in this example. Thus, using the weighted average method, this results in a capital gain of EUR 93,500.

In summary, the capital gain in our example using the different valuation methods is:

LIFO:	EUR 91,800
FIFO:	EUR 95,200
Weighted average:	EUR 93,500

The choice of valuation method has a demonstrable impact on any taxable capital gain. **Prior to filing your personal income tax return, make all three calculations. Then you can see which one suits you best.** Only drawback: you have to keep using this method for the subsequent years.

WHEN ARE CAPITAL GAINS REALISED?

We referred this point earlier. **Under Belgian tax law, an exchange between crypto currencies is a realisation moment.** So, not only when crypto is converted to 'regular' currency, also known as 'fiat amounts'.

Every time you, as an investor, purchase a crypto coin with another crypto coin - which we call an inter-crypto transaction - you have to check whether a capital gain was realised on the other crypto coin. In that case, that capital gain should be declared.

COMMON ERROR

The idea that inter-crypto transactions cannot give rise to taxes is a frequent misconception. **Many people assume that the difference between the invested and withdrawn fiat amounts equals the taxable capital gain**. But that's not true. Other countries, such as France, do apply this type of logic, but it remains absent in Belgium for now.

In the relevant professional literature, however, there are many proponents of a 'portfolio concept'. With this, the tax authorities only look at the incoming and outgoing fiat amounts to calculate the correct tax. But that would be far too straightforward for the friends of the taxman... So, that's not the case at the moment.

DO THE MATH!

You buy one Ethereum on 1 January 2021 for EUR 590. On 1 June 2021, when the value of ethereum reaches EUR 2,150, you will buy 14.35 litecoin with this one ethereum. So, if your investments involve a professional activity or are outside the normal management of private assets, this purchase will realise a capital gain of EUR 1,560 on Ethereum. You then include that capital gain in your personal income tax return.

WOW, THAT'S A LOT OF WORK, BECAUSE I DO A LOT OF TRANSACTIONS!

Indeed, if you have made a significant number of transactions as an investor in crypto coins, **correctly calculating the taxable capital gains can be a enormous task**. Fortunately, there are many software tools that apply the above principles automatically, such as Koinly, Cointracker, Accointing, Taxbit, etc.

HOW DOES THIS SOFTWARE WORK?

The software reads the data provided by the exchanges' transaction extracts. But not every software tool can handle all exchange data. So you are advised to find out as much information as you can beforehand. This is always the best advice, by the way!

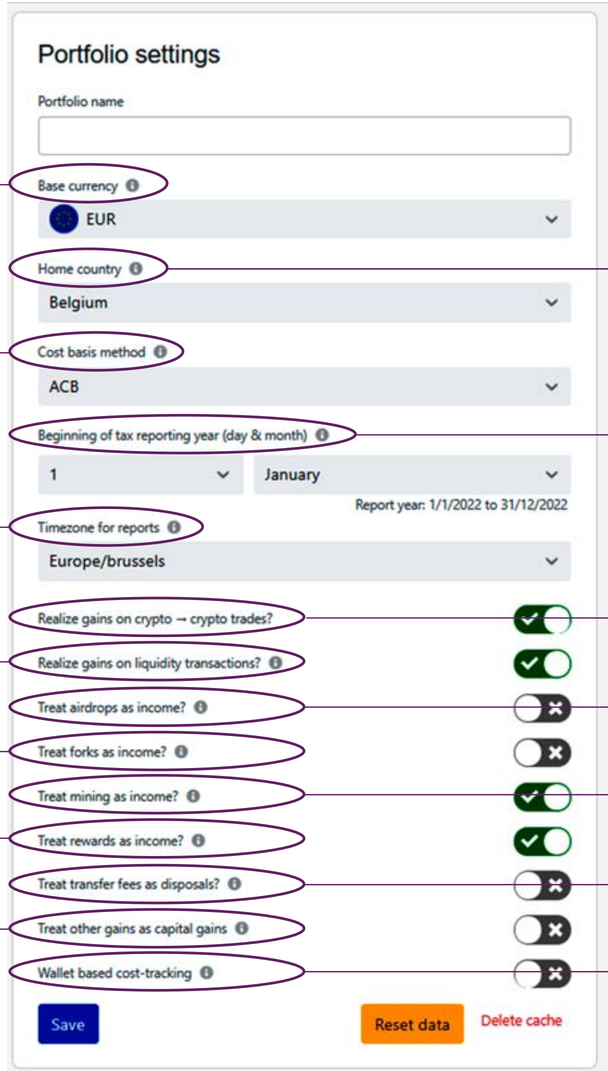
SOFTWARE IS NOT SACRED!

Another thing to consider is that not all software tools indicate how the calculations were made. **As a result, the tax authorities cannot verify the accuracy of the calculations.** If you were to be subjected to scrutiny. And that’s a big, *if*. And yes, the burden of proof is on the tax authorities if they wish to effectively dispute the calculated capital gain.

Another downside is that there is no software today specifically tailored to Belgium's specific tax regulations. Or if it does exist, its existence has eluded us. In other countries, capital gains is sometimes calculated differently and inter-crypto transactions may not give rise to tax, so not every software tool can be easily applied to the Belgian context....

WHICH SOFTWARE TOOL DO YOU GUYS RECOMMEND?

Looking for software that has enough options to make the calculation comply with Belgian rules? Well, let's run a test with the software package 'Koinly'. In it, you can indicate your 'home country'.



Base currency: the currency in which the capital gain is calculated.

Cost basis method: the valuation method. Koinly offers the weighted average (= average cost base) method, FIFO, LIFO and HIFO at this time. => HIFO stands for 'Highest In, First Out', under this calculation method it is assumed that the most expensive coins purchased are sold first. With this valuation method, the taxpayer ensures that the capital gain is calculated as low as possible for first sales. HIFO is not part of internationally accepted accounting principles and cannot be applied in Belgium!

Timezone: the time zone in which the user is located.

V **Realise gains on liquidity transactions:** This setting allows the user to exclude the capital gains realised on *liquidity transactions* from Koinly's reports. This setting is relevant to investors who make crypto coins available to *liquidity pools*. Since we assume these transactions are taxable, you should enable the option.

- **Treat forks as income** => We will come back to both *airdrops* and *forks* later. Both are tax-free, in our opinion, which means this option should be off.

V **Treat rewards as income**: This option regulates the taxability of income from *staking*. Further on in the book we provide more explanations on *staking*, but the conclusion is that this income is taxable.

- **Treat other gains as capital gains**: when enabled, Koinly will include any gains or losses that do not fall under one of the other categories under the capital gains category. These are mainly gains from transactions with derivatives such as *futures*. This option allows the user to ring-fence such profits if the investor lives in a country where there are different tax rules for such transactions. This is not the case in Belgium, so such gains should also be included in capital gains. The setting must be disabled.

Home country: the user's country of residence. (But there is no explanation of how this information is effectively processed.)

Beginning of tax reporting year: the taxable period in personal income tax runs concurrently with the calendar year. Thus, the start date of the taxable period is 1 January.

V **Realise gains on crypto -> crypto trades:** This setting determines whether Koinly should consider inter-crypto transactions as taxable events or not. Such transactions are taxable events under Belgian law.

- **Treat airdrops as income**

V or - **Treat mining as income:** when this setting is on, Koinly calculates the profits earned from *mining* as taxable income. If this is relevant to you, you should enable it, otherwise there is no need.

- **Treat transfer fees as disposals:** this setting determines whether Koinly considers transaction fees as taxable or not. Transaction costs are deductible under Belgian law and do not form part of the tax base.

V or - **Wallet-based cost-tracking:** different *wallets* may charge different transaction fees. When this setting is on, the generated reports display transaction costs separately per *wallet*. This setting has no relevance to the calculation of capital gains.

Glossary

The following terms have already been covered: *mining, staking, air drops* and *forks*. The term *yield farming* will also make an appearance in this book. The problem is that while these are universal terms, the definition is not ‘scientifically’ fixed. Indeed, what we mean by ‘staking’, you may see differently. To avoid misunderstandings, the definitions we use are given below. This will ensure that you know what we mean and misunderstandings will hopefully be avoided. After all, (tax) law is very nuanced and depends on the actual facts.

Mining: providing computing power for the operation of blockchain ecosystems with a Proof-of-Work consensus mechanism, in exchange for (a chance of) compensation in crypto coins.

Staking: 'fixing' coins for a certain time ('*staking*') and being compensated in crypto coins, so-called '*staking rewards*'. This book covers on-chain, off-chain and DeFi strike.

Air drops: the free acquisition of certain crypto coins. *Air drops* are regularly issued by crypto-currency developers as an advertising campaign or as an 'appetiser', to increase enthusiasm about and awareness of their project. (Sometimes an *air drop* is the logical consequence of a *fork* in the *blockchain*. See below)

Forks: arise when the developers of a particular project decide that the *blockchain* on which the project was developed no longer has the technological characteristics to support the project. The blockchain on which the project is running will then be deduplicated from a specific *block*. The old and new blockchain share the same history up to a well-defined point, after which two distinct blockchains emerge. Often, the old currency remains in circulation alongside the newly created one. A well-known example is the split between Bitcoin and Bitcoin Cash in the summer of 2017.

Yield farming: lending of crypto assets to *liquidity pools* which facilitate the operation of *decentralised exchanges* (DEX) in exchange for fees in crypto coins. The fees come from the users of the decentralised exchanges.

Liquidity pools: In classic exchanges, the link between buy and sell orders is made by the exchange itself. In effect, the exchange acts as a trusted intermediary between those who want to sell a particular asset and those who want to buy that asset. The exchange charges a transaction fee for this, which is usually a percentage of the value of the buy or sell order being placed.

It may be that on a conventional exchange, the discrepancy between the price at which a particular asset is sold and the price at which that same asset is bought is too great for transactions to take place. In that case, we speak of a liquidity problem. In this situation, classical exchanges call on *market makers*, i.e. third parties (usually large institutional players) who are always willing to buy or sell a particular asset. The profit earned by the market maker depends on the discrepancy between the price of buy and sell orders that accrue on the exchange for that asset.

Decentralised exchanges, on the other hand, do not use a trusted intermediary, but work peer-to-peer. The matching of buy and sell orders is done by a smart contract, a piece of code that is stored on the blockchain and for that reason is immutable and therefore trusted. Decentralised exchanges also experience liquidity problems. For this reason, there are liquidity pools (sometimes also called automated market makers).

Liquidity pools are collections of two different crypto currencies. At the time a liquidity pool is set up, the value of one currency in the pool, expressed in dollars or euros, is equal to the value of the other currency in the pool, expressed in euros or dollars. The value of the coin in the pool is not necessarily the market value for that coin, allowing some investors to make profits through so-called 'arbitrage' or by taking coins out of a pool when it can be sold for a higher price elsewhere.

It is a complex story, but the end result is that decentralised exchanges can operate without the need for the capital strength of institutional players. Those who take over the function of the market makers by entrusting coins to a liquidity pool (= liquidity providers) are rewarded for this with a share of the transaction fees charged by the DEX.

II Income in crypto currencies

1 The qualification difficulty

HOW CAN YOU MAKE INCOME IN CRYPTO COINS?

Within the world of blockchain, investors can amass returns in many more ways than through the mere buying and selling of crypto coins. Given the speed at which this world is evolving, it is impossible to cover them all. We will therefore only cover the most common forms of income in crypto currencies:

1. mining
2. staking
3. airdrops and forks
4. yield farming

HOW IS THE INCOME TAXED?

Capital gains taxation is all about your behaviour as an investor in crypto coins. Were you acting as a professional investor? Or are you more likely to fall within the concept of a 'good family man'? This determines whether the capital gain created falls under the category of 'professional income', 'miscellaneous income' or 'the normal management of private assets'. This qualification exercise becomes even more complex if the taxpayer - in addition to capital gains - also receives *income* obtained in the form of crypto coins. **With income in crypto currencies, it is not behaviour as an investor that counts. It is the nature of the income**.

The income tax code has four different income categories, each with its own rules:

1. movable
2. immovable (not applicable in this book)
3. professional
4. miscellaneous

Determining which category applies to you is crucial for filing an accurate personal income tax return. Applying 'classic' tax rules to a modern phenomenon like blockchain not unexpectedly leads to various qualification difficulties.

2. Movable income

WHAT IS MOVABLE INCOME?

The Belgian Income Tax Code operates a closed system with regard to movable income. This numerus clausus means that **only the following income is defined as movable**:

1. dividends
2. interest
3. income from the rental of movable property
4. income from certain annuities
5. royalties

In the cryptocurrency sphere, the question is almost exclusively whether you can qualify a particular payment as interest. However, as crypto coins become more accepted as a means of payment, the other categories of movable income will gain in importance. For now, such situations are still very rare, which is why we leave them out of the scope of this book.

SO WHAT IS THE DIFFERENCE BETWEEN PROFESSIONAL INCOME, MISCELLANEOUS INCOME... AND MOVABLE INCOME?

Good question. It will come as no surprise to learn that, well, it's a bit complicated. When we talk about capital gains, investment behaviour determines the regime under which the created capital gains will be taxed. When taxing income, what counts is the nature of the income. That may lead to **some overlap**.

An example: For example, if you are subject to miscellaneous income because of the way you invest and you obtain a dividend in the form of crypto coins, that dividend is on the dividing line between miscellaneous income and movable income in terms of qualification. Both categories have different rates and taxable bases...

HOW DO YOU CONNECT THE DIFFERENT REVENUE CATEGORIES?

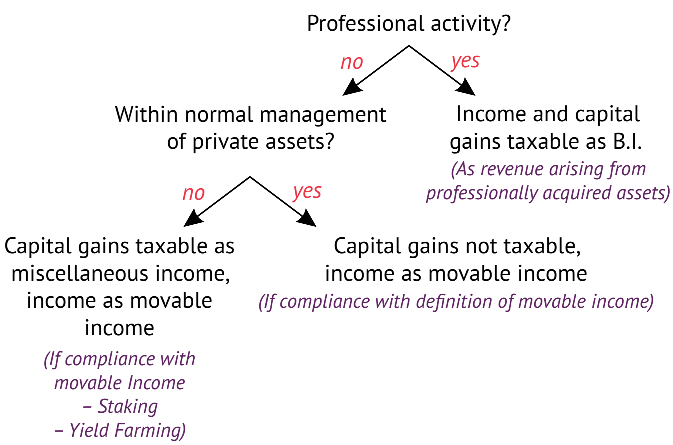
A given income component can sometimes fall into several income categories. This leads to uncertainty and discussions. To resolve this, the Supreme Court in its jurisprudence adopted the '**the obligation type**'. Under this theory, a particular income item can be ‘taxed exclusively under the category to which it belongs’. Eh? Indeed, we find the Court's wording very unclear too.

Essentially, the Supreme Court means that tax as movable or immovable income takes precedence over the categories of professional income, miscellaneous income or normal management of private wealth. The nature of the income and therefore not the activities of the taxpayer determine the applicable tax regime.

LONG LIVE THE FAVOURABLE MOVABLE INCOME RATE!

The movable income rate is a lot more appealing than the progressive rate in professional income. But as a professional investor, it doesn’t apply to you.

Despite the obligation type theory. Because there is an exception: movable income obtained through the use of professionally used movable goods (such as crypto coins) equals professional income.



So remember: **in the case of overlap between movable income and miscellaneous income** and **when there is overlap between movable income and the normal management of private assets, the income is taxed as movable income.** However, in case of overlap between professional income and movable income, the income will be taxed as professional income to the extent that the crypto coins are used professionally.

3 Revenues obtained through *mining*

For the context of this guide, we define *mining* as the provision of computational power for the operation of blockchain ecosystems with a Proof-of-Work consensus mechanism, in exchange for (a chance of) compensation in crypto coins.

QUASI PROFESSIONAL!

Today, you need to make **substantial investments in specialised hardware** if you wish to make a return on your mining activities. Setting up and maintaining all the equipment requires some specialised knowledge too. As a layman, you can of course turn to specialised third parties for this.

Mining → Investment
- Specialised hardware
- Setting up and maintaining equipment
- Specialised knowledge

SO, IS MINING INCOME BY DEFINITION PROFESSIONAL INCOME?

The question of the taxability of mining income is actually the same as the question of the taxability of capital gains from the purchase and sale of crypto coins. Is mining, as an activity, classed as a professional pursuit?

Because of the hefty investment and all the energy and time spent on mining, it will almost always give rise to a qualification as professional income or miscellaneous income in the eyes of the tax authorities. If you plan to set up a mining operation in Belgium, we advise you to assume that your profits will be taxable as professional income.

IS THERE NO SIMPLE MINING THEN?

Indeed, there are a number of crypto coins that are designed and programmed in such a way that the limited processing power of a home computer is sufficient to mine them. **Computers with relatively robust graphics cards** (GPUs) are suitable for mining coins like Monero, Ethereum Classic or Zcash, for example.

You could reasonably say, as a taxpayer, that profits arising from mining performed on a home computer do not fall under professional income. After all, neither investment nor in-depth knowledge of blockchain are required. In that case, tax on miscellaneous income might be a defendable qualification.

4 Revenues obtained through *staking*

DOES INCOME FROM STAKING FALL UNDER MOVABLE INCOME?

We have already mentioned the complex dynamics between professional income, miscellaneous income and normal management on the one hand and movable income on the other. The question now is what ‘staking' falls under. The extensive investment in terms of time, knowledge and infrastructure in relation to mining is not irrelevant here. And a 'fee in exchange' suggests that we are dealing with interest. *Enter* movable income?

Within the context of this manual, we distinguish three different forms of *staking* - securing coins for a certain time and being compensated in crypto coins in exchange, so-called '*staking rewards*':

on-chain staking: the classic form of staking, where the staking contributes directly to the operation of the blockchain. This form only occurs with tokens operating on a blockchain that uses a Proof-of-Stake consensus algorithm. A well-known example of such a currency is Cardano.

off-chain staking: an spurious form of staking, where a central party such as an exchange pays its users a fee in crypto coins for securing certain coins. This fixing does not necessarily contribute to the operation of the blockchain in question. A well-known example is the 'Earn' feature on the Kraken exchange.

DeFi staking: staking using smart contracts, where the coins in question are sent to the address of a smart contract. The smart contract is then responsible for holding the coins and paying out the staking rewards. A well-known example is the HEX ecosystem.

A theoretical discussion: Interest *or no* interest*, that's the question!*

Interest is defined in the Income Tax Code, with some exceptions, as **the proceeds of a claim**. A claim, in turn, is an abstract concept that is best thought of as the right of a creditor to demand a certain output, such as the payment of a sum of money, from the debtor.

If you have a bank account, you have a claim against the bank: **you have the right to ask the bank for your assets**. The bank is your debtor as a customer and has an obligation to release the funds if you request it. When the bank reimburses you as a customer for this debt claim, there is taxable interest or interest for tax purposes. Interest constitutes proceeds from a claim for the customer.

Consequently, a claim implies there are at least two persons: a creditor and a debtor. This is where the theory doesn't quite fit, when you ask whether staking gives rise to moveable income (interest) or not. After all, the concept behind blockchain is that of decentralisation and making intermediaries like a bank redundant! When an investor sakes crypto coins, does he have a claim on his original capital? Who is the debtor then? The coin's developer? Every user of the currency?

Because of the **absence of a clearly defined counterparty/debtor**, you can argue that staking does not give rise to interest because of the absence of a debtor. Interest is the proceeds of a claim and a claim can only arise as soon as at least two parties are involved: the debtor and the creditor.

There is no judgment or ruling at this time on the applicable taxable regime on staking rewards. **Moreover, the tax authorities have not yet announced an official position on the matter.** We personally think that from a legal perspective, staking rewards should be seen as movable income. We have two reasons for this position.

Staking rewards are very similar to interest. This makes it nonsensical and possibly even discriminatory to subject 'classic' interest and staking rewards to different tax regimes. Furthermore, and slightly more theoretically, just because there is no intermediary does not mean there is no counterparty, which makes the whole 'interest or no interest' point a bit silly anyway. There are authors in professional literature who consider crypto currencies as an entry agreement: the mere use or holding of a crypto currency then implies that the investor agrees to the rules of that particular currency, which will mostly follow from its technical operation.

For now - see box above - **we must assume that the system of movable income applies, i.e. a flat rate of 30%.** The moveable income regime differs from that of professional income and miscellaneous income in that the question of taxability depends, not on the activities of the investor himself, but on the nature of the income.

As soon as a particular income meets the legal definition of a movable income, that income will be taxed as such. The question of whether or not the investor has invested like a good family man is irrelevant in this context. However, if you can be considered a professional investor and the staked coins are used in the context of professional investing, the income from staking will be subject to the professional income regime

In our view, it would make sense if staking rewards were regarded as taxable interest for tax purposes. However, this may be subject to debate because the current fiscal legislation regarding decentralised finance is inadequate. Should it later turn out that our reasoning on movable income is not accepted, the staking income will in all likelihood be taxed as miscellaneous income.

SURELY MISCELLANEOUS INCOME THEN?

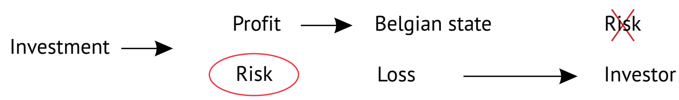
The legal definition of miscellaneous income is very broad. It includes 'any form of profit or gain arising from any performance, transaction, speculation or service rendered to a third party'. If staking rewards are counted as miscellaneous income instead of moveable income, this would have some interesting implications.

THEN, THEY ARE NOT EVEN TAXABLE! AND LOSSES ARE DEDUCTIBLE!

The exception from the normal management of private assets applies to miscellaneous income. If miscellaneous income was earned as a good family man, this income is not taxable. In that case, the assessment of income from staking would be fully consistent with the analysis as it applies to capital gains.

In addition, losses incurred following staking would be deductible. Should you as an investor in crypto currencies get scammed, or somehow lose your capital or the platform used goes bankrupt, that leaves at least **the tax-deductible and transferable loss** from that.

Under the moveable income regime, you cannot deduct losses. This rule can be understood from the context of classic investments: after all, a dividend or interest is always an increase in the investor's assets. **So while the Belgian state shares in the profits, the risk of losing capital is entirely the responsibility of the investor.** Costs, such as transaction fees on the exchanges, may not be deducted from movable income.



HOW DOES THE MOVEABLE INCOME SYSTEM WORK WHEN YOU APPLY IT TO STAKING?

For now, we are going to work on the basis of the moveable income regime. This movable income will be allocated in crypto coins, not fiat money. The question to ask then, is how the taxable base is determined. This is the sales value of the crypto coins obtained at the time of the revenue allocation.

HOW DO I CALCULATE THIS TAXABLE BASE?

When it comes to staking, the sales value on a given date can vary considerably depending on the exact time the coins are awarded, and it can be unclear exactly when staking rewards are allocated. It is not simple.

An example: Suppose you staked Cardano and obtained 100 Cardano as compensation on 9 December 2021. On that day, the price for one cardano ranged from EUR 1.92 to EUR 1.96. As the taxpayer, which price should you then declare in your personal income tax return?

A pragmatic solution is required. When movable income is distributed not in cash but in the form of listed securities, the tax law prescribes that the sales value cannot be less than the closing price of the security on the day before the allocation. It would make little sense - at least in this context - to treat crypto currencies differently from listed securities. So let's apply this rule here too.

Although exchanges do not close and so there is no 'closing price' in the literal sense of the word, websites such as coinmarketcap or coingecko can be used to find **the last known value** for a given date. Consultation with coinmarketcap shows that Cardano's 'closing' value on 8 December 2021 was EUR 1.94. So, in our example, the taxable base would therefore be EUR 194.

HOW DO I KNOW THE EXACT TIME WHEN THE STAKING REWARDS WERE ISSUED?

Especially with on-chain staking, the wallet you use as an investor may not provide clear information about the exact number and exact time that rewards are paid out. However, this information is indispensable for an accurate declaration as movable income.

Again, it's best to take a pragmatic approach. If you stake for an extended period, it is appropriate to **document how many coins you own at set times with short intervals** (e.g. weekly). The increase in the number of coins in that interval can then be considered as the amount of coins awarded, to be valued at the weekly moment.

WILL THE TAXMAN ACCEPT THAT?

It is a general principle within the law that no person can be obliged to do the impossible. If the staking platform used does not provide the necessary information, the taxpayer cannot possibly meet the tax obligations. By documenting at a fixed time the increase in the number of coins as well as the exchange rate of that currency at that time, you conform to the tax law as best you can. If the tax authorities wish to proceed with a strict application of the tax law, it will be up to them to prove exactly how the law should be applied, which will prove a difficult task in the light of the above...

Do It Yourself documentations → At fixed time
→ Increase in the number of coins
→ Progress of the currency

Alternatively, of course, you only stake on those platforms that provide you, the user, with clear information on both the amount of staking rewards and the exact time the rewards are awarded. After all, with this information, you are fully capable of declaring your movable income as required by the letter of the law.

COULD THERE BE A LIQUIDITY RISK?

The fact that the tax is determined at the time the staking rewards are awarded may indeed lead to an **additional complication**. This is because the tax assessment has to be paid in fiat, resulting in a liquidity risk.

An example: You invest the totality of your savings in Tezos, with the intention of staking Tezos for at least two years. You keep meticulous records of when and how many Tezos this earns you and declare it carefully in your 'personal income tax' return under movable income. However, at the time you receive your tax bill in the mail, the Tezos exchange rate is experiencing an all-time low. Then you have the choice of selling your Tezos at a loss to pay the tax bill or you have to find financing to pay the taxes.

To accommodate this, you can also opt to always sell 30% of the staking rewards for fiat or stablecoin, so that you **build up a reserve for the tax assessment**. This method does have the disadvantage that it allows you to add 30% fewer staking rewards to your stake, reducing the compound 'snowball effect' of such a technique.

IS THERE A WITHHOLDING TAX ON CRYPTO CURRENCIES?

In classic investments, the tax on movable income is levied through the withholding tax system. The paying agent, such as a bank that pays interest or a company that pays a dividend, transfers only a net amount to the recipient and immediately remits the applicable tax to the tax authorities. Nice and convenient. **As a taxpayer yourself, you no longer have to declare the income in the personal income tax return.**

In most cases, the withholding tax system will not be able to be applied to crypto coins. Indeed, there is often **no identifiable paying agent** (e.g. on-chain staking or DeFi strike). Moreover, very few crypto platforms are based in Belgium and only those based in Belgium are obliged to deduct withholding tax.

Where the paying agent has not deducted withholding tax, this **obligation falls on the shoulders of the receiving taxpayer**. If you invest in crypto coins through a platform based in Belgium, it is best to check whether or not that platform deducted withholding tax when paying out staking rewards.

5 Revenues obtained through *yield farming*

In the context of this book, we understand *yield farming* to mean the lending of crypto assets to *liquidity pools* that facilitate the operation of *decentralised exchanges* (DEX) in exchange for fees in crypto coins. The fees come from the users of the *decentralised exchanges*.

DOES INCOME FROM YIELD FARMING FALL UNDER MOVABLE INCOME?

By definition, yield farming takes place in the context of DeFI, making it difficult to refer to as the proceeds of a claim. A liquidity pool has no legal personality, so investors cannot have a claim on it. So the same discussion of principle that we entered into with staking also applies here.

On 6 December 2021, the Accounting Standards Commission ('CBN') issued an opinion stating that crypto tokens used as a means of payment are best accounted for as 'a receivable from a prospective counterparty who, against the delivery of a quantity of crypto coins is, in turn, willing to deliver goods or provide services (and thus participates in the crypto coin system). The entry under Other receivables indicates that this is not a receivable from, for example, a credit institution, but from a currently limited number of parties.'

One could say that **the cryptocurrency investor has a claim against every other user of the coin in question**. Whatever your view on crypto currencies, debt and counterparties, you cannot get past the clear similarities between yield farming and interest rates. Therefore, we believe that revenue from yield farming should be considered movable income.

SO SHOULD I CALCULATE THE SALES VALUE HERE TOO?

Movable income is taxable at the time of allocation. As crypto currencies do not yet have a specific legal status, yield farming revenues are considered **income in kind from a legal perspective**. The law states that tax on movable income in kind is levied on the sale value of the goods.

With staking, we suggested that the best way to do this is to take the value of the coin obtained at the time of 'closing', as publicly available on websites such as coingecko and coinmarketcap. **If, as a yield farmer, you want to be fiscally compliant, you will have to closely monitor which coins you obtain at which times.** This can be a monumental huge task, particularly if you are yield farming on multiple platforms and the rewards are paid out daily. Fortunately, there is specialised software that automatically tracks this data.

6 Revenues obtained through *air drops* and *forks*

Air drops and *forks* are two different phenomena, which we treat together in this book because of their similar tax treatment. **Air drops** are the free acquisition of certain crypto coins. Air drops are regularly issued by crypto-currency developers as an advertising campaign or as an 'appetiser', to increase enthusiasm about and awareness of their project.

Sometimes an air drop is the logical consequence of a ***fork*** in the blockchain. Forks arise when the developers of a particular project decide that the blockchain on which the project was developed no longer has the technological characteristics to support the project. The blockchain on which the project is running will then be deduplicated from a specific block. The old and new blockchain share the same history up to a well-defined point, after which two distinct blockchains emerge. Often, the old currency remains in circulation alongside the newly created one. A well-known example is the split between Bitcoin and Bitcoin Cash in the summer of 2017.

HOW ARE AIR DROPS AND FORKS TAXED?

With air drops or forks, two issues come into play: the acquisition of the coins following the air drop or fork itself and the cashing of the coins through sale against fiat. Both are potentially taxable acts. We say potentially, because the tax authorities have not yet announced an official position on the matter.

DO AIR DROPS FALL UNDER MOVABLE INCOME, PROFESSIONAL INCOME OR MISCELLANEOUS INCOME?

As you know, the division between miscellaneous income and an untaxed income is theoretically formed using the normal management of private assets. Acts that a regular, well-intentioned good family man would take with regard to his or her assets **do not give rise to taxation**.

QUASI-ENERGY AND RISK-FREE?

There can be little dispute that **air drops almost always fall within the bounds of normal asset management**. In many cases, as an investor, you don't even have a choice whether or not to accept the air drop. In other cases, all you have to do as an investor to obtain an air drop is fill in your contact details (for advertising purposes). It doesn't take much energy in terms of effort.

Because an air drop is almost always obtained without any *downside potential*, i.e. without any risk to your assets, the only correct decision seems to be that this will always be within the normal management of private wealth.

Air drop → ~~Risk~~ for the investor → Normal management

SO DO FORKS ALSO FALL UNDER THE NORMAL MANAGEMENT OF PRIVATE ASSETS?

At first glance, it seems logical to see forks in this context too, but some nuance is in order here. To obtain crypto coins following a fork, investors must already hold coins grafted onto that blockchain before the date of the blockchain split.

It is quite possible that the investor's position in crypto currencies before the fork could be situated outside the boundaries of normal management of private wealth. And then the fork is different.

WITH THIS FORK THEN, IS THERE A DIFFERENCE IN THE TAX CAPACITY BETWEEN COIN A AND COIN B?

Yes, that is possible. Allow us to illustrate this with an example. You have total moveable assets of EUR 20,000. You learn, at some point, that currency A will undergo a fork. You now want to speculate on the currency exchange rate that will arise as a result of that fork, and therefore invest your entire wealth in currency A. In addition, you will take out a loan of EUR 20,000 to invest in currency A as well. So, how does all this play out?

Well, in that case, you invested outside the normal limits of normal management of private assets in currency A. A good family man does not usually invest all his moveable capital in one asset and certainly does not take out a loan to *leverage* such investments. Consequently, the purchase of currency A was speculative. The subsequent profitable sale of currency A will thus be subject to tax as miscellaneous income at 33%. If currency A now undergoes a fork and splits into currency A and currency B during the period you hold it, is the acquisition of currency B following the fork a taxable event?

MAYBE THE TAXMAN DOESN'T EVEN KNOW?

By now, you won't be surprised to learn that tax law is silent on the(in)taxabilityof income from a fork! **As a taxpayer facing uncertainty, you will therefore have to make your own choice in the 'personal income tax' return**. Your question now, of course, is: which one actually applies to me?

It is our personal view that the most **pragmatic solution** legislatively would be to make the acquisition of the new coins non-taxable. We discuss this theoretically in the framework piece further on. It is worth considering this for a moment, because you will have to apply the consequences of your choice consistently.

Either way, if you are convinced by the arguments in support of the non-taxability of income following forks, you should be aware that the taxman may well opt for a different view. We therefore recommend that, to the extent possible, you properly document your assets and the movements therein.

HOW DO I BEST DOCUMENT ALL THE 'MOVEMENTS'?

Any information that shows what you did with your coins can be useful; this includes **extracts from the various exchanges as well as wallets**. We therefore recommend sorting your coins as much as possible into different wallets depending on the method of acquisition.

For instance, you could have a wallet in which you keep track of coins you consider as investments, another wallet for coins you consider as currency and another wallet for coins you obtain from forks. You are thus dividing your wealth into different components according to the tax consequences that may be involved. You then minimise the difficulties that may arise as a result of mixing the currencies that may give rise to different tax processes.

All this may turn out to be unnecessary. **But if the opinion of the tax authorities differs, this documentation will come in very handy.** By the way, in the last chapter of this book, we delve a little deeper into your position as a taxpayer in case of a dispute with the tax authorities.

A theoretical discussion:
to tax the fork or not to tax the fork!

If you dive into the legal theory behind the Income Tax Code, you can find perfect arguments for whether income from a fork should definitely be taxed or whether it falls just outside the taxation requirement. The article of law that makes speculative transactions taxable requires that the taxpayer has made some performance, transaction, speculation or service to third parties before there can be taxability. From the taxpayer's perspective, the acquisition of coins following a fork is a purely passive event, over which the taxpayer usually has no control. **Since you as the taxpayer did not provide a performance, transaction, speculation or service with respect to third parties, there can be no taxability.** End of story! But there are also counterarguments...

The **enrichment of the taxpayer** may also be regarded as the exclusive consequence of the speculative purchase of currency A. Without the speculative position in currency A, the taxpayer would not have obtained currency B. The speculation on currency A meets the tax law's broad definition of 'any performance, transaction, speculation or service to third parties'.

So, what now? As a taxpayer facing uncertainty, you must therefore make your own choice in the 'personal income tax' return. It is our personal view that the most pragmatic solution legislatively would be to make the acquisition of the new coins non-taxable. Should the legislature want to tax forks, it would be better to make the tax conditional on the subsequent redemption of the coins obtained as a result. Otherwise, you **as a taxpayer could face a liquidity risk**. Then, if the exchange value of the forked currency falls in the period between acquisition and sale, you would pay tax on a value you no longer hold!

It should also be noted that taxation at the time of cashing in also has drawbacks. It is not inconceivable that the forked currency could be used as a means of payment. If you issue the forked coins by making a payment with them instead of a sale against fiat money, then a redemption takes place. The forked coins then disappear from the taxpayer's estate and the purchased good or service replaces them. If tax is then levied at the time of redemption, the value of the good (or service) so acquired should be considered. After all, it will be this value that serves as the sales value for calculating capital gains.

There are **further complications** if one prefers taxation at the time of redemption as a solution. Suppose you received a specific coin from a fork and, in addition, also purchased the same coin as an investment or for use as a means of payment. Under the assumption that the forked coins would become taxable at the time of redemption and that the coins purchased would have been acquired within the normal management of private assets, the taxpayer should keep track of which coins he or she issues or sells. The cashing-in of the forked coins would then give rise to taxation, but the cashing-in of the same coin that was purchased would not! Under that assumption, the taxpayer must use a valuation method that allows a value to be attached to the coins issued (LIFO, FIFO or weighted average).

In the United States, the Internal Revenue Service (the 'IRS', or US tax authority), takes the view that forks give rise to taxability based on the market value of the currency acquired at the time of acquisition. A number of academics at Stanford University (M. Landoni and G. C. Pieters with their publication *Taxing Blockchain Forks*) rightly criticise this view. They suggest that there may be difficulties in deciding which coin is the 'original' and which is the acquired coin.

In some cases, a fork will not give rise to an increase in a taxpayer's assets, but rather a redistribution of assets across different currencies. Even if it is established that the forked coins would give rise to growth in the taxpayer's assets, the taxpayer may not have access to the new coins. Their fourth conclusion is that even if the accretion of assets is accessible, it is difficult to determine the extent to which the taxpayer has used this accretion of assets. Finally, Landoni and Pieters rightly point out that almost every coin created as a result of a fork is overvalued at the time of acquisition. Taxation at the time of acquisition of the 'new' coins would thus result in a tax systematically higher than the accretion of the taxpayer's net wealth.

III Financial obligations

1 The declaration of exchanges and wallets

WHICH FINANCIAL RULES APPLY TO CRYPTO CURRENCIES?

In both tax and financial regulation, blockchain is causing headaches for various regulators. Many of the difficulties relate to the **lack of an intermediary**. This function is performed in the mainstream financial context by banks, stock exchanges and other entities such as asset managers… and that creates a certain logic. This logic is completely overturned in the world of crypto currencies.

The question now is which legal financial obligations you are open to as a regular private investor in crypto currencies (as a participant in the financial blockchain traffic). For now, crypto tokens do not fall under the legal definition of ‘currency’ or ‘money’. **That makes the vast majority of financial rules inapplicable to crypto currencies**.

ARE THERE ANY MINIMUM REQUIREMENTS I NEED TO MEET AS A CRYPTO INVESTOR?

Well, not really. The first and only obligation you face as an investor in crypto currencies - at least for natural persons, for corporations it is slightly different - is the obligation to declare your accounts with exchanges as foreign bank accounts.

Belgian taxpayers holding bank accounts must declare them. You must do this with both the National Bank of Belgium and the tax authorities. **Exchanges are thereby considered as foreign bank accounts.**

A theoretical discussion: is an exchange or wallet a foreign bank account?

Indeed, you might wonder. Especially if you add in the official definition of a foreign bank account: 'Any account of any kind held with a banking, foreign exchange, credit and savings institution (...) established as a result of the conclusion of a banking or financial agreement with the taxpayer, alone or jointly with other persons, and which makes it possible to record and monitor, on an individual basis, the flows and balances of monetary or financial assets held by the institution concerned on behalf of that taxpayer, alone or jointly with other persons, or which are made available to the latter by the institution concerned.'

You're now wondering if this is applicable to crypto currencies: **is an exchange a banking, exchange, credit and/or savings institution?** If I open an account with an exchange, is it established as a result of a banking or financial agreement between myself and the exchange?

There are several reasons why declaring exchanges as foreign bank accounts is preferable to non-declaration. However peculiar you may find the qualification as 'foreign bank account'. First, the tax authorities have taken the position that accounts at exchanges are declarable. End of story.

Francis Adyns, the spokesman for the Federal Public Service Finance, informed the media in mid-2021 that '**crypto accounts' are accounts of all kinds and therefore should be declared**. We must note here that this may have been prompted by necessity. After all, at this point in time, the taxman has no way of verifying which taxpayer has ventured into crypto investments and which has not.

Second, there was a similar debate about Paypal around 2016. At the time, some MPs raised the question to the finance minister whether an account with Paypal was considered a foreign bank account from the perspective of the declaration requirement. Back then, they decided that such accounts should be declared unless they were not used professionally and no funds were held in that account longer than necessary for the transaction for which the funds were deposited. It is by no means impossible that the same conclusion will be reached with regard to the world of crypto.

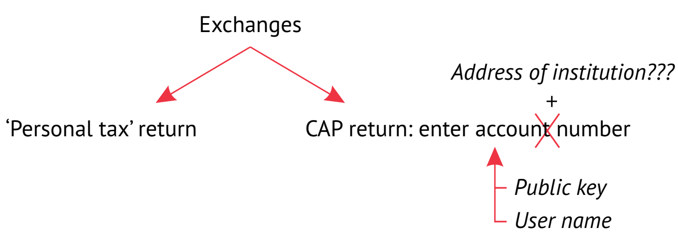
The third and perhaps most important reason concerns **your 'body language' as a taxpayer towards the government**. Nowadays, there is a perception among tax authorities that anyone who failed to declare an account is a fraudster. In practice, this is reflected in the so-called CRS files. CRS (Common Reporting Standard) is the international exchange of data for tax purposes. When a Belgian taxpayer opens an account in a state participating in the international data exchange, the institution where the account was opened will notify the tax authority of the state of residence. The latter will then transfer the information to the Belgian tax authorities, who will then proceed to work on it.

Belgian tax authorities invariably see the non-declaration of an account as proof of intent to evade tax. Thus, not only does the tax authority have the option of imposing an administrative fine of EUR 50 to EUR 1,250, it then also has the option of conducting its investigation over a time span of seven years instead of the usual three years and, in addition, it will **impose a fine of 50% to 200% of the tax due in case of correction.** So, it is in your interests to show the taxman that you have nothing to hide and will not venture into a discussion about the obligation to declare accounts.

HOW DO I INDICATE MY EXCHANGES?

There are several reasons why declaring exchanges as foreign bank accounts is preferable to non-declaration, however peculiar you may find the qualification as 'foreign bank account'. The question is… how?

The declaration to the National Bank of Belgium is made through the Central Contact Point ('CAP'). By signing in with your identity card or Itsme app on the CAP website, you can easily declare your accounts with the exchanges. But because accounts at exchanges do not have an account number as there is with a traditional bank account or securities account, a practical problem pops up.



BUT CRYPTO STILL WORKS UNDER ACCOUNTNUMBERS OR PHYSICAL INSTITUTIONS?

At this time, the module on the CAP's website has not been updated to declare accounts with exchanges. The module still asks for an account number. In that field you should fill in **what distinguishes your account on the platform in question from other accounts**. For exchanges, this is usually an e-mail address or a **username**.

In addition, the CAP's website asks for the branch address of the institution managing the account. In some cases, this is very difficult to find. Changpeng Zhao, the CEO of Binance, said in an interview in 2020 that 'wherever I sit or wherever I need someone to sit, there is Binance's branch. Binance has no branch, just as Bitcoin cannot be geographically located.' If you hold an account with an exchange that does not make information public about its branch address, you have two options: either search the internet until you find an address that seems correct, or enter 'unknown'.

WON'T THIS ANNOY THE TAXMAN?

It is our firm belief that a notification not done correctly for the above reason should not result in punishment. **After all, the general principle in law is that no one can be obliged to do the impossible.** Moreover, in light of what we just described, it is better to file an incomplete declaration than not to file any declaration at all.

At the end of the declaration to the CAP, you have the option to download a pdf file confirming your registration. We recommend you save this document. Worst-case scenario: you can always use that document as proof of your intention to declare your income correctly. And that you are not, therefore, a fraudster.

AND WHERE DO EXCHANGES FALL IN THE 'PERSONAL INCOME TAX' RETURN?

In addition to the declaration to the CAP, your accounts with exchanges should also be declared in your 'personal income tax' return. You do this in box XIII, under section A (at least in the return form that was used for 2020 income). This section looks as follows:

Box XIII – ACCOUNTS AND INDIVIDUAL LIFE INSURANCE POLICIES ABROAD, LEGAL CONSTRUCTIONS AND LOANS TO START-UP, SMALL BUSINESSES

A. FOREIGN ACCOUNTS

Did the following apply to you, your spouse or your legally registered partner, with whom you are submitting this return, or one of your non-emancipated minor-age children in 2020:
- Holder of one or more accounts with a bank, exchange, credit or savings institution registered abroad, or
- Administrator of one or more of such foreign accounts in the name of one or more associations that receive no profit or benefit and which are not subject to corporation tax or legal entities tax?

If so, please enter the details below.

1075-89 ☐ Yes

Surname and first name of the holder or, for an account in the name of an aforementioned association, the administrator of the account	Country where the account was opened	Have the legally defined details about the account been registered with the central contact point for the Belgian National Bank?
....	....	☐ Yes
....	....	☐ Yes
....	....	☐ Yes

2. The future: DAC8 and the MICA Directive

IS THERE A LEGISLATIVE FRAMEWORK AROUND 'CRYPTO' AT THE EUROPEAN LEVEL?

At the national level, at the time of writing, we are still waiting for a reasonable sign from the 'Rue de la Loi' of legislative intervention around crypto currencies and blockchain. At European level, the situation is different. The European Commission has started the legislative process to issue two directives **with the intention of implementing a harmonised legal framework around crypto currencies at the European level**.

LONG LIVE THE EUROPEAN GUIDELINES!

The first directive the European Commission plans to launch is the DAC8 directive, where 'DAC' stands for Directive in Administrative Cooperation, or **the Directive on Administrative Cooperation**. The aim of this directive is to enable the tax authorities of different member states to exchange, automatically or at each other's request, information that allows taxes to be levied efficiently.

SHARING INFORMATION ACROSS NATIONAL BORDERS

But… at the moment, the European Commission has not yet put a concrete proposal down on paper. However, there have already been seven versions of the DAC guidelines. With that in mind, it is to be expected that exchanges offering their services in Europe will be required to share the **information about their clients with the tax authorities of the country where they are based**.

Wallets & exchanges//Foreign accounts

↓

Must be reported by you

How the directive will deal with decentralised exchanges is unknown at this time. Perhaps, as is roughly the case now for Belgians with foreign accounts, **the investor himself will be obliged** to disclose his wallets to the tax authorities in his state of residence.

In turn, the MICA ('Markets in Crypto-assets') directive aims to integrate crypto-currencies and blockchain into mainstream finance. The MICA Directive is thus intended to be the counterpart to the MiFID ('Markets in Financial Assets') directives, which are currently the European Union's main financial directives.

The MICA **Directive** sets out a whole host of rules primarily aimed at cryptocurrency developers and exchange operators, including rules to prevent market manipulation and *insider trading*. **No obligations are imposed on the investor/consumer themselves**. Unlike the DAC8 directive, a proposal for the MICA directive is already available online.

IV The hard road back to fiat

1 Crypto currencies: source of money laundering and terrorist financing?

DO CRYPTO COINS MAKE MONEY LAUNDERING EASIER?

As with traditional banking products and services, crypto currencies may be equally exposed to money laundering risk and various forms of financial fraud, or being used to finance terrorism. The Financial Action Task Force has detailed the potential risks for crypto currencies in terms of money laundering and terrorist financing in several reports.

This FATF, also known by its French name *Groupe d'action financière*, is an intergovernmental organisation set up in 1989 at the initiative of the G7 to develop policies to combat money laundering. Conclusion of the FATF? 'Virtual currencies may enable terrorist groups to channel funds into the Union's financial system or hide remittances.' This concern of the European legislator is a result of the (**pseudo) anonymity of virtual currencies**, which could encourage abuse for criminal purposes.

HOW HAS THE BELGIAN REGULATOR RESPONDED?

With the Fifth Anti-Money Laundering Directive, the European legislator - and, in implementing this directive, thus also the Belgian federal legislator - brought providers (exchanges) within the scope of anti-money laundering legislation. At the same time, we realise that this will not fully solve the issue of anonymous transactions in virtual currencies. After all, users can also **conduct transactions without the intervention of providers**.

On the tax front, we note that crypto currencies are not yet subject to automatic data exchange as is the case for foreign accounts. However, the European Commission is preparing for this and it can be expected in a subsequent amendment to the Directive on Administrative Cooperation (DAC), namely DAC8.

2 From crypto to fiat

HOW DO I CASH IN MY CRYPTO PROFITS?

We are not psychics, but we do suspect that you are reading this book because you have either made a profit by investing in crypto currencies, or that you have a keen interest in it. In both scenarios, the ultimate goal is usually to monetise these crypto profits in traditional bank accounts. Before you turn to your bank, however, we recommend that you read this chapter carefully. It will prepare you for the possible questions from the financial institution receiving your crypto profits.

DON'T BANKS WANT MY CRYPTO PROFITS THEN?

Belgian banks, like any European banks, are subject to anti-money laundering laws. This law not only requires banks to identify and verify their customers, i.e. the so-called agents and beneficial owners, but also requires an **investigation into the origin of the funds subject to the transaction**.

Indeed, the bank must satisfy itself that the funds received do not qualify as an **illegal capital gain**. They must therefore verify that these funds come from a legitimate source and do not stem from a crime, including tax fraud.

HELP! WHAT A MESS!

The application of anti-money laundering legislation is a **time-consuming and expensive affair for financial institutions**. This *workload* is also increasing year on year. At the same time, the appetite for risk in general seems to be decreasing. The global sanctions imposed on banks and other entities for inadequate compliance with obligations under anti-money laundering laws are not to be sneezed at.

Within the Belgian banking landscape, it should be noted that most banks are therefore not overly keen to convert crypto coins to fiat deposits. This is not only due to the fact that anti-money laundering compliance is expensive and time-consuming, but also due to the fact that **banks do not have sufficient expertise on this** in-house.

WHY STAY IN BELGIUM WITH MY CRYPTO COINS?

When you combine a lack of knowledge about the application of anti-money laundering legislation to crypto currencies, with the lack of interpretation by its regulator and an unclear tax legislative framework, you realise that there are many grey areas here in Belgium.

Belgium = lack of

↓

- Knowledge of how to apply anti-money-laundering law to crypto currency
- Clarity by supervisory body
- Clear fiscal legislative framework

↓

Cryptic taxation

The acceptance of credits from realisations of crypto currencies is mostly still in a project phase within Belgian financial institutions. Countries like Switzerland, Luxembourg, the Netherlands and Germany are much further ahead. This is increasingly giving rise to **capital flight to a foreign financial institution** the moment these crypto coins are converted to fiat money.

Only in very straightforward cases does the bank seem willing to receive funds derived from the realisation of crypto coins. You must then be able to prove as a customer that those funds came from a legitimate activity and that the correct taxes were paid.

In the future, banks will undoubtedly have to show their colours and decide whether to accept the risk associated with accepting fiat money from cryptocurrency investments. If so, they will have to invest in the staff and resources to 'manage' the risk rather than adopt a strategy of 'de-risking'.

A little background: why our banks are being so cautious

Belgian banks are taking a very cautious approach. They have - by their own admission - a series of reasons for this. The biggest argument in their eyes is the **(fraud) risk** faced by crypto currencies and more specifically DeFi. **Indeed, decentralised finance (DeFi) offers financial instruments without depending on intermediaries such as brokers, exchanges or banks.**

The **lack of a regulatory framework around compliance in cryptocurrencies** and the fact that the application of traditional anti-money laundering legislation in a DeFi environment is deficient does not help either, of course. Read: the banks trust it less.

Whereas exchanges and financial institutions intervene as gatekeepers for the application of anti-money laundering laws following investments in crypto currencies or their realisation in fiat money, such oversight is absent in a pure DeFi environment. Depending on the level of centralisation, it will be easier to designate a person responsible for applying anti-money laundering legislation.

Take Uniswap, for example, a decentralised exchange, which is basically a software application. This makes it hard to impose the same anti-money laundering obligations on Uniswap as on a more traditional exchange such as Coinbase. Even though providers of virtual assets fall under the scope of anti-money laundering legislation and more 'guidance' is on the way from the FATF, for example, it is clear that the classic implementation of the rules from a centralised financial world needs to be refined in a specific context.

Moreover, there is a risk that **human error or manipulation of the software code** could allow hackers to extract crypto assets and then syphon them off. **Crypto currencies have become a payment instrument of choice for certain forms of crime**. Consider, for example, IT fraud (*ransomware*, trades on the *dark net*, credit card fraud...). The challenge for criminals is to launder the crypto proceeds from their criminal activities. This often involves the use of DeFi services to make the origin of crypto assets less transparent by obscuring the link to the origin and creating a semblance of legitimacy.

There is also the problems associated with tracing the origin of crypto currencies. Although the **blockchain is intrinsically transparent**, certain software applications can make the detection of illicit proceeds more difficult. Moreover, as we mentioned earlier, there is a huge lack of comprehensive knowledge about blockchain and crypto currencies and the various investment options (farming, staking, etc.) in the banks' compliance departments. All these challenges mean that accepting fiat money derived from the realisation of crypto currencies is a labour-intensive and therefore expensive business for banks today.

3 Proof of innocence and the importance of adequate documentation

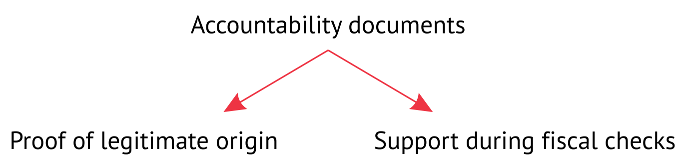
WHAT MONEY LAUNDERING? ('WAT WIT WAS?')

To clarify the following point, we would like to refer you to an apt anecdote from the more than excellent book *Wat wit was* by tax lawyer Jan Tuerlinckx. Imagine two identical vintage cars, he says. Both cars have the same engine, are the same colour, and have the same interior and performance. The only difference is that one car has a valid proof of purchase, service book and the full paperwork, while the other lacks any kind of documentation. Which of the two cars do you think will fetch the most in a public sale?

If you chose the car with the papers, you immediately understand the point we want to make. After all, what applies to vintage cars also applies to your assets. **The better your assets are documented, the more easily you will be able to deploy those assets in regular economic transactions**. Especially as far as crypto is concerned, **adequate documentation is essential**.

HOW DO I DOCUMENT EVERYTHING?

If you want to convert (some of) your crypto assets to fiat at some point, you will need the necessary accountability documents to do so. The usefulness of this documentation is twofold. Any authority subject to anti-money laundering legislation should be able to verify that your funds have a legitimate origin (including whether the proceeds have received their normal tax treatment). **In addition, these documents are also needed to assess the tax treatment in the case of a tax audit**.



We therefore advise you to keep a documentation folder showing the origin and every movement of your assets. Relevant documents are all the bank account statements for every transfer from fiat to an exchange. Indeed, by presenting these extracts, you can prove that the funds used for the investments came from a traditional bank account. This does not mean, however, that this immediately legitimises the origin of these funds. **Often, the bank will request additional explanations about the origin of the funds that were used to purchase the crypto coins.**

SO ARE MY BANK ACCOUNT STATEMENTS NOT ENOUGH?

If you have ever received crypto coins as a gift you will need a dated and signed statement from the donor stating that it was a gift (a so-called *pacte adjoint*). **Again, the bank will require justification of how the donor came into possession of those crypto coins**. And, as a gift recipient, you won't always know that.

You also have **the statements for the accounts you hold with an exchange or for each wallet you own**. With these extracts, you can prove which transactions have been carried out. You can also prove that your wealth has increased as a result of the realised crypto investments and does not come from the realisation of crypto coins whose legitimate acquisition cannot be proven!

The **proof of registration of your crypto accounts with the CAP** is also crucial, as are personal income tax returns in which income was declared from crypto coin investments. If you had taxable income that was not declared, you need a regularisation certificate.

ARCHIVE IT!

All the documents mentioned above should be kept up to date. That is the bare minimum. As a rule of thumb, you can never keep too much information. So if you have only just started investing in crypto currencies or are about to do so, it is important to get organised accordingly.

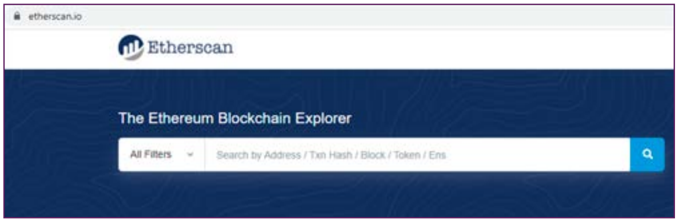
You could, for example, minimise the number of wallets and the number of exchanges you use. And, prior to making your investments, it is advisable to do your ***due diligence*** **on the wallets and exchanges you wish to use**. Do they even keep records/extracts? If so, how is that data stored? Do you have **unlimited access**?

HELP! I CAN'T PROVE IT!

What if you have performed transactions in the past that were not stored by the exchange or wallet you used? Then it is impossible to compile a complete overview of all movements within your digital assets. You should then check if you can find this data somewhere else.

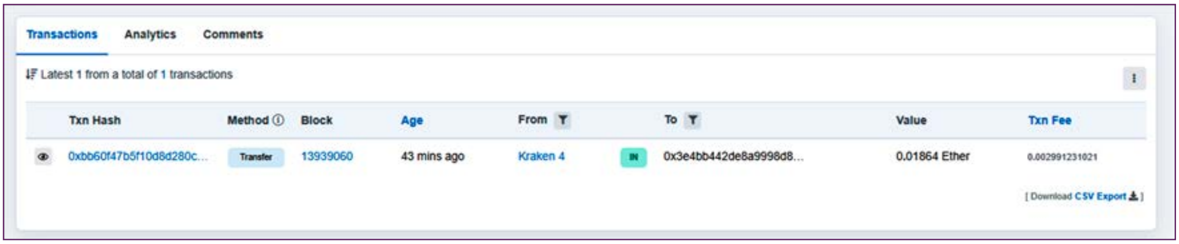
On some exchanges, you can ask the helpdesk for a copy of the extracts. **If you have conducted transactions through a wallet, you can use a blockchain explorer to access these transactions**. Blockchain explorers are **software packages** that can read the information contained in a given blockchain and thus retrieve information about certain transactions. They do so using a particular address or the unique ID assigned to the transaction.

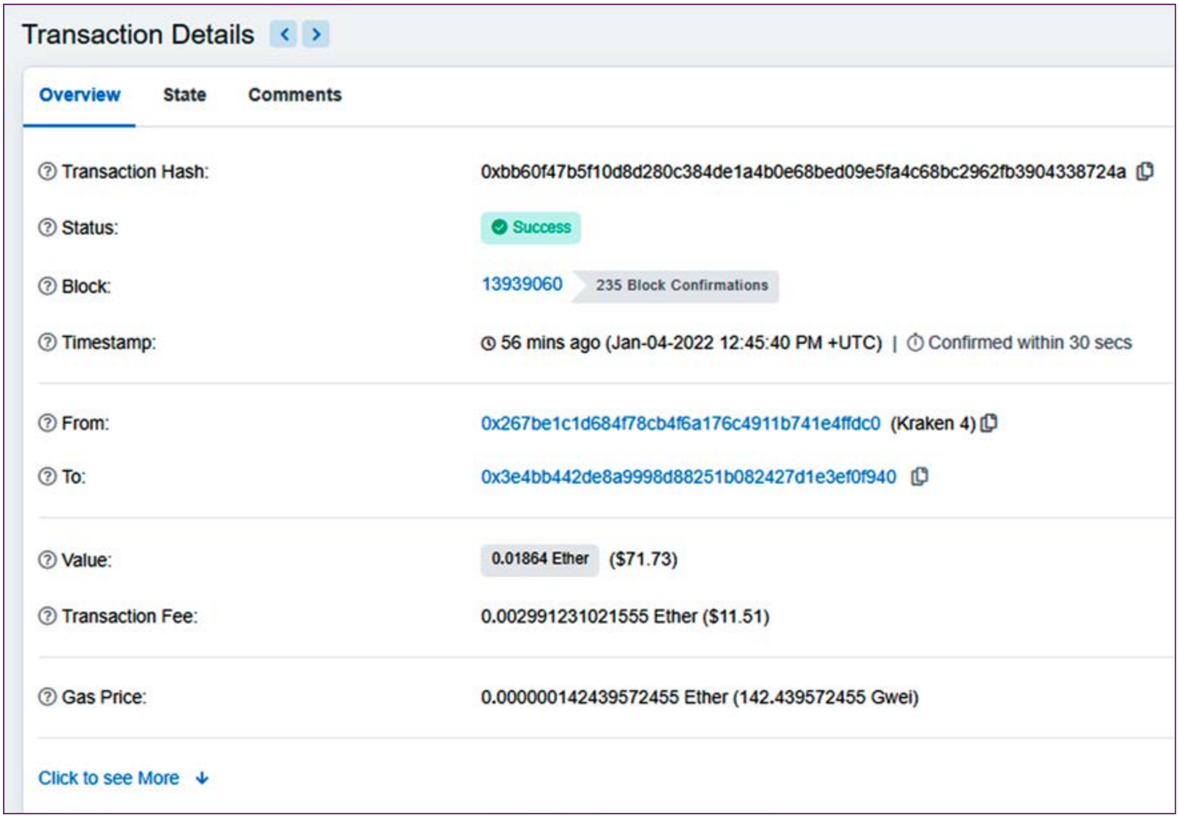
An example: On 4 January 2022, you transferred 0.01864 Ethereum from your account at Kraken to your soft wallet. You can easily look up this transaction on the most well-known blockchain explorer of them all, etherscan.io. It lets you look up transactions on the Ethereum blockchain using the address of one of the parties involved, the transaction hash, the block number...



The address of your wallet is 0x3E4Bb442dE8A9998D88251b082427D1E3ef0F940. Enter this address in etherscan, and you will obtain the following overview:

As you can see, this search shows only one result. We have created this wallet especially for this particular example. Etherscan can provide information for each transaction:





On the image above, you can read all the details Etherscan provides about a particular transaction. These include the transaction hash, the block in which the transaction was added to the blockchain, the sender and receiver, the time and even the USD exchange rate at the time of the transaction.

If you search for an address on Etherscan, you can download every transaction that ever happened over that address in the form of a csv file that can be read by Microsoft Excel. **This allows you to easily bundle the various transactions you carried out through that address and add them to your documentation folder.**

ARE THERE ANY OTHER TOOLS?

Yes. On the market, there are **several providers of software that allow cryptocurrency investors to document their assets**. They can also provide a record of both investments and transactions and the profits generated by them. Earlier, we talked about the software package Koinly, which supports the automatic import of data from various wallets and exchanges.

Of course, if you want to use this type of software, you should first check whether the wallets and exchanges used in the investments are supported by that particular package.

MORAL OF THE STORY!

The importance of adequate documentation with your digital assets cannot be underestimated. If you, as an investor, cannot document your assets from start to finish, it will not go down well with the bank. **You then run the risk that your crypto coins may well end up staying purely virtual**.

4 Access to the banks = rulings and regularisations

HOW DO I RID MYSELF OF THE SUSPICION OF MONEY LAUNDERING?

Belgium does not currently have a coherent legal framework regulating the taxation of crypto currencies, so the tax process involves a subjective assessment. This creates a peculiar situation, with concepts like money laundering and tax fraud lurking around every corner. Banks should not and will not accept funds from crypto investments in the current financial climate if they could be the subject of tax fraud.

When is this an issue? If **a breach of any material tax standard** - defined in the Income Tax Code or in an implementing decree of this Code - has been committed with fraudulent intent or with intent to harm. Assessing the material element (is there a violation of the tax law) and the moral element (is there fraudulent intent or intent to harm) may give rise to a suspicion of money laundering. Both come down to an interpretation of tax laws and the client's intentions.

Has there been a breach of fiscal law?
+
Is there fraudulent intent or intent to harm?

↓

Interpretation of fiscal law and customer's intentions

↓

Possible suspicion of money laundering

If you consider yourself to have invested a limited amount of your savings in crypto currencies and managed them like a good family man, it implies that the realised proceeds will, in principle, not be taxed. However, it would be helpful if you could also prove the legality of the funds that were used to acquire the crypto coins. **This type of formal document, stamped with the official emblem of the Federal Public Service Finance could allay concerns among banks.**

SO, HOW DO I GET SUCH A FORMAL DOCUMENT?

Tax audits on the realisations of crypto currencies are still in their infancy. This is partly because the FPS Finance does not have an overview of the revenue realised. **It is therefore expected that large-scale checks on crypto currencies will not follow until a system is in place that can provide the tax authorities with sufficient data to do so.** This might involve the implementation of the DAC8 directive. This will create an **automatic form of data exchange**, as we already have for foreign accounts, and would provide a point of departure for the tax administration initiating checks. Rulings, meanwhile, are an excellent solution in theory.

With a ruling request, as a taxpayer, you ask the tax authorities to clarify the tax consequences of a certain action even before you take that action. **Once a ruling is delivered, it is in principle binding on both you as a taxpayer and the tax authorities**. In other words, if you perform that act as described in the ruling, the tax authorities cannot and should not change their position thereafter, regarding the tax consequences of that act.

OK, BUT HOW DO YOU OBTAIN SUCH A RULING IN PRACTICE?

Rulings delivered will be published in an anonymous manner. This ensures that everyone can be aware of the views of the ruling committee. However, don't get your hopes up too much, because this solution is not ideal. Indeed, the ruling commission faces the same uncertainty as everyone else in Belgium regarding cryptocurrency legislation.

While the rulings system is a very workable solution in theory, it is worth noting that the ruling committee feels inhibited from ruling in favour of the taxpayer. **Positive rulings often deal only with the very simplest of cases**. The ruling commission has unofficially informed the various tax law firms that, in the cryptocurrency sphere, it will only issue rulings on the normal management of private assets in cases where the taxpayer has behaved as the model good family man.

A little background: a telling anecdote

Recently, we had a client who had experienced a fair bit of financial prosperity in his life. As a student, he was the lucky recipient of a WinForLife. With part of the income from these profits, he invested in crypto currencies. As a student, his monthly fixed WinForLife income was more than enough to cover all his expenses and he even had a surplus. He was searching a *return on investment.*

Our student followed the investment strategy of a pure buy-and-hold. He had even created a documentation folder for this purpose in which he fully documented the origin of his assets. The various excerpts showed that he had been investing in crypto coins for about four years, but still had not sold a single coin. He did all this without any professional or academic knowledge of blockchain. He also did not rely on third parties in his investment decisions and never invested with borrowed money.

We therefore advised him to apply for a ruling. He met just about every criterion cited in case law on the normal management of private assets. With this ruling, he would have had no problem in being able to transfer the profits from his investments to a Belgian bank.

What transpired? Much to our surprise, our ruling application was rejected. According to the ruling commission, the client had invested too much in crypto coins and would not have waited long enough to sell them. This serves to illustrate just how reluctant the ruling commission is to deliver rulings on normal management in the context of crypto currencies. After all, you rarely get them simpler than this case. **It is particularly unfortunate that the ruling committee keeps passing the 'hot potato' to the taxpayer and the tax authority's audit departments in this way.**

ARE THERE NO ALTERNATIVES THEN?

Another possible 'entry ticket' exists in tax regularisation at the Regularisation Contact Point. A regularisation procedure is one in which you, as a taxpayer, voluntarily 'expose' income that did not receive the normal tax treatment in the past. The income is then still subject to a regularisation levy.

WHAT DOES SUCH A REGULARISATION CHARGE ENTAIL?

It is **the normally applicable rate, increased by 25% or a flat rate levy of 40% to the extent that there is fiscally time-barred income**. In exchange for this voluntary declaration, you obtain a regularisation certificate as a taxpayer. That attestation ensures that you can no longer be prosecuted criminally or fiscally in relation to those funds for which regularisation was carried out.

However, the regularisation procedure is expensive. Moreover, by necessity, you have to take the position that income was taxable in the past. **Such a regularisation procedure for crypto currencies was recently compared by a colleague to paying a ransom so that the investments can eventually end up in a bank account**. It immediately highlights the limited usefulness of the regularisation procedure for crypto investors.

However, the voluntary regularisation procedure may well provide a solution to return to financial participation when there can be no doubt about the taxability of income from cryptocurrency investments that did not receive their normal tax treatment in the past.

A little background: another telling anecdote

One of our clients was a young worker who, as a result of past interests, was very much into crypto currencies. Through a variety of investments over several years, including a period when he was mining with specialised and expensive ASIC computers, he had managed to build a portfolio which then had a market value of around one million euros. What, for this client, had started as a **potentially lucrative hobby** had grown into **a substantial asset.**

So he had been very active, but not in documenting... So he had never documented his assets and at the time of our consultation, that had become impossible. He had even lost access to some of his accounts on various exchanges. Given the huge volume of transactions and intensive mining activities of this client, it was clear that his income should be taxed as professional income. The unfortunate conclusion, therefore, was that he had to regularise his one million euro assets as professional income and thus hand over 75% on the total assets to the tax authorities.

This clearly highlights the importance of adequate documentation and correctly determining the tax legal position. If the client had kept detailed documentation relating to his activities and transactions from the beginning, **the tax assessment could have been at least 25% lower if the whole process had been considered a professional activity**!

V Conclusion: dealing with fiscal uncertainty

Dear reader, if one thing is clear, it is that there is still a great deal of uncertainty about the correct taxes on crypto currencies. Applying traditional tax rules to cryptocurrency investments is no easy task. And there are innumerable issues on which no one can offer absolute certainty.

ARMED WITH USEFUL INSIGHTS

That is precisely why we have tried to arm you with the necessary insights with this book. You should now be able to make your own informed assessment of where you are as a crypto investor on the scale that starts with investments within the normal management of private wealth and extends to investments in a professional sphere.

Over the last few past pages, we have also provided the necessary explanations of the implications of the different tax regimes and how to declare your capital gains and income accordingly. We have also considered the obligation to declare accounts with the exchanges. Such transparency also relates to various other advantages, by the way. **What is beyond doubt is that it is crucial to document all possible information around your digital assets extremely well, both for the banks and the tax authorities.**

THE LAW IS NOT EQUAL FOR ALL

The procedural rules in a dispute with the tax authorities are indisputably in their favour. Thus, a tax assessment has the same legal standing as a court judgment. The tax authorities can unilaterally decide on the application of the tax law, and can even proceed to recover a disputed tax debt during the proceedings. Moreover, you are obliged to follow the existing procedure with the tax authorities themselves before you can go to court.

As a taxpayer, if you choose not to pay the disputed tax debt throughout the proceedings, then go to court and the ruling goes against you, you will have to pay the disputed tax debt with 4% interest on top. On the other hand, if you do pay and you win the case in court, the taxman will have to repay your money with an interest rate of only 2%! **Before the court, there is no equality between taxman and taxpayer.**

It is clear that Belgium has missed the boat when it comes to crypto currencies. We must wait and see what the future holds. **Tax authorities, accountants, auditors and taxpayers are all looking towards the legislature. But they don't give a hoot**. Couple this with the fact that the taxman is expected to continue to hold a **very strict position** on the normal management of private assets and the concept of professional activity, things look bleak for Belgian crypto-currency investors.

LIGHT AT THE END OF THE TUNNEL!

Nevertheless, the taxpayer has one trump card at his disposal. One that comes from quite unexpected quarters. From the area of human rights, no less! The European Convention on Human Rights establishes that everyone has the right to undisturbed enjoyment of property.

The right to property is a peculiar human right and a full discussion would easily add some six hundred pages to this book. So we are not going to do it. In the context of taxes, for convenience, we will summarise the right to property as follows: **the Belgian State may only deprive you of your property on the condition that this is done in accordance with a law that is sufficiently clear and foreseeable.**

Yes, you read that correctly: taxes may only be levied on the basis of a law that is sufficiently clear. According to the European Court of Human Rights, a law is clear when the taxpayer is able - with the guidance of a tax *professional*- to reasonably predict the legal consequences of his actions. Ask 10 different lawyers at this time what should be understood by ‘the normal management of private assets’ and the chances are enormously high that you will get 10 different answers. Moreover, in May 2021, the Supreme Court asked the Constitutional Court whether the concept of ‘normal management of private assets’ was precise enough to meet those requirements. Meanwhile, the Constitutional Court has ruled that the 'normal management of private assets' is indeed sufficiently clear. Whether this can be extended *linea recta* to investments in crypto currencies, remains to be seen.

Until the legislature intervenes and comes up with a clear and understandable law on the valuation of cryptocurrency investments, numerous questions remain unanswered. **So, it is up to alert taxpayers and tax lawyers to ensure that taxpaying citizens do not lose out because of the government's lack of clarity.**

ARMED WITH KNOWLEDGE

With the information in this book, you can in any case arm yourself should you find yourself in a battle with the tax authorities over the correct application of the tax law to your crypto situation. **And forewarned is forearmed.**

And a well-informed taxpayer is armed to the teeth! We hope this book will make you a well-informed taxpayer and we wish you every success with your further investments!

Dave van Moppes combines his expertise in anti-money laundering, tax regularisation and taxation when assisting clients who realise income and capital gains from crypto investments and convert them into fiat money.

Baptistin Alaime is an *early adopter* on taxation around cryptocurrencies. He has been advising on tax implications and consequences for more than five years.

The authors are all tax lawyers at Tuerlinckx Tax Lawyers.

info@tuerlinckx.eu
www.tuerlinckx.eu

@TuerlinckxLaw

Tuerlinckx Tax Lawyers

NUR 826
ISBN 9789464369571

Cover: Buro Blikgoed
Typesetting: Dolna Elija/Friedemann Vervoort
Author's photos: Photography An Clapdorp

**Crypto investors seeking tax insights. Not obvious.
The law is much older than the new concept. Two young lawyers with the necessary technical baggage and extensive experience in crypto tax, took up the challenge.
They succeeded with flying colours.**

— JAN TUERLINCKX, tax lawyer

**Those who make profits from crypto often do not realise the tax consequences.
However, these should not be underestimated.
This book will get you started in the fiscal crypto jungle.**

— PASCAL PAEPEN (KU Leuven, Thomas More & Spaarvarkens.be)

Crypto is here to stay, but a coherent Belgian legal framework is long overdue. In this book, Dave van Moppes and Baptistin Alaime - lawyers specialising in tax law - share their knowledge and experience with investments in crypto currencies and the taxes involved.

As lawyers, they see a large influx of clients with questions about blockchain, crypto and taxation. Investors in crypto currencies face high uncertainty, making crypto investments less attractive. With the best practices put on paper by Van Moppes and Alaime in a language that anyone can understand, you are able to better protect your investments from unexpected tax issues.

TX
TUERLINCKX
TAX LAWYERS

tuerlinckx.eu

9 789464 369571