

ENDOXA

Taxing the unregulated: Taxation of digital assets in Tanzania

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Introduction

Digital assets is a broad term that includes virtual currencies such as bitcoins, central bank digital currencies, tradable digital securities supported by blockchain or distributed ledger technology (DLT), crypto-assets, crypto-commodities and crypto-tokens, NFTs and other tokens.

The digital assets industry was not taxed in Tanzania until the Finance Act, 2024ⁱ introduced a withholding tax on payments to owners of digital assets exchange platforms and/or facilitators of exchange or transfers of digital assets. In this way, Tanzania followed the global trend of taxing digital assets market players including brokers, custodians and other intermediaries.

What is interesting is the fact that the blockchain, digital assets and digital custody industry remains unregulated in Tanzania, as is the case in most other African countries. This means there is no licensing or authorization requirement for owners of digital assets exchange platforms and/or facilitators of exchange or transfers of digital assets to operate in Tanzania.

As such, they are under no obligation to maintain a robust risk management framework or a robust governance framework. Further, no regulations exist which will compel them to meet specific prudential guidelines which would have minimized the risk of mismanagement of funds and protected digital asset holders. This is possibly one of the reasons that the Bank of Tanzania has cautioned the Tanzanian public against the trading, marketing and usage of cryptocurrencies, a form of digital assets, in Tanzania. The Bank of Tanzania's stand is likely to change when the industry is adequately regulated.

In the meantime, digital assets exchange platforms continue to operate openly in Tanzania, both remotely and through locally registered companies. They remain unregulated even though the trading of digital assets securities would fall under the regulatory supervision of the Capital Markets and Securities Authorities of Tanzania and the use of some type of digital assets as a currency would possibly fall under the regulatory supervision of Bank of Tanzania.

Coincidentally, the Anti-Money Laundering Act (**AML Act**) was amended in 2022ⁱⁱ to include virtual assets service providers (VASP) as a reporting person under the AML Act. Virtual assets are a type of digital assets. They have been defined in the AML Act as a **“digital representation of value that can be digitally traded or transferred and can be used for trade or investment purposes and is recognized by the Government of the United Republic of Tanzania and does not include digital representations of fiat currencies, securities or other financial assets that are already covered under the laws of Tanzania.”** The **term virtual assets service provider** has also been defined in that AML Act.2.

Recognition of VASP as reporting persons under the AML Act was not intended to give a green light for VASP to conduct business in Tanzania. It was one of the measures which were necessary to get Tanzania out of the Financial Action Task Force (FAFT) grey list which indicates weaknesses in Tanzania’s anti-money laundering policies and practices. However, it does highlight the fact that VASP need to comply with existing laws and that sector specific regulations is inevitable as is the need to establish an appropriate taxing system for digital assets stakeholders.

Taxing digital assets in Tanzania

Section 41 of the Finance Act, 2024 introduced a new Section 83C in the Income Tax Actⁱⁱⁱ. Section 83C introduced tax on the **“payment’ made by an owner of a digital asset exchange or a person who facilitates the exchange or transfer of a digital asset to a resident person** arising from an exchange or transfer of a digital asset at a rate of 3%.

“Digital assets” is defined broadly to include

- (i) **“anything of value that is not tangible including crypto-currencies, token code, number held in digital form and generated through cryptographic means or any other means, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and**
- (ii) a non-fungible token or any other token of similar nature, by whatever name called.

The use of the word “**payment**” is expressed to mean “**the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset**”.

It is important to note that the tax is a withholding tax that owners of the platform or those who facilitate the exchange or trade of the digital asset are required to withhold and remit to the Commissioner of taxes on the 7th day of the following month with the other withholding taxes as well as filing the monthly return.

Implication of the digital assets tax for Tanzania

A lot of articles have been written about the recognition of digital assets for tax purposes and how this seemingly contradicts Bank of Tanzania’s (**BOT**) alleged stand against virtual currencies. We do not see such a contradiction

The public notice that was issued by BOT in November 2019,^{iv} commented on the risk associated with virtual currencies including cryptocurrency and reiterated that Bank of Tanzania was the sole authority mandated to issue legal tender in Tanzania. It did not touch on other forms of digital assets and their respective usages. Rather, BOT commented on the use of virtual assets as currency.

Interestingly, in January 2023, Bank of Tanzania issued another public notice informing the public that they are considering issuing a Central Bank Digital Currency (CBDC), which will be legal tender^v. Central Bank digital currencies are also digital assets.

In contrast, the Finance Act, 2024 has made digital assets a taxable asset class and is therefore taxing Digital Assets as a ‘property’. It did not refer to Digital Assets when used as a currency.

What remains to be seen is how feasible it will be for the Tanzania Revenue Authority to identify and enforce the digital assets tax from the local blockchain and digital assets industry while this industry remains unregulated and to enforce the tax regime on foreign digital assets exchange platforms.

It also remains to be seen how the local digital assets ecosystem players will react to a tax on the gross fair market value of consideration on a transfer or exchange of digital assets.

Perhaps it would have been easier to tax the digital asset owner with a capital gains tax (**CGT**) on the disposal of a digital assets rather than imposing a withholding tax on digital assets exchange platform owners and facilitators of digital assets transfers and exchanges. The Nigeria Finance Act, 2023 introduced a CGT of 10% on the disposal of digital assets.

Time will tell how efficient this tax regime will be in Nigeria. Unlike Tanzania, in Nigeria, trading in digital assets as security is regulated by the Securities and Exchange Commission (**SEC**) of Nigeria. The SEC issued the Rules on Issuance, Offering Platforms and Custody of Digital Assets in May 2022. This introduced registration requirements for digital assets offering platforms, digital assets custodians, rules on virtual assets service providers (VASP) and rules on issuance of digital assets. This means the Nigerian revenue authority can identify players in this ecosystem and users. Not surprisingly, the Central Bank of Nigeria has taken a more cautious approach to the use of digital assets as currency. Initially directing banks and financial institutions not to transact in virtual currencies, a form of digital assets, and to implement anti-money laundering controls^{vi}. Later, in 2021, the CBN prohibited banks from dealing in cryptocurrencies^{vii}. However, in June 2023, the CBN issued guidelines for banks holding VASP accounts^{viii}.

Lessons from East Africa

Tanzania is not the first country in Africa to introduce a tax on digital assets exchange platform owners and facilitators. The amendments made to Section 12F of the Kenyan Income Tax Act^x by the Kenyan Finance Act, 2023^x also introduced tax on the income derived from the transfer or exchange of digital assets (such as crypto currency transactions) at a rate of 3%. The wording of Section 12F of the Kenyan Income Tax Act is par material to Section 83C of the Tanzanian Income Tax Act as amended by the Tanzanian Finance Act, 2023.

It is important to note that the Kenyan digital asset tax is one of the new taxes introduced in the Finance Act, 2023 which remains valid but is facing a constitutional challenge in Kenya.

In July 2024, the Court of Appeal of Kenya issued a judgement in the case of **National Assembly & Another v Okiya Omtatah Okioti & 55 Others** in which they declared the Kenyan Finance Act, 2023 as null and void for procedural irregularities including failure to provide reasons for disregarding public comments on the Finance Bill, 2023 and inclusion of clauses which had not been included in the Finance Bill, 2023. In August 2024, the Supreme Court issued a stay of execution pending an appeal lodged by the National Assembly of Kenya and others.

Conclusion

With the growth of innovation in Tanzania, it is undisputed that businesses and transaction are increasingly becoming more digital. Therefore, regulating digital services, and particularly the digital assets industry, is inevitable, including for the purpose of protecting consumers. Whether or not it should be a priority over all the other pressing issues of financial inclusion for Bank of Tanzania and/or the Capital Markets of Tanzania is something only the affected regulators could decide.

What is also clear is that the increasing usage of digital assets necessitates the need for the government to expand its tax base to digital services including those pertaining to digital assets. Given the complexity and diversity of the digital assets subsector, it is important for digital assets service providers and other key industrial stakeholders to maintain a proactive dialogue with legislators and authorities so they can take part in shaping how this subsector will be regulated and ensure that an appropriate tax framework is put in place that balances the revenue authorities objectives of enhancing the tax base without putting undue burdens on the taxpayers.

Endnote

- i Finance Act of 2024 (Act No. 6 of 2024) of the Laws of Tanzania.
- ii AML (Amendment) Act, 2022 (Act No. 2 of 2022).
- iii Income Tax Act, Chapter 332, Revised Edition 2019.
- iv BOT, Public Notice on cryptocurrencies, November 2019 <https://www.bot.go.tz/Adverts/PressRelease/sw/2020031307240424208.pdf>
- v BOT, Public Notice, Progress on the Central Bank Digital Currency, January 2023 <https://www.bot.go.tz/Adverts/PressRelease/en/2023011413181519.pdf>
- vi CBN, Circular to banks and other financial institutions on virtual currency operations in Nigeria, January 2017.
- vii CBN, Letter to all deposit money banks, non-bank financial institutions and other financial institutions, February 2021.
- viii CBN, Guidelines on operating VASP accounts, 23 December 2023.
- ix Kenyan Income Tax Act, Chapter 470 , Revised Edition 2021.
The Kenyan Finance Act, 2023 (Act No. 4 of 2023).

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