

# Legal regulation of cryptocurrency and NFTs

Italy





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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.

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



The Italian legislator introduced - for the first time - the definition of "distributed ledger technology" with Law n. 12/2019 which converted Decree-Law n. 135/2018 (so-called simplification decree) on "Urgent provisions on support and simplification for businesses and public administration". More specifically, "distributed ledger technology" means *"IT technologies and protocols that use a shared, distributed, replicable, simultaneously accessible, architecturally decrypted cryptographically based registry that enables the recording, validation, updating and storage of both unencrypted and further encryption-protected data that is verifiable by each participant, non-alterable and non-modifiable"*. In order to anticipate the EU Regulation no. 858/2022 on a pilot regime for market infrastructures based on distributed ledger technology - applicable from 23 March 2023 - it has been approved, on 17 March 2023, the Decree-Law n. 25/2023 which provides for "Urgent provisions on the issuance and circulation of certain financial instruments in digital form". The provisions apply to several categories of financial instruments, including shares, bonds, debt securities issued by limited liability companies, additional debt securities issued in accordance with Italian law, depositary receipts relating to bonds and other debt securities of non-domiciled issuers issued by Italian issuers, money market instruments governed by Italian law, shares or units of Italian collective investment undertakings, and additional instruments identified by the regulation adopted pursuant to Article 28(2)(i) of such Decree-Law. The Decree-Law provides that the issuance and transfer of digital financial instruments shall be effected by means of entries in a register for digital circulation maintained by a registrar, the operator of a SS distributed ledger technology or TSS DLT, the Bank of Italy or the Ministry of Economy and Finance, as well as by any further entities identified by the regulation adopted pursuant to Article 28(2)(i) of such Decree-Law. Please note that such Decree-Law shall be converted into Law by the Italian Parliament and amendments and/or integrations may occur.

Therefore, it is possible to state that under Italian law it is legal for all entities - including charities of NGO - to engage in blockchain technology.

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

Under Italian law, while waiting for MiCAR to enter into force, there is not a specific legislation governing crypto currency as a whole, but some aspects have been regulated.

One of these is related to AML issues. In particular, the Italian AML legislation, set out in Legislative Decree n. 231/2007, most recently amended by Legislative Decree n. 125/2019 in transposition of the AML Directive V, provides for the following of notion of service provider in this field (VASP - Virtual Asset Service Provider), which includes *"any natural or legal person providing third parties, on a professional basis, including online, with services functional to the use, exchange, storage of*

*virtual currencies and their conversion from or into legal tender or digital representations of value, including those convertible into other virtual currencies, as well as issuing, offering, transferring and clearing services and any other service functional to the acquisition, trading or intermediation in the exchange of such currencies".* The same Legislative Decree provides also for the definition of virtual currency, which means *"the digital representation of value, neither issued nor guaranteed by a central bank or public authority, not necessarily linked to a legal tender, used as a medium of exchange for the purchase of goods and services or for investment purposes and transferred, stored and traded electronically"*. In particular, VASPs are required to fulfil the obligations of due diligence, retention of data and information and to report suspicious transactions. The aim of such amendment is - as stated in its illustrative report of Legislative Decree n. 125/2019 - to include the VASPs among the persons obliged to perform AML checks.

Moreover, the Legislative Decree n. 90/2017 provides that the *Organismo degli Agenti e dei Mediatori (OAM)* register in a special section (established ex novo and active from 16 May 2022) of the register of money changers the VASPs. Such Decree defines virtual currency as *"a digital representation of value, not issued or guaranteed by a central bank or public authority, not necessarily linked to a legal tender, used as a medium of exchange for the purchase of goods and services or for investment purposes and transferred, stored and traded electronically"*. Under current legislation, the OAM does not have the power to monitor cryptocurrency operators with regard to their operations *vis-à-vis* clients or to ensure compliance with anti-money laundering regulations. However, the OAM does manage the Registry to which operators must register in order to operate legally in Italy. The requirements for enrolment in the Register depend on the type of applicant: for natural persons, Italian citizenship or citizenship of an EU state or of a different state according to the provisions of the Consolidated Immigration Act, and domicile in Italy are required. For subjects other than natural persons, the legal and administrative seat or, for EU subjects, a permanent establishment in Italy is required. The OAM can only request information on the registration requirements of operators, but does not have the power to check transactions carried out by operators. Operators, on the other hand, are required to transmit data on their customers and transactions to the OAM, but this transmission is not yet operational pending the opinion of the *Garante della Privacy*. Finally, the OAM has the power to suspend operators from the Register only if they violate their obligation to report quarterly data on client transactions, for a period of not less than three months and not more than one year.

All this being said, it is possible to assume that under Italian law there are no restrictions for charities to operate with cryptocurrencies. Nevertheless, Bank of Italy the Italian Supervisory Authority (with CONSOB) continues to call the attention of the public about the necessity to understand and taking in consideration the risks connected to cryptocurrencies as this continue to be, for the time being, an unregulated sector.



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



Under Italian law, there is not a specific legislation governing NFTs, but it is possible - also according to scholars - to apply general principles of civil law. In particular, NFTs may be considered goods pursuant to article 810 of the Italian Civil Code.

In fact, in the blockchain system, tokens have all the characteristics required to be considered as goods, because they are aimed to belong on an exclusive basis. This comes from the fact that blockchain system ensures the non-replicability of the token and its certified attribution to a proprietor.

Therefore, it possible to consider the NFTs as (movable) goods (i) for the purposes of their identification within the debtor's assets; (ii) for the purposes of identifying the methods of liquidation of such assets, (iii) in order to exclude from the debtor's assets those tokens which, although in his name, actually belong to third parties, for example because they have been hacked. In the event of hacking or code theft, the victim could file an action for reinstatement of possession of the stolen NFT, also with a view to avoiding further circulation of the token among bona fide purchasers, to whom, pursuant to Article 1153 of the Civil Code, the unlawfulness of the purchase of the spoliator might not be enforceable.

All this being said, it is possible to assume that it is permitted for charities to raise fund issuing NFTs.

### 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?

As a general remark please note that, the Italian legal framework does not provide a clear definition of charity for tax purposes. In recent years the term "third sector" has been adopted to identify, among others, volunteering, social assistance and charitable purposes. Entities that actively carry on such charitable activities include non-governmental and non-profit-making organisations or associations and foundations. Italian tax authorities have circulated some guidance about the taxation of digital assets. In detail, the tax ruling no. 437/2022 (confirming the past case law composed of Resolution 72/E dated 2 November 2016 and tax ruling no. 788 dated 24 November 2021) clarifies the following: (i) any transaction involving cryptocurrencies realized a capital income and/or financial income (*redditi diversi*) (ii) individuals and non commercial entities have to comply with the special reporting obligations with regard to cryptocurrencies not deposited with Italian financial intermediaries (i.e. banks), fulfilling and filing a specific section of the income tax return form, called RW section. The Italian tax authorities have clarified and described the monitoring rules concerning the trust structures the cryptocurrencies (iii) the consideration in kind represented by cryptocurrencies for staking transactions is taxed as a capital income for individuals and non commercial entities at 26%. In

addition, please note that the Italian Parliament passed the 2023 Finance Bill where specific provisions related to digital assets have been introduced. In detail, starting from 1 January 2023 capital gains and other income “realized through the sale for consideration, exchange or holding of crypto-assets, however denominated, stored or electronically traded on distributed ledger technologies or equivalent technologies” constitute “other income if they do not constitute capital income” under pursuant to article 67 paragraph 1 of ITC, to which the new letter c-sexies dedicated precisely to crypto-assets has been added; in particular:

- these capital gains and proceeds constitute taxable income if they exceed the deductible of 2,000 euros (amount that could be modified during the approval process) in the tax period, a figure below which they are not tax-relevant.
- the exchange between crypto-assets with "same characteristics and functions" does not constitute a fiscally relevant case.

As regards the methods for determining income, the 2023 Budget Law integrates article 68 of the Tuir with the new paragraph 10, which establishes that:

- the capital gains realized consist of the difference between the consideration received for the sale (or their normal value, in the case of a tax-relevant exchange) and the purchase cost or value;
- during the tax period, the taxable income, which is net, is calculated by algebraically adding capital gains and capital losses;
- in the event that the capital losses are higher than the capital gains, any surpluses can be carried over to subsequent years for use, subject to disclosure in the Income form; also for this point the tax relevance is subject to the deductible of 2,000 euros, still to be confirmed.

No special rule for donations of digital assets is provided. However, for the entities being part of No profit sector (please refer to the relevant legal rules) and other recognised non commercial entities the donations received are generally outside the donation tax.

As anticipated the 2023 Finance Bill has regulated the crypto assets. In this respect, the new provisions clarify that in case of donation of crypto assets, the fiscal cost of the donee is the one of the donors. No specific provision or guidance from Italian tax authorities have been provided with regard to the specific topic of the donation of digital assets. However, the donation in favor of charity or NGO is not a taxable event in Italy for the inheritance and donation tax purposes provided that the donee is registered and recognised as a No Profit entity according to the relevant provisions of Law.



Tax deductions are available for the donor in respect of donations to charities or NGOs under the Italian law. In particular, for individuals the following alternative is available: i) 10% deduction of the taxable income; ii) 30% tax credit of the amount of the donation not higher than € 30.000. A general deduction of 19% is also available.

There are no specific requirements for the donor to keep certain records or obtain valuations regarding the donations of digital assets. However, according to their general accounting rules, they have to register the donation and register the fiscal cost of the digital assets in the hands of the donee.

There is no Capital Gains Tax (CGT) or other tax implications arising at the time of donation for the charity or NGO in Italy

A charitable entity is subject, in principle, to corporate income tax (IRES) at a rate of 27.5% on its income. Determination of the tax base depends on the entity. A charitable entity is subject, in principle, to corporate income tax (IRES) at a rate of 27.5% on its income. Determination of the tax base depends on the entity and whether it is commercial or non-commercial. The sale of crypto assets would trigger a taxed capital gain which is exempt for 41,85% provided that the relevant conditions be met.

## 5. What is the best practice or guidance?



The Italian authorities published communications and guidance on crypto currencies (*please refer to paragraph 2 above*).

Moreover, the Italian authorities published guidance with reference to tax purposes (*please refer to paragraph 4 above*).

All such documents are published only in Italian.

## 6. Additional research findings worth noting

Please note that the regulatory framework in this subject may be changed by the Italian legislator also to anticipate the EU regulation whose entry into force is still pending. We make reference in particular to MiCAR which is expected to enter into force in 2024.




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