Legal regulation of cryptocurrency and NFTs

Estonia

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Introduction

There is an increasing number of charities across the world that have started accepting cryptocurrency as donations, including UNICEF and the Salvation Army. New platforms like The Giving Block and DoinGud are helping nonprofits to raise funds with cryptocurrency and non-fungible tokens ("NFTs").

To help charities better understand the opportunities and risks involved in working in this new context, PILnet with its partners launched a project about legal regulation of cryptocurrency and NFTs in different jurisdictions around the world.

The report below aims to consider:

(a) The legality of cryptocurrency

(b) Accepting cryptocurrency

(c) Accepting NFTs and its proceeds

(d) Issuing NFTs to raise funds

Disclaimer

PILnet, and partners participating in this research are not liable towards third parties for the accuracy of the information contained in the research about Cryptocurrency and NFTs. The information contained herein cannot be considered as legal advice. The research was carried out in 2022-2023 and responds to the regulatory framework in effect during this time period.

Contents

1. Is engaging in blockchain technology legal in this jurisdiction?

Engaging in blockchain technology is legal in Estonia, subject to compliance with applicable regulations. More specifically, Estonian law does not prohibit charitable associations from engaging in blockchain technology, assuming that the aim of such activities is in line with their non-profit nature and articles of association (for more details, please see next answers).

2. Is accepting cryptocurrency permitted for charities? If so, what legislation/regulation governs it?

The market acknowledges several types of crypto assets. Since different regulatory regimes apply to different types of crypto assets, it is necessary to ensure that the crypto asset is qualified correctly. Qualification of each crypto asset depends on its characteristics. Therefore, we shall first clarify a definition of cryptocurrencies under Estonian law.

Money Laundering and Terrorist Financing Prevention Act (hereinafter "MLTFPA") uses the term virtual currency instead of cryptocurrency and provides the following definition for a virtual currency: a value represented in the digital form, which is digitally transferable, preservable or tradable and which natural persons or legal persons accept as a payment instrument, but that is not the legal tender of any country or funds for the purposes of Article 4(25) of Directive (EU) 2015/2366 [...] on payment services in the internal market, [...] or a payment transaction for the purposes of points (k) and (l) of Article 3 of the same Directive.[1]

Thus, for the purposes of the following analysis, the underlying assumption is that the cryptocurrency falls within the definition provided in the MLTFPA and does not qualify as any other type of crypto asset, for example, as a security issued by means of distributed ledger technology within the meaning of the Securities Market Act.

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[1] Article 3(k) of the Directive 2015/2366 refers to a payment instrument that can be used only in a limited way, and that also meets one of the following conditions: (i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer; (ii) instruments which can be used only to acquire a very limited range of goods or services; (iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer.

Article 3(l) of the Directive 205/2366 refers to a payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service: (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or (ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets; provided that the value of any single payment transaction referred to in points (i) and (ii) does not exceed EUR 50 and: a) the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month, or b) where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month.

Estonian law provides two types of charitable associations: non-profit associations (in Estonian: *mittetulundusühingud*) and foundations (in Estonian: *sihtasutused*) (hereinafter collectively "charitable associations"). The former is regulated by the Non-Profit Associations Act (hereinafter "NPAA") and the latter is subject to the Foundations Act (hereinafter "FA").

A non-profit association is a voluntary association of persons the objective or main activity of which shall not be the earning of income from economic activity. The NPAA does not prohibit non-profit associations from and does not prescribe any procedures for accepting cryptocurrencies. However, income of a non-profit association may be used only to achieve the objectives specified in its articles of association. Non-profit associations may not distribute profits to its members.

A foundation is a legal person in private law which has no members and which is established to administer and use assets to achieve the objectives specified in its articles of association. A foundation may use its income only to achieve the objectives specified in its articles of association. Upon foundation of the foundation, Section 10 of the FA prescribes the opening of a bank account for the purposes of transferring the money to the foundation. However, the FA does not prohibit foundations from and does not prescribe any procedures for accepting cryptocurrencies.

In accordance with the Income Tax Act (hereinafter "ITA"), these associations benefit from income tax incentives and may accept gifts and donations. The ITA does not provide a clear definition for gifts and donations, which is why the Estonian tax authority uses their usual meaning or the content laid down in other legislation to define these concepts.

Nonetheless, subsection 4 of Section 27 of the ITA specifies that gifts and donations may be made in monetary and non-monetary forms. The cost of a non-monetary gift or donation is the market price of the property, and in the case of sale of the property at a preferential price, the cost of the gift or donation shall be the difference between the market price and selling price of the property. Moreover, services provided free of charge or at a price below the market price are not deemed to be gifts or donations.

In addition, Section 259 of the Law of Obligation Act (hereinafter "LOA") provides a definition for a gratuitous contract, whereby one person (donor) undertakes to transfer an object belonging thereto to another person (*donee*) and allow the transfer of ownership to the *donee* or waive a patrimonial right in favour of the *donee* or enrich the *donee* in another manner. As such, the following are not deemed to be gifts in favour of another person: avoidance of acquiring assets; waiving of rights which have not yet been acquired; and renunciation of an estate or legacy.

Therefore, in the context of charitable associations, cryptocurrencies may be classified as gifts and donations. As such, the Estonian Tax and Customs Board has confirmed the possibility of donating cryptocurrency and giving cryptocurrency as a gift.

For the reasons above, charitable associations are not prohibited from accepting cryptocurrencies. However, such activities (generally) should be in line with the non-profit objectives and the articles of association of the charitable associations.

Furthermore, it must be mentioned that Estonian law regulates the provision of virtual currency services. Virtual currency service providers are subject to a requirement to obtain relevant speciality authorisation from the Estonian Financial Intelligence Unit (hereinafter "FIU"). Virtual currency services within the meaning of the MLTFPA include virtual currency wallet, exchange and transfer services, as well as the organisation, in the name or on behalf of an issuer of virtual currency, of a public or targeted offering or sale related to the issue of such currency, or the provision of any related financial services. While the acceptance of cryptocurrencies does not constitute a provision of the above-mentioned services, it is important to be mindful of the regulation in order to avoid the trigger of licensing requirements.

Further to this, please note that the Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (hereinafter "MiCAR") is expected to come into force in the coming years which intends to amend the rules regulating cryptocurrencies in the European Union.

2.1 What limits and restrictions exist in terms of the types of cryptocurrencies that a charity can accept?

The law does not prescribe any limits nor restrictions. Please refer to the underlying assumptions as to the definition of cryptocurrencies above.

Question 2.1. (a). Is a charity or NGO permitted to open its own wallet(s) and exchange account(s) for receipt of donations in cryptocurrencies? What exchanges are permitted and/or prohibited?

The law does not contain prohibitions on opening one's own wallet(s) and exchange account(s) for the receipt of donations in cryptocurrencies. As stated under Question 2, the MLTFPA regulates the provision of virtual currency services, including wallet and exchange services, and virtual currency service providers are subject to a requirement to obtain an authorisation. Nonetheless, authorisation requirements are not relevant as long as these services are merely used, as opposed to offered to other persons.

Section 8 of the FA requires a foundation to establish, among other things, the procedure for transfer of assets to the foundation in the articles of association. Thus, the receipt of the cryptocurrencies must be done in line with the procedure set out in the articles of the association. The articles of association must provide adequate details for the foundation's members to understand the process, as merely mentioning it is not sufficient.

The law does not contain any permissions or prohibitions in regard to using exchange platforms. However, as mentioned above, the provision of virtual currency exchange and wallet services requires a license in Estonia (currently issued by the Estonian Financial Intelligence Unit under the MLTFPA, or in some cases by the Estonian Financial Supervision Authority). Thus, it is safer to use licensed service providers (public information on the licenses issued by the Estonian Financial Intelligence Unit is provided here: https://mtr.ttja.ee/; public information on the licenses issued by the Estonian Financial Supervision Authority is provided here: https://www.fi.ee/en).

Question 2.1. (b). Can a charity or NGO manage its own wallet(s) and exchange account(s) and the cryptocurrencies therein?

The law does not contain any such prohibitions, except that such activities (generally) should be in line with the non-profit objectives and the articles of association of the charitable associations. Please also refer to the underlying assumptions as to the definition of cryptocurrencies and virtual currency services under Question 2.

Question 2.1. (c). If a charity or NGO cannot directly manage cryptocurrencies, how are charities and NGOs able to convert cryptocurrencies to fiat? (For example: Does the charity or NGO need to engage with a third-party vendor/intermediary?)

N/A (please see previous answer to Question 2.1. (b)).

Question 2.1. (d). Can a charity or NGO use cryptocurrencies directly for its transactions?

The law does not contain any such prohibitions, except that the transactions (generally) should be in line with the non-profit objectives and the articles of association of the charitable associations. Please also refer to the underlying assumptions as to the definition of cryptocurrencies and virtual currency services under Question 2.

Question 2.1. (e). Can cryptocurrencies be used as payment for goods or services provided by the charity or NGO?

The law does not contain any such prohibitions, except that such goods or services (offered by the charitable association) should be in line with the non-profit objectives and the articles of association of the charitable association. Please also refer to the underlying assumptions as to the definition of cryptocurrencies and virtual currency services under Question 2.

Question 2.1. (f). How should the charity or NGO record and account for the digital assets held?

For the purposes of the following answer, it is assumed that digital assets are confined to cryptocurrencies and NFTs.

Section 33 of the FA requires the management board of the foundation to organize the accounting of the foundation pursuant to the Accounting Act. Section 35 of the NPAA prescribes the same obligation to the management board of the non-profit association.

Therefore, digital assets must be recorded in accordance with the Accounting Act and other applicable financial accounting standards. Further on this matter, the Estonian Accounting Standards Board (hereinafter "ASB") has issued guidance that concerns the accounting and reporting of instruments based on blockchain technology. The ASB recommends that the financial statements should reflect those instruments in a manner that is understandable to the reader, reflects the economic substance of those instruments, and is comparable to the accounting policies for similar instruments. In addition,

it should be carefully considered the purpose for which those instruments are acquired and held, and assess whether they are an asset, a contingent asset, or an expense.

2.2. Do the company's governance documents allow the charity or NGO to deal with crypto assets?

Both charitable associations must have in place articles of association.

The law prescribes minimum requirements for the articles of associations and does not contain any specific restrictions or limitations on dealing with crypto assets. Apart from the minimum requirements set by the law, the articles of association may also prescribe other conditions which are not contrary to law. However, it should be kept in mind that activities undertaken by charitable associations should be in line with their non-profit objectives.

Question 2.2. (a). Is dealing with cryptocurrencies and NFT's consistent with the charity or the NGO's charitable purpose?

Section 11 of the ITA lists a number of requirements that charitable associations must comply with. The most important of these conditions are the following: associations must be charitable and operate in the public interest.

Section 11 of the ITA together with its explanatory memorandum clarifies that charitable purposes entail offering goods, services or other benefits primarily free of charge or in another non-revenue seeking or publicly accessible manner to a target group specified in the articles of association. The public interest is a broader concept, which the law does not define exhaustively, since it is regarded to be an undefined legal concept, the content of which will evolve in the course of implementation. However, the explanatory memorandum refers to the following guiding definition of the public interest: the pursuit of activities in the common interest for the benefit of the common good, or for the benefit of a narrowly defined group when it is disadvantaged in relation to the rest of society. Subsection 2 of Section 1 of the NPAA sets out that the income of a non-profit association may be used only to achieve the objectives specified in its articles of association.

Moreover, subsection 1 of Section 1 sets out that a non-profit association shall not be the earning of income from economic activity. Subsection 1 of Section 1 of the FA provides that foundations must administer and use assets to achieve the objectives specified in its articles of association.

Therefore, charitable associations may deal with cryptocurrencies and NFT's only if such activities are in line with their charitable nature and for the purposes of achieving the objectives set out in their articles of association.

Question 2.2. (b). Does an officer of a charity or NGO need to seek any approval or obtain any authority to open and manage the charity or NGO's wallet(s) and exchange account(s)?

The law does not prescribe such obligation. A charitable association must have a management board which manages and represents the association. The management board may consist of one or several members. Usually, every member of the management board has the right to represent the association

in concluding all transactions unless otherwise provided by law or the articles of association. However, foundations must also have a supervisory board, and in managing a foundation, the management board shall adhere to the lawful orders of the supervisory board – transactions which are beyond the scope of everyday economic activities may only be entered into by the management board with the consent of the supervisory board. Furthermore, articles of association and internal rules (if any) of charitable associations may set forth limitations. Thus, it is mainly a question about internal governance rules (and these may vary).

Question 2.2. (c). Do the existing governance documents provide sufficient oversight for the management of digital assets?

An answer to this question cannot be provided without analyzing specific governance documents of a charitable association. Generally speaking, Estonian charitable associations have not yet started accepting cryptocurrencies in the form of donations and raising funds with NTFs. Thereby, an assumption can be made that articles of association and internal documents are not yet adapted to such activities and adequate oversight for the management thereof.

Question 2.2. (d). Does the charity or NGO need to report digital assets in audits and financial reports?

Please refer to an answer under Question 2.1. (f).

In addition, Section 91 of the Auditors Activities Act provides that an audit of the annual accounts is compulsory for a foundation established by the state, a legal person in public law, a local government, a political party or a company in which the state has at least the discretion for the purposes of the State Assets Act, as well as a foundation established on the basis of a will or a foundation that is subject to audit pursuant to the Statutes or the Supervisory Board decision or which is in correspondence with at least two of the following conditions: (1) sales revenue or income of 4,000,000 euros; (2) total assets as of the balance sheet date of 2,000,000 euros; (3) average number of employees is 50 people.

For charitable associations that do not fall within Section 91 of the Auditors Activities Act, audit of the annual accounts is not prescribed by the law.

2.3. How does the jurisdiction's anti-money laundering/counter-terrorism financing (AML/CTF) regime (if any) address cryptocurrency donations?

The MLTFPA and legislation and guidelines adopted on the basis thereof do not specifically address cryptocurrency donations.

However, as previously established, MLTFPA provides a definition of a virtual currency and different virtual currency services, and sets forth an anti-money laundering and counter-terrorism financing regime to the virtual currency service providers, through which it also tackles money laundering and

terrorist financing in relation to virtual currencies. For specifics on charitable associations, please also see the next answer.

Question 2.3. (a). Does the receipt of cryptocurrencies by a charity or NGO need to be reported in compliance with the AML/CTF regime of your jurisdiction?

The MLTFPA regulates the principles of assessment, management and mitigation of risks related to money laundering and terrorist financing. The law specifies two grounds on which the MLTFPA applies to charitable associations.

First, the MLTFPA applies to charitable associations where they are paid or they pay, in cash, over 5,000 euros or an equivalent sum in another currency, regardless of whether it is paid as a single payment or as several related payments over a period of up to one year. Since cryptocurrencies do not fall within the meaning of "cash", the MLTFPA does not apply to charitable associations in this regard. Nonetheless, it would be preferable to voluntarily carry out due diligence measures as prescribed by law in transactions that are over the specified threshold (e.g. to protect the association and its reputation etc.). After all, the explanatory memorandum to the MLTFPA highlights that the not-for-profit sector is especially vulnerable to terrorist financing threats.

Secondly, the MLTFPA applies to charitable associations where the customer or a person participating in the transaction has a connection to a State or jurisdiction that is subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations. Section 20 of the General Part of the Civil Code Act defines a transaction as an operation or a set of related operations which contains a manifestation of intention intended to bring about a certain legal consequence. In other words, the receipt of cryptocurrencies falls within the scope.

Therefore, the MLTFPA applies to a charitable association whenever it deals with persons who are established in or come from, or are domiciled in, a higher-risk geographical area and due diligence measures must be applied. In cases as such, there is no need to report the receipt of cryptocurrencies, unless the charitable association suspects money laundering, terrorist financing and/or the commission of related offenses. In that case, the charitable association must report it to the FIU without delay, but not later than within two working days after identifying the activity or facts or after getting the suspicion.

Question 2.3. (a)(i): Can donations be made anonymously? If not, what disclosure requirements are present in relation to donor identity and the donations value?

As mentioned under Question 2.3. (a), the MLTFPA applies to charitable associations where the customer or a person participating in the transaction has a connection to a State or jurisdiction that is subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations. In accordance with Section 29 of the MLTFPA, charitable associations are under obligation to carry out due diligence measures in such transactions. Therefore, donations cannot be made anonymously by persons who are established in or come from, or are domiciled in, a higher-risk geographical area.

In accordance with Section 20 of the MLTFPA, the charitable associations must apply the following due diligence measures:

1) identification of a customer or a person participating in an occasional transaction and verification of the submitted information based on information obtained from a reliable and independent source, including using means of electronic identification and of trust services for electronic transactions;
2) identification and verification of a representative of a customer or person participating in an occasional transaction and their right of representation;
3) identification of the beneficial owner and, for the purpose of verifying their identity, taking measures to the extent that allows the charitable association to make certain that it knows who the beneficial owner is, and understands the ownership and control structure of the customer or of the person participating in an occasional transaction;
4) understanding of business relationships, an occasional transaction or operation and, where relevant, gathering information thereon;
5) gathering information on whether a person is a politically exposed person, or whether their family member or a person known to be their close associate is a politically exposed person.

The MLTFPA specifies requirements for identification, depending on whether the person participating in the transaction is a natural or legal person.

Question 2.3. (a)(ii): If a donation exceeds a certain amount, does the charity or NGO need to do due diligence? If so, how?

Please see answers under Questions 2.3. (a) and 2.3. (a)(i).

2.4. Is accepting NFTs permitted for charities and NGOs? If so, what legislation/regulation (if any) governs it? What limits exist in terms of the proceeds that can be derived from the sale of NFTs donated? (For example: Can proceeds be converted to cryptocurrencies (e.g. BTC, ETH or stablecoins), or is conversion confined to your jurisdiction's own digital or fiat currency?)

To begin with, the regulation of NFTs in Estonia shall be clarified.

As such, NFTs do not fall under the meaning of 'virtual currencies' as stipulated in the MLTFPA. In certain cases (depending on their actual characteristics), NFTs may qualify as securities, making them subject to the Securities Market Act. The Estonian Financial Supervision and Resolution Authority (hereinafter "EFSA") has explained that this might be the case where the acquisition of an NFT confers on the investor other rights in addition to the ownership of the underlying assets, that are similar to those of securities, e.g. an expectation of income in a company related to the issuer of the NFT. There has also been a proliferation of fractionalized NFTs (hereinafter "F-NFTs"), which are not a unique and irreplaceable NFTs, but pieces of its ownership. In this case, as they are standardised, i.e. similar,

interchangeable instruments giving the right to ownership of something, F-NFTs may also fall under the definition of a security for the purposes of the Securities Market Act.

Nonetheless, if NFTs do not qualify as securities nor virtual currencies, the Estonian law does not address pure NFTs. In addition, the law does not prescribe any limits to the use of the proceeds derived from the sale of NFTs donated.

Finally, turning to the acceptance of the NFTs. In line with the analysis conducted under Question 2, NFTs may be classified as gifts and donations. For the reasons above, charitable associations are not prohibited from accepting NFTs.

2.5. Does the receipt of NFTs by a charity or NGO need to be reported in compliance with the AML/CTF regime of your jurisdiction?

As mentioned under Question 2.3. (a), the MLTFPA applies to charitable associations where the customer or a person participating in the transaction has a connection to a State or jurisdiction that is subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations. Section 20 of the General Part of the Civil Code Act defines a transaction as an operation or a set of related operations which contains a manifestation of intention intended to bring about a certain legal consequence. In other words, the receipt of NFTs falls within the scope.

Therefore, the MLTFPA applies to a charitable association whenever it deals with persons who are established in or come from, or are domiciled in, a higher-risk geographical area and due diligence measures must be applied. In cases as such, there is no need to report the receipt of cryptocurrencies, unless the charitable association suspects money laundering, terrorist financing and/or the commission of related offenses. In that case, the charitable association must report it to the FIU without delay, but not later than within two working days after identifying the activity or facts or after getting the suspicion.

Question 2.5. (a). Can donations be made anonymously? If not, what disclosure requirements are present in relation to donor identity and the NFTs value?

Please refer to the analysis under Questions 2.5. and 2.3. (a)(i).

2.6: Are there any prescribed processes and/or restrictions in releasing NFTs and converting it to fiat?

The law does not prescribe any specific processes nor restrictions in releasing NFTs and converting it to fiat. However, civil and contract law, including, but not limited to, the Law of Obligations Act and General Part of the Civil Code Act, must be taken into account. Moreover, if an underlying asset of the NTF is subject to specific regulatory regime (e.g. copyright protection) then it should be taken into account.

Question 2.6.(a). If a charity can auction/sell NFTs themselves, how can this process be legally undertaken?

The law does not prescribe a specific procedure for the auctioning/selling of the NFTs. However, civil and contract law, including, but not limited to, the Law of Obligations Act and General Part of the Civil Code Act, must be taken into account. The Law of Obligations Act predominantly applies to transfer transactions of NFTs as non-financial assets. Moreover, if an / underlying asset of the NTF is subject to specific regulatory regime (e.g. copyright protection) then it should be taken into account.

Question 2.6. (a)(i): Are there restrictions on how NFTs can be held by a charity or NGO, including in particular the length of holding of the NFT?

The law does not contain any restrictions.

Question 2.6. (a)(ii): What platforms can NFTs be sold on? Are there any prohibited sites/mediums?

The law does not prescribe on which platforms NFTs can be sold on. The law does not contain any prohibitions on sites/mediums.

3. Is issuing NFTs to raise funds permitted for charities? If so, what legislation/regulation (if any) governs it?

As mentioned above, Estonian law does not specifically regulate NFTs nor the issuance of NFTs (civil and contract law, including, but not limited to, the Law of Obligations Act and General Part of the Civil Code Act, must be taken into account). Moreover, NFTs are not virtual currencies within the meaning of the MLTFPA. Therefore, issuing NFTs does not require any licensing or obtaining a permit to operate. However, in issuing NFTs to raise funds, charitable associations must stay in line with their non-profit nature and articles of association.

It is important to mention MiCAR that will be soon adopted and thereby be directly applicable in Estonia. Accordingly, NFTs will be excluded from the scope except if they fall under existing crypto-asset categories. Recital 6c of the draft text stipulates that fractional parts of an NFT will not be considered "non-fungible", nor will the issuance of NFTs in a large series or collection, meaning that in certain cases NFTs may be categorized as crypto-assets. As such, issuance of crypto-assets will require a license and under Estonian law, charitable associations are not be permitted to hold any licenses related to economic activities.

In addition, the Financial Action Task Force on Money Laundering (hereinafter: "FATF") has pointed out in its 2021 guidelines that some NFTs may still fall under the definition of crypto assets if they are used for payment or investment purposes in practice.

As mentioned above, in certain cases, NFTs may qualify as securities, which would make them subject to the Securities Market Act. Consequently, provisions of the Securities Market Act on the issuance and public offering of securities will apply, for example, the publication of prospectus.

3.1. Are there any restrictions on how a charity or NGO can create and sell NFTs or NFT collections?

See answer under Question 3. Charitable associations must ensure that the issued NFTs do not qualify as financial instruments or crypto-assets. Moreover, if an underlying asset of NTF is subject to specific regulatory regime (e.g. copyright protection), then it should be also taken into account.

Question 3.1. (a). Are charities and NGOs able to collaborate with third party partners to create NFTs?

The law does not regulate creation of pure NFTs (meaning that the NFTs do not qualify as, inter alia, securities nor virtual currencies) nor does it prescribe rules on collaboration.

Question 3.1. (b). What functions and features can a charity or NGO include in the NFTs they create and sell (for example, functions and features that resemble that of securities/ investment contracts)?

See answers to the Questions 3 and 3.1.

Question 3.1. (c). Can charities and NGOs design their NFTs so that they have real-world benefits?

As mentioned above, the law does not regulate creation of pure NFTs. Thereby, charitable associations can include features (including having real-world benefits) with their NFTs. But it is important to mention that these features cannot be related to any of the regulated services nor lead to the requalification of the NFTs (see examples under Question 2).

3.2. What proceeds are charities and NGOs able to accept from issuing and selling their own NFTs?

The law does not prescribe what proceeds charitable associations can accept from the issuance and selling of their own NFTs.

Question 3.2. (a). Can charities and NGOs only accept proceeds from the initial sale of the NFT?

The law does not prescribe what proceeds charitable associations can accept from the issuance and selling of their own NFTs.

Question 3.2. (b). Are charities and NGOs permitted to gain royalties from subsequent sales of NFTs by third parties?

The law does not provide any restrictions on charitable associations gaining royalties from subsequent

sales of NTFs they have issued.

Question 3.3. Do NFTs sales need to be reported by a charity or NGO in compliance with the AML/CTF regime of your jurisdiction?

Please see the analysis under Questions 2.5 and 2.5. (a).

Question 3.3. (a). Are initial and subsequent purchasers of the NFT issued able to remain anonymous? If not, what disclosure requirements are present in relation to donor identity and the donations value?

Please refer to the analysis under Questions 2.5. and 2.5. (a).

4. Are there tax implications for donations of cryptocurrency or NFTs? Are there obligations to pay tax for charities who sell NFTs for fundraising purposes?

Estonian charitable association types of donation share the same tax treatment with Estonian companies, meaning the income received by NGOs is not taxable upon receipt or retaining. It follows that the receipt of cryptocurrencies or obtaining a crypto asset as a donation should not be taxable with income taxes at the level of that charitable association which receives the crypto. For that reason, we do not see an income tax related requirement to establish internal guidelines for deciding which coins to accept and which not, etc.

For the purpose of accounting and drafting annual reports (that are not relevant for tax purposes), it would make sense to have an internal policy on how to qualify crypto assets under the accounting rules. The accounting and bookkeeping of cryptocurrencies and NFTs is not yet thoroughly regulated in Estonia, it is in many cases up to the company and management to justify why a specific accounting approach was taken. In the absence of specific rules, management is allowed to use its own judgment to classify a transaction. The need to make such choices and justify the choices is especially true when it comes to NFTs, because NFT (a token that is not reproducible) is a format (a digital certificate with a certain level of security) and the economic content depends on the terms and functionality of the NFT. Tax and accounting depends on the economic substance of the NTF and other types of crypto assets.

Whether a charitable organization is included in the List (the Estonian tax administration maintains a list of tax-advantaged associations, whose membership entails benefits for both tax-advantaged associations and donors, and allows for a number of tax-free expenses) or not determines the tax treatment of payments made by the charitable associations on the account of donations received by

them. In principle, a charity organization can incur expenses to carry out the duties outlined in its articles of incorporation without having to pay income tax. Tax treatment for donors differs depending on the tax residency and legal form of the donor, as well as whether the charitable association is listed as a charitable association subject to certain income tax benefits (*tulumaksusoodustustega mittetulundusühingute ja sihtasutuste nimekiri*, the List) or not.

The format for registering the receipt of NFTs does not determine the taxation of such NFTs. As said above, charitable associations would not pay income tax on income or profit they received, because charitable associations fall under a deferred income tax regime.

5. What is the best practice or guidance?

The EFSA has written a section on NFTs for its website which is available here: https://www.fi.ee/en/finantsinspektsioon/innovation-hub/nft.

The Estonian tax authority has written a section about cryptocurrencies and donations on its website, available here: https://emta.ee/en/business-client/taxes-and-payment/income-and-social-taxes/gifts-and-donations#taxation-of-donations and

https://www.emta.ee/en/private-client/taxes-and-payment/taxable-income/cryptocurrency#taxation-transactions.

The guidelines issued by the ASB for the purposes of accounting and reporting of instruments based on blockchain technology is here (in Estonian only): https://www.fin.ee/finantspoliitika-valissuhted/raamatupidamine-ja-audiitortegevus/raamatupidamiskorraldus#estonian-financial-r

Charitable associations may refer to the guidelines on the characteristics of suspicious transactions issued by the FIU (for the compliance with the AML/CTF regime). The guidelines also contain an annex specifying countries with a higher risk of terrorist financing. The guidelines are available here: https://fiu.ee/en/guidelines-fiu/guidelines#guidelines-on-the-ch.

Moreover, Estonian authorities often follow and publish guidelines and technical standards issued by institutions of the European Union, such as ESMA, ESMA, and ECB as well as international standards (e.g. AML/CTF standards of FATF).

Questions 5.1. and 5.1. (a). Is there non-binding guidance (if any) issued by any regulatory or government authority or industry association in your jurisdiction in relation to best practices relating to acceptance and issuance of cryptocurrencies and NFTs?

No guidance has been specifically released on the acceptance and issuance of cryptocurrencies and NFTs.

Questions 5.2. and 5.2. (a). What resources are available for entities and individuals to seek further guidance? Is there an online portal to submit questions?

Charitable associations may approach the FIU (https://fiu.ee/en), EFSA (https://www.fi.ee/en), and Estonian tax authority (https://www.emta.ee/en). These websites contain instructions on how to contact these authorities.

Questions 5.2. (b) and 5.2. (b)(i): Is there a system for public and/or private rulings and decisions? If so, are these decisions binding on the relevant authority *(for example, the Commissioner)?*

Public judicial decisions are accessible in the electronic Riigi Teataja (available here: https://www.riigiteataja.ee/kohtulahendid/koik_menetlused.html). Databases make the decision made in administrative, misdemeanor, civil and criminal cases accessible to the public after their enforcement if no restrictions on publication established by law have been set in respect of the decision.

Moreover, the FIU (https://fiu.ee/en), EFSA (https://www.fi.ee/en), and Estonian tax authority (https://www.emta.ee/en) publish, among other things, notifications, guidelines and certain acts on their websites. Usually, guidelines are non-binding but recommended, and the authorities follow the "comply or explain" procedure in supervision. Judicial decisions are binding on the authorities, subject to the delineation with their tasks and objectives. However, the judicial decisions do not amend or override the law (not taking into account exception constitutional or EU law matters).

Question 5.3 Has there been any recent legal cases or other guidance that can help interpret how cryptocurrencies and/or NFTs are treated in accordance with your jurisdiction's existing regulatory framework?

In the first half of April 2016, the Estonian Supreme Court found in its judgment no. 3-3-1-75-15 that trading Bitcoins on a website is an economic activity and subject to anti-money laundering regulation and state supervision (available here: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-75-15). Since then, the law has been amended and now delineates clearly which activities constitute provision of virtual currency services.

Legal regulation of cryptocurrency and NFTs in Estonia

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