Taxation of Crypto Assets

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Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
E-mail: international-sales@wolterskluwer.com
Website: lrus.wolterskluwer.com

Sold and distributed by:
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Printed on acid-free paper.

ISBN 978-94-035-2350-7

e-Book: ISBN 978-94-035-2351-4
web-PDF: ISBN 978-94-035-2352-1

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Printed in the United Kingdom.

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Mexico

Ricardo Leon Santacruz & Jorge Lopez Lopez

1. COUNTRY GUIDES

1.1 Mexico

1.1.1 Applicable Tax Law, Guidance, and Case Law

(a) What laws, regulations, and other administrative guidance exist that deal with crypto assets?

On September 2018, the Mexican Congress enacted the Financial Technology Law (Fintech Law) with the purpose of regulating Financial Technology Institutions. This is the first Mexican normative framework that targets and regulates crypto assets. Nevertheless, instead of providing a general legal framework for crypto assets, the Fintech Law focuses mainly in regulating the use of crypto assets by Financial Technologies Institutions ('Fintech Institutions').

Fintech Law defines crypto assets as 'virtual assets' providing that a virtual asset is an electronic representation of value used as a medium of payment by the general public. In addition, crypto assets are clearly distinguished from foreign currency.[1]

Through General Regulations, the Mexican Central Bank has regulated the issuance and the transactions with crypto assets as follows:

(1) Authorized Fintech Institutions are allowed to use crypto assets only to conduct 'internal transactions'. Internal transactions are defined as any internal transaction carried out by the Fintech Institutions to conduct active,

1. Article 30 of the Fintech Law.

passive, and services activities with their clients. In addition, Fintech Institutions are not allowed to transfer, directly or indirectly, to its Clients any risk or exposure related to the internal transactions.

(2) Fintech Institutions are not allowed to exchange, transfer, or have the custody of crypto assets in transactions entered into with their clients.

(3) Subject to authorization, Fintech Institutions are allowed to make internal transactions with crypto assets that comply with the following characteristics:
   - They should be traceable units recorded in an electronic basis that does not represent the ownership of an underlying asset or, if they represent such ownership, the assets' value should be lower than the underlying assets.
   - They should have control protocols for asset issuance that can be subscribed by third parties.
   - They should control protocols that prevent the copy of the units that are available to be transferred at more than one time at the same moment.

(b) Which court cases exist dealing with crypto assets?

We do not know of any court cases dealing with crypto assets.

1.1.2 Income and Capital Gains Taxes

(a) How are crypto assets classified for income and capital gains tax purposes?

The Mexican Income Tax Law (MITL) does not provide special regulations for crypto assets. However, they cannot be considered as money or foreign currency, but crypto assets are treated as property. Hence, any transaction with cryptocurrency is governed by the applicable general income tax principles.

It is important to note that Monetary Law defines the Mexican peso as the official currency,[2] and although such law does not define 'foreign currency', the Fintech Law defines crypto assets as a virtual asset. In this regard, because no special rule for tax purposes is provided, crypto assets will be considered as assets, for tax purposes.

Since crypto assets are not treated as currency, no foreign currency gain or loss can result from dealing with such assets or from holding them.

Mexican tax law does not provide any characterization rule for securities referred to crypto assets or utility tokens. Therefore, to determine the character of such instruments, taxpayers should rely on general tax principles. Each instrument should be analysed in order to determine both the nature of the instrument and also the nature of its yields.

2. Article 1 of the Monetary Law.

In general terms, non-Mexican securities and utility tokens can be characterized as intangible property (if the instrument consists in contractual rights), shares (if the instrument consists of a participation in a vehicle that for Mexican purposes has legal personality), equity interest (if the instrument consists of a participation in a vehicle that for Mexican purposes lacks legal personality), or debt instruments (if the instrument consists of an unconditional obligation to repay).

The nature of the instrument will typically determine the nature of the yields. For example, if an instrument is characterized as a share, any yield will be treated as a dividend, but it if is characterized as a debt instrument, yields will be treated as interest.

(b) What are the income/capital gains tax consequences of selling crypto assets against fiat currency?

Mexican tax residents. For Mexican tax residents, selling crypto assets is a taxable event that can result in taxable gain or loss calculated on a net basis (i.e., sales price minus acquisition cost).[3] However, the treatment of the gain or loss is different for individuals and corporate taxpayers:

Individuals not engaged in a trade or business. The gain should be divided between the number of years that the taxpayer held the crypto asset, but not to exceed twenty years. The result of this operation should be accrued by the taxpayer as gross income in the fiscal year in which the sale takes place. The remaining gain, if any, is taxed at the election of the taxpayer, with the effective income tax rate of the taxpayer for the prior five fiscal years, or the effective tax rate of the year in which the sale took place.[4]

For example, if taxpayer A sells a crypto asset for Mexican pesos (MXP) 2,500 that she acquired five years ago for MXP 1,000.00, the tax burden for taxpayer A should be calculated as follows (for these purposes we are assuming an effective income tax rate of 25% for the last five years and an effective income tax rate of 35% for the year of the sale):

Net gain (Sale price – Acquisition cost)	MXP 1,500.00
Net gain taxed at a 35% income tax rate (Net gain per 5 years)	MXP 300
Income tax (1)	MXP 105
Net gain taxed at a 25% income tax rate (Net gain per 5 years)	MXP 1,200
Income tax (2)	MXP 300
Total income tax liability (1 + 2)	MXP **405**

Individual taxpayers are obliged to make advance income tax payments per each taxable transfer, be it a sale or exchange. Advance payments are calculated over a 20% income tax rate over the sales price in case of a sale, or the fair market value of the property received in case of a taxable exchange.

3. The acquisition cost should be adjusted for inflation.
4. Article 120 of the MITL.

It is important to note that the taxpayer is required to identify the acquisition cost of each crypto asset and to calculate the relevant gain upon each sale. If the taxpayer is selling only a fraction of the crypto asset, then the acquisition cost must be proportional to such fraction.

In case of loss, the taxpayer is not allowed to deduct it.

Corporate taxpayers and individuals engaged in a trade or business. All gain or loss derived from the sale of cryptocurrency accrues as taxable income. Corporate taxpayers must recognize such gain in the fiscal year of the sale, and individuals in the fiscal year in which the sales price is paid. Deduction of losses from dealing in crypto assets is allowed to the extent that the taxpayer can evidence that such dealings are ordinary and necessary for its business.

It is important to note that while corporate taxpayers can deduct the acquisition cost of the crypto assets only when such assets are sold,[5] individual taxpayers are required to deduct the acquisition cost in the fiscal year that the asset is purchased.

Finally, individual taxpayers are subject to a progressive tax rate of up to 35% and corporate taxpayers are subject to a flat rate of 30%.

FX gain and loss. It is important to note one of the main differences between crypto assets and foreign fiat currency. Mexican tax residents that hold foreign fiat currency are obliged to recognize the gain or loss from fluctuations in the FX exchange rate. However, holding a crypto asset is not subject FX rules and a gain or loss should not be recognized until a realization event occurs.

(c) *What are the income/capital gains tax consequences of exchanging crypto assets against other crypto assets?*

MITL treats the exchange of property as a taxable event, meaning that two different transfers are taking place. For this purpose, the taxpayer takes the fair market value of the property received, namely, the crypto asset,[6] as the price paid. For purposes of calculating the gain or loss, the same rules as in section (b) above are applicable.

For future transactions, the fair market value of the crypto asset received will be its acquisition cost.

(d) *If a distinction is made between business assets and non-business assets, when does trading in crypto assets imply a trade or business?*

For Mexican tax purposes there is no distinction between business and non-business assets. However, for individuals there is a distinction for persons engaged in a trade or business. An individual's dealings with crypto assets might fall into this category if, according to federal business law, the transaction has a business nature.

5. To identify the assets that are sold they can elect to use any of the following accounting method: (i) first-in, first-out (FIFO); (ii) identify the cost; (iii) average cost; and (iv) estimated costs.
6. Article 17 of the Federal Tax Code.

According to the Federal Tax Code, a taxpayer is engaged in a trade or business to the extent that it conducts certain listed activities (industrial, agricultural, fishing, livestock sectors) or if the activities that he/she conducts have a business nature according to Mexican business law. General principles of business law characterize a transaction as a business transaction under three different criteria:

(i) Entity criterion. All transactions executed by *per se* businesspersons or entities are deemed to be business transactions, unless the transaction has a *per se* civil nature (i.e., leasing of residential property). In this regard, Fintech Institutions are considered business entities.

(ii) Subjective criterion. An entity or an individual is deemed to be a businessperson or entity if he/she is engaged in transactions with a speculative purpose. In most cases it is not clear whether trading with securities or crypto assets for investment purposes should qualify as business activity. Nevertheless, it is important to note that although income deriving from capital gains, dividends, or interest might come from a speculative transaction, its tax treatment might fall under a specific tax regime (i.e., a specific tax regime per each type of income) different from the tax regime provided for business transactions. As of today there are no relevant precedents that distinguish when a transaction should be considered to be a business transaction for tax purposes or when it should be governed by the specific tax regime for such type of income.

(iii) Objective criteria. Transactions related to a per se business instrument (namely, an instrument governed by any business law) are deemed to be business transactions. For example, any transaction involving shares of a business entity is regarded as a business transaction.

Notably, in the case of individual taxpayers there is not a clear line between the treatment of income that is specially regulated by the MITL (i.e., dividends, interest, and capital gains), and the treatment of business income where the taxpayer derives the same items of income as part of its business activities.

(e) What are the income/capital gains tax consequences for an employee receiving wages or salaries in crypto assets?

The fair market value of the crypto asset received will be taxed as compensation for subordinated services or salary. It is important to note that the payor of wages is required to withhold the applicable income tax, so employers must transfer to employee the relevant cryptocurrency with a fair market value equivalent to the salary minus the applicable income tax.

(f) *What are the income/capital gains tax consequences for a merchant receiving payment in crypto assets?*

Since crypto assets are considered neither as money nor as a foreign currency, any trading that involves the use of crypto assets is treated as a taxable exchange, meaning that, for tax purposes, two properties are exchanged. Seller should consider the fair market value of the crypto asset received, as consideration received. Consequently, the seller taxpayer (individuals and corporations) will be allowed to deduct the cost of goods sold.

As pointed out in section (d), there is not a clear line between the business income and the other regimes applicable to special types of income (i.e., capital gains). Therefore, if the trading of an individual taxpayer is not construed as a business activity, instead of accruing the fair market value of the crypto asset received and deducting the cost of goods sold, such taxpayer should calculate a net gain as indicated in section (b) above.[7]

Individual taxpayers are obliged to make advance income tax payments per each taxable transfer, be it sale or exchange. Advance payments are calculated at a 20% income tax rate over the sale price, in case of a sale, or the fair market value of the property received, if a taxable exchange. The taxpayer cannot deduct any losses.

Finally, as previously pointed out, individual taxpayers are subject to a progressive tax rate of up to 35% and corporate taxpayers are subject to a flat rate of 30%.

(g) *What are the income/capital gains tax consequences of a loss of crypto assets?*

Only corporate taxpayers are allowed to deduct the loss of crypto assets to the extent that such crypto assets are used in their trade or business. If the crypto asset is part of the inventory (namely, the taxpayer holds the crypto assets for trading purposes), such taxpayer shall deduct the acquisition cost according to the rules applicable to the determination its COGS.[8] If the crypto asset was held for investment purposes, the taxpayer is allowed to deduct the adjusted basis in the tax year in which the loss was sustained.

In the case of individuals that are not engaged in a trade or business, the loss of a crypto asset is not allowed. For individual taxpayers engaged in a trade or business, if the taxpayer holds the crypto asset as part of the inventory, since they are subject to a cash basis accounting method, no deduction is granted for the loss of such asset, because the acquisition of it was already deducted.[9] If the crypto asset is held for investment purposes, then there is no deduction allowed for the loss of the crypto asset. This is true also if the taxpayer receives a crypto asset in a taxable transaction.

7. Article 120 of the MITL.
8. To identify the assets that are sold, they can elect to use any of the following accounting methods: (i) FIFO; (ii) identify the cost; (iii) average cost; and (iv) estimated costs.
9. Section 103 of the MITL.

(h) What are the income/capital gains tax consequences of a loss in value of crypto assets?

Because the Mexican income tax law requires a realization event to trigger any tax consequence related to assets, the loss in value of a crypto asset does not trigger any tax consequences.

It is important to mention that in the case of corporate taxpayers, the MITL only provides a deduction for physical inventory if the value of it has been lost, and the deduction is subject to compliance with certain conditions, such as filing a notice before the Mexican tax authority and destroying such inventory. Therefore, for intangible inventory it is not clear whether this deduction is available.

(i) What are the income/capital gains tax consequences of forks of crypto assets?

MITL does not provide a specific treatment for forks. However, a fork will not be a taxable event to the extent that the fork does not result in the creation of a new crypto asset. If the fork results in the creation of a new crypto asset, such fork can be considered as a taxable exchange, through which the taxpayer gives up the original asset and receives a new one. In such case, the rules applicable to taxable exchanges will be applicable (section b).

Since there are no regulations for these types of transactions, the technical issues pertaining to the fork become extremely important to determine whether the fork results in an exchange or an update. In the absence of any regulatory framework, we cannot anticipate what elements should be considered in order to determine in which cases a fork can derive in a variation of the same asset or in a completely different asset. Elements such as the change in the code, alterations in value, etc., might be taken into consideration.

(j) What are the income/capital gains tax consequences of airdrops of crypto assets? Are the tax consequences different if the airdropped tokens are unwanted?

If any type of taxpayer receives crypto assets free of charge, such airdrop will be a taxable event through which the taxpayer should recognize the fair market value of the crypto asset received as taxable income.[10] The acquisition cost for the crypto asset received is its fair market value included in the taxpayer's taxable income.[11]

It is important to note that if upon an airdrop the taxpayer is required to conduct any service or pay any amount, the transaction would be characterized as an acquisition. Therefore, these types of airdrops will be a taxable event to the extent that the fair market value of the crypto asset received exceeds the value of the price paid, or

10. Article 130 of the MITL.
11. Article 124 of the MITL.

the service rendered. In these cases, the price paid or the value of the services will be part of the acquisition cost of the crypto asset.[12] For individual taxpayers any difference of less than 10% does not trigger a taxable event,[13] and such difference should be included in the gross income of the taxpayer that received the crypto asset.

(k) What are the income/capital gains tax consequences of (solo, pool, and cloud) mining?

Mining is a taxable event, even though mining can be characterized either as compensation for services or as a taxable acquisition. In both cases, the taxpayer is required to recognize income at the fair market value of the crypto assets received from the mining activities, using such value as the acquisition cost for further transactions. If the taxpayer can show that its regular business activity is mining, it will be allowed to deduct all the expenses related to such activity; otherwise, no deduction will be allowed. It is important to note that although services might be considered as a trade or business, for income tax purposes, independent services (as opposed to labour services) fall into a separate tax regime.

In solo mining, the taxpayer should recognize the full value of the crypto asset received, while in pool mining, the taxpayer should recognize its allocable share of such value. The same rules apply to cloud mining. However, it is likely that in this case, the fees paid to the mining company can be deducted by the taxpayer.

(l) What are the income/capital gains tax consequences of staking crypto assets?

Staking would be a taxable event to the extent that the user receives a crypto asset. Like mining, staking can be characterized as compensation for services or as a taxable acquisition. In both cases, the taxpayer is required to recognize as income the fair market value of the crypto assets received from the mining/staking activities and such value will be the acquisition cost for further transactions. If the taxpayer can support that its regular business activity is staking, it will be able to deduct all the expenses related to such activity; otherwise, no deduction will be available.

(m) What are the income/capital gains tax consequences of an indirect investment in crypto assets?

The treatment will depend on the type of vehicle through which the investment is undertaken. In general terms we can classify the different types of investments as follows:

12. By taxing the airdrop in exchange for services rendered to the extent of the difference of the fair market value of the crypto asset over the fair market value of the services, the MITL is indirectly taxing the services.
13. Article 130, section I of the MITL.

(1) Mexican corporations. If the investment is conducted through shares of a Mexican corporation, for all tax purposes the investment will receive the treatment applicable to shareholders, meaning that any sale of such shares, except for buybacks, will be taxed on capital gains. Buybacks will be treated as a partial liquidation, and distributions from the corporation will be treated as dividends or capital redemptions.
(2) Controlled foreign corporations (CFCs). If the investment is conducted through a foreign corporation (a foreign entity with legal personality) treated as an opaque taxpayer and that is controlled by the taxpayer,[14] such taxpayer will be subject to an anti-deferral regime and will be obliged to recognize as taxable income the net taxable income of the relevant fiscal year. This regime does not apply if the relevant foreign corporation derives at least 80% of its gross income from business activities, so an analysis should be done on a case-by-case basis.
(3) Non-controlled foreign corporations. If the investment is conducted through shares of a foreign corporation for tax purposes, the investment will receive the treatment applicable to shareholders of a foreign corporation, meaning that any alienation of such shares, except for buybacks, will be taxed as a capital gain on the net capital gain. Buybacks will be treated as a partial liquidation, and distributions from the corporation will be treated as dividends or capital redemptions.
(4) Transparent foreign corporations and any other transparent entity. As with CFCs, if the investment is conducted through transparent vehicles, the relevant taxpayer is required to recognize as taxable income any income or gain derived through the investment vehicle. Unlike CFCs, where the taxpayer is required to anticipate the net taxable income derived by the vehicle in the relevant fiscal year, an investment trough transparent vehicles requires the taxpayer to recognize as a taxable event each transaction separately, as if directly conducted by the taxpayer.

From a Mexican perspective, each type of investment vehicle should be analysed and classified according to the prior classification. Hence, for example, an ETF can be characterized as either a transparent vehicle or a foreign corporation, depending on the tax laws of the country in which such ETF has its tax residency.

To determine whether a foreign vehicle will be treated as a foreign corporation or as a transparent entity or legal arrangement the following rules are applicable:

(1) Foreign corporation. All entities that have legal personality, in accordance with the laws in which they are incorporated, will be treated as foreign corporations.

14. Special rules for determining control are in force as of 1 Jan. 2020.

(2) Legal arrangement. All entities that lack legal personality, in accordance with the laws in which they are created, will be treated as transparent legal arrangements.
(3) Tax transparent entities. A foreign entity will be treated as tax transparent, to the extent it is not a taxpayer and that income derived by such entity is assigned to its members in accordance with the laws in which it was organized or in the country where it is effectively managed.

(n) How is income from crypto assets to be treated under double tax treaty law?

It is important to mention that according to MITL, aside from certain royalties, any other capital gains or profits deriving from the alienation of intangible assets, the sale of goods is not income sourced in Mexico. Consequently, a foreign tax resident without a permanent establishment in Mexico would not trigger any Mexican source income from trading with cryptocurrency.

Therefore, since the transfer of crypto assets is not sourced in Mexico for income tax purposes, it is not relevant to classify such deal under the relevant provisions of the tax treaty. For example, a non-Mexican tax resident selling a crypto asset to a Mexican tax resident will not be subject to income tax in Mexico and hence no tax treaty will be applicable.

On the other hand, if a non-Mexican tax resident renders services in Mexico (including mining and stalking) and receives crypto assets in payment for such services, such payment will be sourced in Mexico as a service, but the nature of such will remain as services income. It is important to note that, for income tax purposes there are no rules to determine in which cases any digital service is rendered within Mexico. Of course a physical presence in Mexico while the services (including mining and stalking) are rendered would be deemed to be rendered in Mexico, but there is still a lot of uncertainty in the MITL with respect to this type of digital services.

(o) What are the income/capital gains tax consequences of selling crypto assets in an ICO/STO/IEO?

ICO. Unlike IPOs, an ICO is a taxable exchange for the issuer, so all the proceeds from the sale of the crypto assets should be recognized as taxable income.

STO. The tax treatment depends on the underlying security that is traded. If the underlying security is stock or corporate bonds, the issuer should not recognize any income from the recipient of the funds.

For traders, selling crypto assets in an STO is treated as dealing with other types of securities. It is important to mention that, although the Fintech Law regulates Financial Technology Institutions, such entities are not part of the financial system for tax purposes. Consequently, such entities are not subject to the special tax regime applicable only to Financial Institutions, and hence, when dealing with crypto assets,

the rules described below will also apply to Financial Technology Institutions and in general to any broker and dealer.

IEO. Like ICO, an IEO is a taxable exchange for the issuer, so all the proceeds from the sale of the crypto assets should be recognized as taxable income. For the crypto exchange company, dealings with crypto assets fall under the same rules previously described for sales or taxable exchanges.

1.1.3 Other Taxes

(a) What are the value added tax/sales tax consequences of selling crypto assets?

Like income tax, for Value Added Tax (VAT) purposes, crypto assets are treated as intangible property. Hence, receiving crypto assets as payment in consideration for a sale is treated as a taxable exchange of property. When services are paid with crypto assets, the service provider is receiving compensation in kind and the client is transferring an asset.

Now, Mexican VAT law taxes only the transfers of property conducted within Mexico. In the case of intangibles such as crypto assets, a sale is deemed to be performed within Mexico if both the transferor and transferee are Mexican tax residents. Hence, only transfers conducted between Mexican residents will be subject to 16% VAT. Please note that because paying to a merchant with crypto assets is a taxable exchange, such 'payment' will be subject to VAT to the extent that both parties are Mexican tax residents.

In addition, sales of intangible property such as crypto assets are subject to a 0% tax rate[15] to the extent that the transfer is conducted by a Mexican tax resident to a non-Mexican tax resident. Again, where a Mexican tax resident makes a payment with crypto assets to a foreign tax resident, a 0% VAT rate would be applicable.

(b) Are payments in crypto assets subject to withholding taxes?

There are no special withholding taxes or rates applicable to payments in crypto assets. However, the regular withholding tax rates for any federal tax will still apply even if the payment is made in kind. In this case, the Federal Tax Code provides that the recipient of the payment must provide to the withholding agent the funds required to pay the relevant tax.[16]

15. The 0% VAT rate does not trigger any economic burden to the taxpayer or the client, but allows the taxpayer to credit the input VAT related to the taxable transaction (which would not be creditable if the transaction were VAT exempted).
16. Section 6 of the Federal Tax Code.

(c) Does payment of compensation in crypto assets give rise to payroll tax consequences?

Payroll taxes are imposed by local states on employers. As of today there is no payroll tax imposed on employees. In most legislations, any compensation paid in kind is includable in the basis of the payroll tax. This should include payments in crypto assets. However, this assessment must be made by each local legislation.

(d) Do transactions with crypto assets trigger any transfer taxes?

Aside from income tax and value added tax, if any, no other Mexican taxes apply to crypto asset transactions.

(e) Are firms operating in crypto space subject to digital service taxes?

There is no digital services tax imposed in Mexico.

(f) Are crypto assets subject to gift, inheritance, estate, or wealth taxes?

Inheritances are exempt from income tax for both the decedent and the beneficiary. Beneficiaries receive a carryover basis in any property bequest.

For donor, gifts are not a taxable event for corporations for individuals, but the deduction of property gifted is not allowed. For the donee a gift will be taxed unless received from his/her spouse, descendants, or ascendants. Hence, in the presence of a taxable gift of a crypto asset, donee should recognize taxable income in the amount of the fair market value of such asset.

(g) Are crypto assets subject to exit tax?

Corporate taxpayers. MITL provides that upon the change of tax residence of a Mexican tax resident corporation, it is deemed that such corporation is liquidated and that it sold all its assets at a fair market value.[17] Hence, a corporation owning crypto assets upon migration to a different jurisdiction should recognize a gain or a loss for the difference of the acquisition cost of the crypto asset and its fair market value.
Individual taxpayers. MITL provides that upon the change of tax residence of a Mexican tax resident individual, any advance income tax payment is construed as definitive.[18] However, an individual would be deemed to be a Mexican tax resident for three years following a migration, if he/she migrates to a preferential tax regime (namely, a jurisdiction where an income tax is not imposed or its effective tax rate is

17. Section 12 of the MITL.
18. Section 90 of the MITL.

lower than the 75% of the Mexican effective tax rate) with which Mexico does not have in place a broad exchange of information treaty.[19]

(h) Can mining trigger gambling tax?

Mexican Excise Tax Law[20] taxes only the person who organizes gambling activities and raffles that require governmental authorization and contests that require the use of electronic and visual images. Hence, because mining is a non-regulated activity that does not require any authorization from the government, and because mining does not require any visual image, mining activities are not subject to the Excise Tax.

1.1.4 Compliance and Documentation Obligations

(a) What documentation requirements exist for taxpayers regarding crypto assets and are there best practices in recordkeeping to support representations made in tax returns?

Aside from general tax documentation requirements, no specific documents are required for crypto assets. However, it is important to mention that to conduct any deduction or crediting of any VAT, all Mexican tax resident taxpayers should obtain from the relevant provider an electronic tax invoice if the provider is also a resident of Mexico or a tax invoice that contains certain specific information if the provider is not a Mexican tax resident.

(b) What is the evidentiary burden of supporting tax positions when a digital wallet address is lost or shared with other persons?

Taxpayers have the burden to prove any loss sustained. Now, given the nature of the asset, it is advisable to have an expert witness opinion that provides the technical explanations that support the loss of the wallet and the consequences of it. From a technical perspective, losing access to the crypto assets does not mean that the asset disappeared or that it no longer exists. Therefore, it is important to evidence that losing such access is equivalent to losing the asset.

(c) Are crypto asset exchanges and wallet providers subject to reporting obligations?

In September 2018, the Anti-Money Laundering Law was amended to consider the exchange and custody of crypto assets as vulnerable activities as of April 2020.[21] Consequently, all dealers and custodians of crypto assets conducting such activities

19. Section 9 of the Federal Tax Code.
20. Article 2, section II, subsection b) of the Mexican Excise Tax Law.
21. Article 17, section XVI of the Anti-Laundry Law.

within Mexico are required to set up a file of each of their clients and to file informative returns in a monthly basis. Among the information to be submitted, the Fintech Institutions must include the following:

(1) Information related to the Fintech institution (name, address, phone, etc.)
(2) Information related to the client (Name, tax ID, nationality, age, profession, etc.)
(3) Information related to the transaction:
    (a) name of the crypto asset;
    (b) exchange rate of the crypto asset in Mexican Pesos, at the moment of the transaction;
    (c) quantity of the operation;
    (d) operation hash;
    (e) date of the transaction; and
    (f) place of the transaction.

(d) Are taxpayers holding crypto assets subject to reporting obligations apart from the filing of income tax/capital gains tax returns?

Corporate taxpayers and individuals engaged in a trade or business are required to file their financial statements with the tax authority. For these taxpayers it is required to report any asset (including crypto assets) through their financial statements. Aside from this, there are no additional reporting obligations.

(e) Are crypto asset exchanges and wallet providers subject to CRS/FATCA reporting?

Although there is no special regulation for reporting crypto assets under the domestic legal framework implemented to comply with CRS and FATCA, if a financial institution for tax purposes offers investments in crypto assets, such financial institution is obliged to report this information to the Mexican tax authority. It is important to note that the Financial Technology Institutions are not part of the financial system for tax purposes, so according to the Federal Tax Code, such entities have no reporting obligation in the FATCA and CRS context.

1.1.5 Civil and Criminal Tax Enforcement

(a) What powers do the tax authorities have to compel the disclosure of information by third parties, such as exchanges or wallet providers, and have these been used in the past?

During an audit process the tax authorities have full powers to require third parties to disclose any transaction made with the relevant audited taxpayer. This power is

broadly used by the tax authority. However, we do not know of any particular case in which the tax authority has required of a third party the disclosure of any information related to crypto assets.

(b) What measures have the tax authorities undertaken in the past to ensure crypto tax compliance?

In September 2018, the Anti-Money Laundering Law was amended to consider the exchange and custody of crypto assets as vulnerable activities as of April 2020.[22] Consequently, all dealers and custodians of crypto assets conducting such activities within Mexico are required to set up a file of each of their clients and file informative returns on a monthly basis.

(c) Are the tax authorities cooperating with tax authorities in other jurisdictions on enforcement?

In the context of CRS and FATCA, Mexico is very cooperative with other jurisdictions. However, as pointed out in section 1.1.4(e), there is no specific provision that requires special reporting for crypto assets.

22. Article 17, section XVI of the Anti-Laundering statute.