

# Tax regime for cryptoassets: Italian Tax Authorities” new circular letter out now

4 November 2023

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On October 27th, 2023, the Italian Tax Authorities issued Circular Letter no. 30/2023 (referred to as the “Circular”), providing clarifications on the tax treatment of cryptoassets as introduced by Law No. 197/2022 (commonly known as the “Budget Law 2023”).



Starting from 2023, the inclusion of cryptoassets within the form RW (“Form RW”, which is the section of the tax return where individuals must report financial and real estate assets held abroad) is explicitly mandated by Article 4 of Law Decree No. 167/90.

In line with prior clarifications issued in response to ruling requests, the reporting requirement for cryptocurrencies in the Form RW remains in place, as well as for all other types of cryptoassets held through “wallets,” “digital accounts,” or alternative storage and filing systems. The Italian Tax Authorities provide operational instructions on how to complete the Form RW, obliging taxpayers to declare each “wallet,” “digital account,” or alternative storage and filing system they possess.

In contrast to the draft circular letter published in June, if a taxpayer can prove the loss or theft of private keys for cryptoassets by filing a complaint with a public security authority, these cryptoassets are not required to be reported in the Form RW. This clarification should also apply to investments in cryptocurrencies on exchange platforms that are no longer accessible due to bankruptcy or closure.

Regarding penalties as per Article 5 of Law Decree No. 167/90, the penalty doubling that applies to foreign financial assets in



tax havens does not extend to cases of omitted declaration of cryptoassets in the Form RW.

Concerning the territorial scope of the tax regime, the Circular explains how to apply the general principle that “income derived from assets within the Italian territory is subject to taxation for non-residents,” as stated in Article 23, paragraph 1, letter f) of the Italian Tax Code. The Italian Tax Authorities specify that cryptoassets are considered “within the Italian territory” if their access keys are held by intermediaries residing in Italy, or if these assets have a substantial connection with a resident intermediary. When cryptoassets (i.e., access keys) are directly held by the taxpayer through devices like USB keys, the income is considered to be generated in Italy if those devices are physically located in Italy. The Italian Tax Authorities presume these devices are in Italy if the person is an Italian resident, although this presumption can be challenged with contrary evidence.

Finally, the Circular provides some clarifications on the regularization procedure (the “Regularization Procedure”, which allows the regularization of undeclared cryptoassets and the deriving income for fiscal years spanning from 2016 to 2021. It involves the application of a 0.5% substitute tax for the cryptoassets and a 3.50% substitute tax for the income), scheduled to expire on November 30<sup>th</sup>, 2023. For instance, if undeclared income was generated only in specific years when the cryptoassets were held, the 3.5% substitute tax is calculated solely on the value of cryptoassets held during those years. However, there is no specific guidance on how to quantify the amount of cryptoassets when there are multiple purchases and sales of the same cryptocurrency within the same tax period.

The Regularization Procedure is available even when the sums invested in cryptoassets are associated with criminal offenses, including tax offenses under Legislative Decree No. 74/2000. Furthermore, the procedure is allowed, even if the taxpayer has received formal notification of inspection or assessment activities related to potentially regularizable assets.

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