

New tax regime applicable to investments in cryptocurrencies in Italy

11 May 2023

Author

**Alessandro
Borsetto**

Partner



In this document we summarise the main contents of the new tax regime for crypto-assets introduced by the Law No. 197 of 29 December 2022¹ (the “Italian 2023 Budget Law”).



1. Income tax regime for individuals that are not entrepreneurs

- 1.1. **Scope of application of the new regime** – The Italian 2023 Budget Law introduced a new tax regime for individuals (persone fisiche) that are not entrepreneurs (imprenditori) by providing for a taxation of any “*capital gains and other income realized through the reimbursement or sale against a consideration, swap or holding of crypto-assets, regardless of their denomination*”. This type of capital gains is considered to be a form of “other income” (redditi diversi) under the Italian income tax regime. For the purpose of the above provision, “*crypto-assets*” are defined as any “*digital representation of value of rights which can be transferred and memorized electronically, by using distributed ledger technology or a similar technology*”.
- 1.2. **Substitute tax** – The capital gains / other income realized by individuals that are not entrepreneurs as a consequence of the transactions referred to under para. 1.1 above are subject to a 26% substitute tax. Income deriving from crypto-assets is therefore considered to be income having a financial nature.
- 1.3. **Conditions triggering the application of the substitute tax** – The Italian 2023 Budget Law also provides that:
 - a. capital gains are subject to taxation only if their aggregate value in the relevant calendar year is at least equal to Euro 2,000;
 - b. the swap between crypto-assets having the same characteristics and functions is not subject to taxation.



lexia.it



Individuals who are not entrepreneurs and make money from transactions related to crypto-assets are subject to a 26% substitute tax on their capital gains and other income.

¹ Article 1, para. 126-147 of the Italian 2023 Budget Law.

As a consequence of the provision mentioned under (b) above, for instance, if a taxpayer has sold bitcoin against ether realizing a capital gain, this capital gain will not be taxable. Conversely, if a taxpayer has sold bitcoin against an NFT, any capital gain resulting from this transaction will be subject to taxation in Italy, because the NFT has not the same function as bitcoin.

- 1.4. **Criteria to calculate the capital gain and exclusion of any deductions** – Under the new provisions introduced by the Italian 2023 Budget Law capital gains are calculated as the difference between (i) the payment received or the “normal value” of the exchanged assets, and (ii) their cost or acquisition value. The normal value is the average price² charged for crypto-assets of the same category.

The capital gains are summed up with any capital losses realized in the same period. If the capital losses exceed the capital gains for an amount that is higher than Euro 2,000, the exceeding loss may be entirely deducted from the capital gains realized in the subsequent calendar years (up to the fourth year) provided that the capital loss is indicated in the tax statement related to the period when the loss occurred³.

The cost or acquisition value of the crypto-assets must be documented on the basis of precise and certain elements under the responsibility of the taxpayer. If this is not the case, the cost or acquisition value is assumed to be equal to zero.

- 1.5. **Income deriving from the holding of crypto-assets** – The Italian 2023 Budget Law specifies that the income derived from the holding of crypto-assets received by the taxpayer during the relevant calendar year is subject to taxation at a 26% substitute tax without any deduction (e.g. cost of management fees).

It is not entirely clear what is the scope of application of this provision. Pending the issue of appropriate guidance by the Italian Tax Authority, it might be that the substitute tax applies to any income deriving from the holding of crypto-assets regardless of any transaction made on them (e.g. staking of crypto-assets).

- 1.6. **Timing for the application of the new provisions** – The tax regime mentioned above is also applicable to capital gains realised before 1 January 2023. The tax losses realized before that date can also be deducted from the subsequent capital gains.



Income earned from holding crypto-assets is taxed at a 26% substitute tax rate, without any deductions. While this tax may apply to all income earned from holding crypto-assets, it is currently unclear. Further guidance from the Italian Tax Authority is needed to provide clarification.

2. Application of the new tax regime

² According to the Italian Tax Authorities, it is the “value corresponding to the quotation of the bitcoins at the end of the financial year. For this purpose, reference could be made to the average of the official quotations found on the online platforms where bitcoin trading takes place”.

³ The Italian 2023 Budget Law also specifies the criteria to determine the value of the crypto-assets in case of inheritance or donation.

2.1. **Regimes applying under Italian law** – Another important amendment introduced by the Italian 2023 Budget Law relates to the regimes that can be applied in order to apply the substitute tax. In this respect, it must be remarked that under Italian law three regimes are available for the taxation of financial income (redditi diversi di natura finanziaria).

The three regimes differ with respect to the allocation of the responsibilities between the investor and the financial institution used for the purpose of making the relevant investment, as well as with respect to the timing when the taxation is applied and the treatment of capital gains and losses, as per the following summary:

- a. **Self-declaration regime** (regime dichiarativo) – under this regime the investor must make all declarations and comply with all other obligations that are connected with the taxation of the relevant income or gain. The taxpayer must pay the substitute tax on the basis of the declaration prepared by the taxpayer itself with respect to the calendar year when the gain or income was realized. Any capital losses can be used to offset any subsequent capital gains until the expiry of the fourth subsequent calendar year.
- b. **Administered savings regime** (regime del risparmio amministrato) – this regime applies when the investor opens an account with an authorized financial institution without entrusting the latter with the duty to manage its savings. In this case the investor has also the option to delegate the fulfilment of all tax obligations to the relevant financial institution. The financial institution calculates the tax due for each transaction made by the investor and pay such amount to the Italian tax authority. The taxes are paid only on the capital gains realized by the investors and it is possible to off-set capital gains and losses subject to certain conditions and limitations. The taxes are applied upon completion of each transaction (rather than upon submission of the annual tax declaration).
- c. **Managed savings regime** (regime del risparmio gestito) – this regime applies in case of a financial institution managing the assets of an investor on the basis of a portfolio management mandate. Any taxes due by the investor are paid by the financial institution on the basis of the net result (risultato netto) of the portfolio – which is calculated by comparing the value of the portfolio at the beginning and at the end of the relevant financial year. All tax obligations are fulfilled by the financial institution on behalf of the investor. While in the other cases the taxes are applied at the time when a “cash event” occurs (per cassa), in this case the taxes are applied on the basis of the value of the assets in the relevant time period (per competenza). This is the only regime that allows the investor to off-set capital gains and losses



Self-declaration regime, administered savings regime, and managed savings regime are taxation options for crypto-assets that depend on on investor-financial institution responsibilities and capital gain/loss treatment.

realized with respect to capital income (redditi di capitale) and other financial income (redditi diversi di natura finanziaria). Only financial institutions providing portfolio management activities can apply this regime.

2.2. Amendments applicable to investments in crypto-assets: the administered savings regime – The Italian 2023 Budget Law introduced the possibility to opt for the substitute tax regime also with respect to investments in crypto-assets.

The most important amendment is however related to the possibility for investors to opt for the administered savings regime also if the crypto-assets are held with virtual asset service providers (“VASPs”) operating in Italy in accordance with the applicable regulatory framework.

It follows from the foregoing that Italian VASPs will be allowed to apply the substitute tax in line of the investors – and provided that the investors exercise this option – in line with the practice followed by other financial institutions (e.g. banks, investment firms, etc.) for investments in other assets (e.g. shares, bonds, ETFs, etc.).

This option could simplify the fulfilment of the relevant tax obligations by the VASP’s customers, as the investors will not have to calculate and report the capital gains / losses realized by them in their own tax declaration and pay the applicable taxes accordingly – i.e. any tax will be calculated and applied directly by the VASP.

The Italian 2023 Budget Law specifies that VASPs are included in the list of entities that:

- a. must directly pay the taxes due by the taxpayer to the relevant authority. The payment must be made within the 15th day of the second month following the month when the tax was applied. The amount can be deducted from the money of the customer (or the VASP can ask the customer to transfer the corresponding amount to allow the VASP to make the payment);
- b. must communicate to the relevant authorities the aggregate amount of the capital gains and other income as well as the substitute taxes applied in the previous calendar year (such communication to be made within the deadline applicable to the declarations that must be made by the entities operating as withholding agent / sostituto d’imposta).

2.3. Additional provisions on the administered savings regime – The Italian 2023 Budget Law specifies that if the entities responsible for the payment of the substitute tax do not have the data and information that are necessary to pay such tax, then the taxpayer must provide the relevant documentation, in the absence of which the taxpayer cannot submit a self-declaration (by way of derogation to the rules that generally apply to other financial income).



*Investors can choose the administered savings regime even if they hold their crypto-assets with Italian VASPs. **Check out more** on VASPs regulation in Italy.*



The Italian 2023 Budget Law also specifies the criteria to be followed in order to calculate the substitute tax, as well as the cases where there is a transfer of crypto-assets potentially triggering a taxation.

- 2.4. **Amendments to the managed savings regime** – The Italian 2023 Budget Law recognizes the possibility to opt for the managed savings regime with respect to investments in crypto-assets as well. The value of the crypto-assets will accordingly contribute to the calculation of the value of the portfolio at the beginning and at the end of the relevant calendar year, in accordance with the criteria specified in the Italian 2023 Budget Law. As noted above, however, the application of the managed savings regime is not possible in case of VASPs.

3. Income Tax Regime for individuals that are entrepreneurs

- 3.1. **Regime applying to entrepreneurs** – In the case of entrepreneurs, crypto-assets are considered business income, i.e. the economic profit realized through a business, which is equal to the positive and negative income components of the relevant business entity. The Italian 2023 Budget Law stipulates that the positive and negative components resulting from the valuation of crypto-assets at the end of each calendar year do not contribute to the formation of the taxable income – for the purpose of the Italian income tax on business entities (IRES) and the regional income tax on business entities (IRAP). The provision is aimed at avoiding that any fluctuations in the value of the crypto-assets may affect the taxable income of the entrepreneur.

The above provision is without prejudice to the need to calculate the income generated by any sale or exchange transaction concerning the crypto-assets.

4. Re-determination of the value of crypto-assets

- 4.1. **Special rule for crypto-assets held as of 1 January 2023** – In order to determine the capital gains and losses referred to in paragraph 1 above, taxpayers may redetermine the value of crypto-assets held as of 1 January 2023 by paying a substitute income tax of 14% (instead of quantifying the capital gains and losses taking into consideration the cost or purchase value of the crypto-assets). The optional regime can cover each type of crypto-assets, and the taxable base of the substitute tax is represented by the “normal value” of the crypto-assets as of 1 January 2023. The capital losses resulting from the application of this exceptional regime cannot be used to off-set the capital gains in accordance with the regime summarised in the paragraphs above.



Crypto-assets are considered business income for entrepreneurs, which means it's the profit gained through their business, including both positive and negative income components.

4.2. **Timing for the payment of the substitute tax** – The 14% substitute tax must be paid:

- a. in a single instalment by 30 June 2023; or
- b. in three equal instalments, the first of which will be due on 30 June 2023 (while the payment of the others will be subject to an annual interest rate of 3%).

6. Sanatorium of past violations

6.1. **Failure to declare holdings of crypto-currencies in the past tax returns** – Individuals (as well as non-commercial entities and partnerships) resident in Italy that did not declare the crypto-assets held by 31 December 2023 in their tax returns (and in particular in the disclosure form of the tax return, the so-called “RW Form”), as well as the deriving income, can benefit from a sanatorium introduced by the Italian 2023 Budget Law.

6.2. **Application of the sanatorium** – In particular, for the purpose of the sanatorium referred to above:

- a. if the taxpayer did not receive any income out of the crypto-assets held by it in the relevant calendar year, but at the same time did not report such crypto-assets in the RW Form, the taxpayer must pay a penalty equal to 0.5% of the value of the assets that were not disclosed for each calendar year in respect of which the disclosure was not made;
- b. conversely, if the taxpayer received an income out of those assets in the relevant calendar year, the taxpayer must pay:
 - i a “substitute tax” equal to 3.5% of the value of the assets held at the end of each calendar year or at the time of their sale; and
 - ii an additional charge of 0.5% applied to the value referred to above (as penalties and interest).



The Italian 2023 Budget Law now requires reporting on transfers involving crypto-assets to virtual asset service providers (VASPs) operating in Italy as well.

7. Other provisions

7.1. **RW Form** – Crypto-assets are now expressly included among the reportable assets in the RW Form.

7.2. **Reporting obligations** – The Italian 2023 Budget Law included transfers concerning crypto-assets in the list of transfers made to foreign countries (or from foreign countries) which are subject to reporting obligations. These reporting obligations apply to transactions having a value of at least Euro 5,000. **The obligations apply also to VASPs operating in Italy.**

7.3. **Stamp duty** – **As of 1 January 2023, crypto-assets are subject to stamp duty (imposta di bollo) at a rate equal to 2 per thousand of the related value.**



The tax applies with respect to all relationships concerning crypto-assets. The timing and modalities for the payment of the stamp duty are the same as those that apply to the stamp duty in accordance with the applicable tax provisions.

7.4. **IVAFE** – Finally, the Italian 2023 Budget Law specifies that transactions crypto-assets are subject to the tax on financial assets held in foreign countries (IVAFE).

This document is not a legal memorandum or opinion and is limited to the tax issues referred to above. It must not be relied upon for any reasons whatsoever for the purpose of taking any decision, making any analysis or recommendation, issuing any guidance or instruction, or making any declaration to the relevant authorities (including, without limitation, any tax authorities) in connection with the taxation of investments in crypto-assets under Italian law.

This document is not aimed at providing a comprehensive overview of all tax requirements and obligations that would apply in connection with investments in crypto-assets, and is confined to the tax issues arising under Italian law.

The considerations outlined in this document relate to the tax laws in force as of the date indicated above. We do not undertake to update this document nor to inform the addressees thereof of, or advise such addressees on, any changes in the law or in the interpretation of such laws and regulations following the date of this document.