

Legal regulation of cryptocurrency and NFTs

Japan





PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law’s full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

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 toward third parties for the accuracy of the information contained in the research about Cryptocurrency and NFTs. The information contained herein is intended as a general overview and discussion of the subjects dealt with and only responds to the regulatory framework in effect during a specific research period in 2022-23. It is not intended to be, and should not be used as, legal advice or a substitute for taking legal advice in any specific situation.

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

Yes, it is legal in Japan.

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

It is permissible for charities to accept cryptocurrencies. Additionally, the charities do not have to register with the Financial Services Agency (“FSA”) as a Crypto-asset Exchange Service Provider if the acceptance is for the purpose of financing charitable activities and not for purposes that can be deemed “as business.”

Whether Registration with the FSA is Required for Acceptance of Cryptocurrencies

A person who engages in the provision of Crypto-asset Exchange Services is required to register with the FSA as a Crypto-asset Exchange Service Provider. A charity or NGO that does not engage in the provision of Crypto-asset Exchange Services would not be required to register.

In Japan, cryptocurrencies are regulated by the Payment Services Act (“PSA”).¹

The PSA sets out that “Crypto-asset Exchange Service” includes engaging in the provision of any of the following services “as business”:

- a. purchase and sale, or exchange, of the Crypto-asset (as defined in Section 4.1);
- b. intermediary, brokerage or agency services for sub-section (i) above;
- c. management of the Crypto-asset on behalf of others.

According to the guidelines issued by the FSA, whether the acts above are deemed as engaging in the provision of services “as business” is determined by (i) whether the services are provided to the public, and (ii) whether the acts are performed repeatedly and continuously. It is generally considered that if an individual or legal entity who engages in the act of purchasing, selling, or exchanging cryptocurrencies “through an account opened with a Crypto-asset Exchange Service Provider” for its own investment purpose or its own financial management purpose, such act will not be deemed as engaging in the provision of services “as business” as they are not being provided as a service to the public. It follows from this that such individual or legal entity is then not providing Crypto-asset Exchange Services. Accordingly, to avoid the risk of the registration requirement, we recommend that charities and NGOs open accounts with a Crypto-asset Exchange Service Provider for accepting cryptocurrencies.

¹ See <https://www.japaneselawtranslation.go.jp/ja/laws/view/3965>.

Whether Incorporation or Formation of Association/Organization is Required

There is no law requiring a charity or NGO to incorporate a legal entity or form an association or organization in order to solicit/receive donations in Japan.

However, there are tax benefits if the charity or NGO takes a certain form (please see Section 4 below). The entity types commonly used for this purpose include:

- General Incorporated Association (*ippan shadan hojin*) (“**GIA**”);
- General Incorporated Foundation (*ippan zaidan hojin*) (“**GIF**”);
- Public Interest Incorporated Association (*koeki shadan hojin*) (“**PIA**”);
- Public Interest Incorporated Foundation (*koeki zaidan hojin*) (“**PIF**”);
- Corporation engaging in specified non-profit activities (*tokutei hi-eri katsudo hojin* or *NPO hojin*) (“**NPO**”); and
- Approved corporation engaging in specified non-profit activities (*nintei tokutei hi-eri katsudo hojin* or *nintei NPO hojin*) (“**Approved NPO**”).

The above entities and their governing laws are as follows:

Entity ^α	Governing Law ^α
GIA ^α	Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006) (the “ GIA/GIF Act ”) ^α
GIF ^α	GIA/GIF Act ^α
PIA ^α	GIA/GIF Act [¶] Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation (Act No. 49 of 2006) (the “ PIA/PIF Act ”) ^α
PIF ^α	GIA/GIF Act [¶] PIA/PIF Act ^α
<u>NPO</u> ^α	Act on Promotion of Specified Non-profit Activities (Act No. 7 of 1998) (the “ NPO Act ”) ^α
Approved <u>NPO</u> ^α	<u>NPO Act</u> ^α

2.1 What limits and restrictions exist in terms of the types of cryptocurrencies that a charity can accept? (For example, is there a prohibition or restriction on Bitcoin (BTC), Ethereum (ETH), and/or stablecoins (e.g., USDT)? Is there any restriction on the amount of cryptocurrencies that a charity and NGO can accept?)

There are no legal limits or restrictions on the types of cryptocurrencies or the amount that a charity or NGO can accept. However, some Crypto-asset Exchange Service Providers do not allow charities to open accounts with them unless the charities are in the form of the following legal entities incorporated in Japan:

- Joint stock company (*kabushiki kaisha*);
- Limited liability company (*godo kaisha*); or
- Limited company (*yugen kaisha*).

2.2 Are there any prescribed processes or restrictions in realizing the value of cryptocurrencies?

2.2.(a). Is a charity or NGO permitted to open its own wallet(s) and exchange account(s) for receipt of donations in cryptocurrencies?

Yes, a charity or NGO is permitted to open its own wallet(s) and exchange account(s) for receipt of donations in cryptocurrencies, as there is no prohibition or restriction under Japanese laws, which are silent on this.

2.2.(a).(i). What exchanges are permitted and/or prohibited? (e.g., Coinbase, Crypto.com)

Only Crypto-asset Exchange Service Providers registered with the FSA are permitted to operate the exchanges under Japanese law. Therefore if the charity/NGO will use an exchange, it should check that such exchange is a registered exchange.

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

Yes, a charity or NGO can manage its own wallet(s) and exchange account(s) and the cryptocurrencies therein, as there is no legal prohibition or restriction under Japanese laws, which are silent on this.

However, as set out above:

- a. we recommend that charities and NGOs open exchange accounts with a Crypto-asset Exchange Service Provider that is registered with the FSA (please see above); and
- b. the charity should take a certain form (joint stock company, limited liability company, or limited company) if it wants to open an exchange account with certain Crypto-asset Exchange Service Providers (please see Section 2.1. above).

2.2.(c). Can a charity or NGO use cryptocurrencies directly for its transactions?

Yes, a charity or NGO can use cryptocurrencies directly for its transactions, as long as the counterpart accepts cryptocurrencies as payment. Please note that as cryptocurrencies are not legal tender in Japan, transactions whereby cryptocurrencies can be used for payment are limited.

2.2.(d). Can cryptocurrencies be used as payment for goods or services provided by the charity or NGO?

Yes. A charity or NGO can receive cryptocurrencies as payment for goods or services it provides.

2.2.(e). How should the charity or NGO record and account for the digital assets held?

If the charity or NGO is a legal entity incorporated under Japanese law, it is required to keep accounting records and prepare appropriate annual financial report, including for digital assets held, pursuant to laws

applicable to the legal entity (e.g., the *Companies Act* and/or the relevant governing law).

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

If the charity or NGO is a legal entity incorporated under Japanese law, the entity is required to have a set of articles of incorporation (*teikan*) (the “Aol”) upon its incorporation. The Aol is to set out the objectives/purpose of the entity by describing the contemplated activities of the entity. The charity or NGO, if dealing with crypto-assets, should list this as one of its activities. There is no specific legal prohibition or restriction on adding dealing with crypto-assets as an activity in the Aol.

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

Dealing with cryptocurrencies and NFTs can be consistent with a charity or NGO's charitable purpose, as long as such dealing is to raise funds for charitable activities.

The legal entities which are commonly used for charitable activities as described above (GIA, GIF, PIA, PIF, NPO, and Approved NPO) are “non-profit” organizations. Under Japanese law, “non-profit” means that such an entity cannot distribute its income to its investors; it is not prohibited for such entities to make profits through dealing with cryptocurrencies and NFTs to raise funds.

2.3.(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)?

No approval of any governmental authority needs to be sought or obtained by an officer of a charity or NGO to open and manage the charity or NGO's wallet(s) and exchange account(s).

As for whether internal approval within the charity/NGO needs to be sought or obtained, this depends on the legal entity type of the charity/NGO, the provisions in its Aol, and any other internal regulations adopted by it.

In the case of the GIA or the PIA:

The execution of the entity's operations is determined by (i) a resolution passed by its board of directors (*rijikai*) (i.e., a board of directors is established), or (ii) a majority of its directors (*riji*) (i.e., no board of directors is established), unless otherwise provided in the Aol.

Therefore, the opening and managing of wallets and exchange accounts will require a resolution passed by its board of directors or the decision of the majority of its directors, unless otherwise provided in the Aol (e.g., the Aol may require a resolution passed by its general assembly (*shain sokai*), which is equivalent to the meeting of shareholders in a Japanese joint stock company).

It is possible for the board of directors to pass a resolution to resolve that, or for the majority of the directors to determine that, the opening/management of wallets/exchange accounts be authorized to a certain

director(s). In such cases, only the approval of such director(s) needs to be obtained for the opening/management of wallets/exchange accounts.

However, please note that where the charity/NGO has a board of directors, the authority for approving the “transfer of important property” cannot be authorized to a certain director(s). Therefore, where the charity/NGO with a board of directors is involved in the purchase/sale of cryptocurrencies of high value, such purchase/sale would need to be approved by the board of directors by way of a resolution, even if there had been a prior resolution approving a certain director(s) to approve the purchase/sale of cryptocurrencies. In the case of the GIF and the PIF, the principles above that apply to the GIA/PIA similarly apply to the GIF/PIF. The difference is that whereas the GIA/PIA has a general assembly, the GIF/PIF has instead a board of councillors (*hyogikai*), which is equivalent to the general assembly in the GIA/PIA.

In case of the NPO or the Approved NPO:

The execution of the entity’s operations is determined by the director (*riji*) based on the resolutions passed by its members in a meeting (*shain sokai*). This is equivalent to the meeting of shareholders in a Japanese joint stock company, unless the decision-making is authorized to the director in the Aol.

Therefore, the opening and managing of wallets and exchange accounts will require the resolution of the members passed in a meeting, unless otherwise provided in the Aol.

It is possible for the members to pass a resolution to resolve that the opening/management of wallets/exchange accounts be authorized to a certain director(s). In such cases, only the approval of such director(s) needs to be obtained for the opening/management of wallets/exchange accounts.

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

There is no legal requirement for a charity or NGO to provide oversight for the management of digital assets in its governance documents, but charities and NGOs can establish their own internal regulations to provide oversight.

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

The charity or NGO needs to report digital assets in audits and financial reports as they are “assets” for the purpose of accounting.

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

Transfer of cryptocurrencies worth JPY 30 million or more from a wallet to another wallet (or from an account to another account, if an exchange service provider manages the charity or NPO’s cryptocurrencies in the same wallet) across the Japanese border is subject to reporting of such transfer (whether as payment or receipt) to the Bank of Japan under the *Foreign Exchange and Foreign Trade Act* (the “**FEFTA**”).

With regard to AML, the *Act on Punishment of Organized Crimes and Control of Proceeds of Crime* imposes obligations on service providers (such as Crypto-asset Exchange Service Providers) to monitor and report suspicious transactions. Such Act however does not impose any obligation on charities and NGOs to monitor and report suspicious transactions.

2.4.(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?

For receipt of cryptocurrencies that do not cross the Japanese border, no reporting for compliance with the AML/CTF regime in Japan is required.

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

Although there is no law prohibiting anonymous donations, the Crypto-asset Exchange Services Providers are required to do the following and therefore as a practical matter, it would be difficult for donations to be anonymous if the charity or NGO uses a Crypto-asset Exchange Service Provider:

- a. verify the identity of the sender and receiver, the purpose of the transaction, whether the parties are subject to economic sanctions etc.;
- b. keep a record of the verification; and
- c. report suspicious transactions to the relevant authority.

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

No, there is no legal requirement that a charity or NGO needs to do due diligence if a donation exceeds a certain amount.

As set out in Section 3.4 above, please note that if a charity or NGO located in Japan receives cryptocurrencies worth JPY 30 million or more from outside of Japan or from wallets or exchanges outside of Japan, the charity or NGO is required to report the receipt of the cryptocurrencies to the Bank of Japan pursuant to the FEFTA.

2.5. Is accepting NFTs permitted for charities and NGOs? If so, what legislation/regulation (if any) governs it?

Accepting NFTs is permitted for charities and NGOs, as there is no legislation/regulation that prohibits it.

In Japan, there is no legislation/regulation that specifically governs NFTs. Although the legislation of the NFT-related matters is being discussed as an initiative within the Ministry of Economy, Trade and Industry and the Digital Agency, the discussions are still very preliminary and no specific bill has been drawn up yet. As such, NFTs and NFT-related transactions are governed by general laws such as the Civil Code, the *Copyright Act*, etc.

2.6. 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?)

As long as the NFTs are not regulated under the PSA or the *Financial Instruments and Exchange Act* (the “FIEA”), no limits exist in terms of the proceeds that can be derived from the sale of NFTs donated.

2.7. 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 long as the NFTs are not regulated under the PSA or the FIEA, a charity or NGO does not need to report the receipt.

2.7.(a). Can donations be made anonymously? If not, what disclosure requirements are present in relation to donor identity and the NFT’s value?

As long as the NFTs are not regulated under the PSA or the FIEA, donations can be made anonymously and there are no disclosure requirements.

2.8. Are there any prescribed processes and/or restrictions in realising NFTs and converting it to fiat?

No, there is no legislation that prescribes specific processes or restrictions in realising NFTs and converting it to fiat.

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

As mentioned above, NFTs and NFT-related transactions are governed by general laws, including the Civil Code and the *Copyright Act*. As such, how the auction/sale process can be legally undertaken depends on the legal nature or characteristic of the NFT being auctioned/sold, and should be determined on a case-by-case basis.

Generally, NFTs are considered “intangible objects” like information or data, and therefore are not subject to ownership rights under the Civil Code. From this perspective, as there is no ownership of NFTs, they cannot be transferred by way of transfer of ownership. However, if the intellectual property in the NFT is protected, for example by copyright or any other IP right as applicable, the auction/sale of the NFT can be done by way of transferring such intellectual property right. Where intellectual property rights to the NFTs are not recognized, it is still possible to undertake the transfer of the NFTs based on “contractual obligations,” for example, a contractual obligation to let the purchaser use the NFT. In such cases, the NFT owner would have an obligation to notify the purchaser of the “secret key” to the NFT.

2.8.(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?

No, there are no specific restrictions on how NFTs can be held by a charity or NGO, including the length of holding of the NFT.

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

NFTs can be sold on NFT market places and there are no prohibited sites or mediums.

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

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

If NFTs fall within the definition of “Crypto-asset” as defined in the PSA, the issue of such NFTs is considered as a Crypto-asset Exchange Service and is regulated under the PSA.



A brief summary of “Crypto-asset” as defined in the PSA is an asset:

- a. whose property value is recorded on and transferable by electronic means and can be used among unspecified persons for the payment or settlement for the purchase or leasing of goods or services; and
- b. whose property value is transferable by electronic means and can be exchanged with the property value in (a). The typical example is a token used for payment.

Further, where the NFT token represents shares, bonds, or interests in funds, the issuance of such tokens is regulated under the FIEA. In particular, the issuance of such tokens is subject to the disclosure requirements set out in the FIEA unless certain exemptions as provided under the FIEA apply.

NFTs that have no economic functions as a means of payment (such as art NFTs) are not regulated under the current regulatory framework.

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

Yes.

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)?

Since NFTs with economic functions can be regulated under the PSA or the FIEA, a charity or NGO may prefer not to issue such NFTs.

NFTs that represent rights on arts (and with no economic functions) can be sold by a charity or NGO without having to ensure compliance with the PSA and/or FIEA.

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

As mentioned above, since the NFTs with economic functions would be regulated under the PSA or FIEA, charities and NGOs may prefer to not design such NFTs.

In addition, NFTs that represent legal currencies such as the Japanese yen would fall under “Prepaid Payment Instruments,” which are regulated under the PSA. Issuers of Prepaid Payment Instruments are to be registered with the local financial bureau and owe certain obligations as issuers. Therefore, charities and NGOs may prefer to avoid designing such NFTs as well.

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

Since Japanese laws are silent on this, charities and NGOs are able to accept any type of proceeds.

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

Under the current regulatory framework, it is not prohibited for a charity or NGO to accept proceeds from each resale of the NFT, and not only just from the initial sale of the NFT.

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

Under the current regulatory framework, it is not prohibited for charities and NGOs to gain royalties from subsequent sale of NFTs by third parties.

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

Under the current regulatory framework, no reporting obligations apply to NFTs that do not fall under the cryptocurrencies under the PSA or tokens regulated under the FIEA. Therefore, NFT sales do not need to be reported, except as required by the FEFTA (please see Section 2.4 above).

3.3.(a). Are initial and subsequent purchasers of the NFT issued able to remain anonymous?

To the extent that the report is not required by the FEFTA, the initial and subsequent purchasers of the NFT can remain anonymous to the authorities. (Please note, however, that due to the nature of blockchain, the transaction can be tracked).

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

4.1. Has the tax authority in your jurisdiction issued any guidance about the taxation of digital assets, including cryptocurrencies and NFTs?

Yes, the National Tax Agency (“NTA”) has issued guidance on the taxation of digital assets, including cryptocurrencies and NFTs. The guidance issued explains the taxation rules that apply to digital assets.²



4.1.(a). Are there special tax rules relating to donations of digital assets?

No, there are no special tax rules relating to donations of digital assets. General tax rules relating to donations of assets apply to donations of digital assets. Information on the general tax rules can be found online.³

4.2. Is a donation of digital assets to charities or NGOs considered a taxable event for the donor in your jurisdiction?

If the donor is an individual, a donation of digital assets to charities or NGOs is not considered a taxable event for the donor. However, the donor may enjoy a tax deduction or tax credit if certain requirements are met (please see Section 4.2(a) below).

If the donor is a legal entity (such as a company), the donor is to include as its taxable income the difference between (a) the market value of the digital asset at the time of donation, and (b) its book value. A donation of digital assets would:

- not be a taxable event if the market value is less than the book value, in which case it is a loss. In any event, the donor may reduce its income tax by claiming a tax deduction; and
- be a taxable event if the market value is higher than the book value. In such a case, the difference in value should be included in the donor’s “gross income,” which would be subject to tax. Notwithstanding that it is a taxable event, the donor may reduce its income tax by claiming a tax deduction.

There may be limitations to the tax deductible amount.

4.2.(a). Are tax deductions available for the donor in respect of donations of digital assets?

Donors who are individuals may reduce their income tax payable by way of:

² See https://www.nta.go.jp/publication/pamph/pdf/virtual_currency_faq_03.pdf and <https://www.nta.go.jp/law/joho-zeikaishaku/shotoku/shinkoku/0022012-080.pdf>.

³ See <https://cof.org/country-notes/nonprofit-law-japan>.

- a. a tax deduction from their taxable income; or
- b. a tax credit against their income tax amount,

if certain requirements are met as set out below.

Tax Deduction

Donors may reduce income tax payable by way of a deduction from their taxable income only if the donation satisfies the following (*tokutei kifukin*):

- the donation is (i) to a public interest entity, and (ii) for charitable causes designated by the Minister of Finance (e.g., donation to Central Community Chest (commonly known as “Red Feather” (*akaihane*)), a public interest entity, for supporting persons affected by COVID-19, a charitable cause designated by the Minister of Finance);
- the donation is (i) to a designated public benefit organization (referred to as *tokutei koeki zoshin hojin*) as set out in the *Income Tax Act*, and (ii) made to finance the primary charitable activities of the designated public benefit organization.

The PIA, PIF, and Approved NPO qualify as a designated public benefit organization for the purposes of the *Income Tax Act*.

The amount of tax deduction that can be claimed is the donation amount minus JPY 2,000, provided that the amount claimed cannot be more than 40% of the gross income of the donor.

In the case of a donation of digital assets, the value of the digital asset (being the donation amount) is its market value.

Tax Credit

Donors may reduce income tax payable by way of a tax credit against their income tax amount if the donation is made to a PIA, PIF, or Approved NPO and satisfies certain requirements as provided under the *Act on Special Measures Concerning Taxation*.

The amount of tax credit that can be claimed is as follows:

Tax credit amount: [(Donation amount – JPY 2,000) × 40%], provided that the amount is not more than 40% of the gross income of the donor

If the donor is a legal entity (such as a company), the donor may only claim a tax deduction and tax credit is not available. The donor may reduce its income tax payable by treating the donation amount as a loss to be deducted from its taxable income, subject to applicable “maximum deductible amount.” The maximum deductible amount varies depending on the nature of usage of the donation and the charity/NGO receiving the donation, as further set out below.

- Designated Donation (*shitei kifukin*) – If the donation is (i) made to a public interest entity, and (ii) for charitable causes designated by the Minister of Finance (e.g., national university corporation and

the Japanese Red Cross Society), there is no maximum deductible amount (i.e., the full donation amount can be treated as a loss).

- Donation to the designated public benefit organization – If the donation is made to a designated public benefit organization (referred to as *tokutei koeki zoshin hojin*) as set out in the *Corporation Tax Act* to finance the primary charitable activities of the designated public benefit organization, the “maximum deductible amount” is calculated using the following formula:

“maximum deductible amount” = donor entity’s capital amount × (number of remaining months in the fiscal year from the date of donation / 12) × 0.375% + (amount of income × 6.25%) × ½

Additionally, the donor may treat the difference between the donation amount and the maximum deductible amount as a “Normal Donation,” as described below. In such a case, the Normal Donation is treated as a loss to be deducted from its taxable income, subject to the applicable maximum deductible amount for the Normal Donation.

The PIC, PIF, and Approved NPO qualify as a designated public benefit organization for the purpose of the *Corporation Tax Act*.

Normal Donation

For donations which do not fall under either of the categories above, the donation amount is treated as a loss to be deducted from the donor’s taxable income, subject to the maximum deductible amount calculated using the following formula:

maximum deductible amount = donor entity’s capital amount × (number of remaining months in the fiscal year from the date of donation / 12) × 0.25% + (amount of income × 2.5%) × ¼

The relevant guidelines published by the NTA are available online.⁴

4.2.(b). Is there a requirement for the donor to keep certain records or obtain valuations regarding the donations of any digital assets?

There is no requirement for the donor to keep any records or obtain any valuations regarding the donations of digital assets, except for the certificate referred to below for tax deduction/tax credit purposes.

Donor Is an Individual

For an individual to enjoy a tax deduction/tax credit, they should, when filing their tax return, also submit a certificate issued by the charity/NGO certifying the matters required to be specified, as set out in applicable law, i.e., the *Income Tax Act* (for tax deduction) and the *Act on Special Measures Concerning Taxation* (for tax credit).

The matters required to be set out in the certificate would usually include the donation amount and a statement that the donation is for a fund related to the charitable activities of the charity/NGO.

⁴ See https://www.nta.go.jp/publication/pamph/koho/kurashi/html/04_3.htm.

Donor Is a Legal Entity

For a legal entity to enjoy a tax deduction, the legal entity, when filing its tax return, is to also submit a “detailed statement concerning the inclusion of deductible expenses into losses” and keep the certificate issued by the charity/NGO describing the matters required to be specified, as set out in the *Corporation Tax Act* and its regulations.

4.3. Are there Capital Gains Tax (CGT) or other tax implications arising at the time of donation for the charity or NGO in your jurisdiction?

It depends on the legal form of the charity or NGO.

Generally, the “corporation in the public interest, etc.” as specified under the *Corporate Tax Act* (the “**Eligible Entity**”) is exempt from corporate tax. An exception to this is if the Eligible Entity has earned income from profit-making activities; in such a case, such income is subject to corporate tax. Therefore, as long as the donation received by the Eligible Entity is for funding charitable activities, corporate tax will not be imposed on the income from the donation.

The PIA, PIF, NPO, and Approved NPO qualify as an Eligible Entity. The GIA and GIF would qualify as an Eligible Entity only if certain requirements are satisfied to ensure that they are not aiming to make a profit. The requirements are set out in the *Corporation Tax Act* (known as *hi-erigata*).

As for CGT, please note that Japan does not impose CGT separately from income tax. Any capital gains obtained is treated as income for tax purposes.

4.3.(a). Is there a requirement for the charity or NGO to record donations of digital assets received?

Other than the general requirements to keep commercial records such as receipts and invoices under the relevant corporate law applicable to the entity form of the charity/NGO and under the *Corporation Tax Act*, there is no specific legal requirement to record donations of digital assets received.

4.3.(b). Is the charity or NGO required to value the digital assets, including NFTs, at the time of donation? If so, are there any prescribed valuation methods?

There is no legal requirement on a charity or NGO to value the digital assets, including NFTs, at the time of donation. However, if a donor is to enjoy a tax deduction/tax credit and seeks a certificate from the charity/NGO for that purpose (see Section 4.2(b)), the charity/NGO would have to value the digital assets as of the time of the donation, as the value is to be stated in the certificate. For the avoidance of doubt, the valuation can be obtained after the time of donation, but the value of the digital asset donated has to be its value as of the time of donation.

The value should be the “market value” of the digital asset (as of the time of the donation). According to the Basic Instructions on Evaluation of Assets issued by the NTA, the market value is regarded as the “price generally adopted in free trade among many and unspecified people.” Apart from that, the NTA has not

issued any specific guidance on the valuation methods for digital assets. Generally speaking, the valuation will be made by the way of referring to the market price (e.g., the prices at the cryptocurrency exchange), the acquisition costs, etc., but it might be difficult to value NFTs if it is one that is newly generated/created.

4.3.(c). Is there a requirement for the charity or NGO to issue receipts or written recognition to donors? If so, is there an established process that must be adhered to or information which must be disclosed (for example, the date of receipt, the number and type of asset received, and the market value at the time of receipt)?

There is no legal requirement on a charity or NGO to issue receipts or written recognitions to donors. However, if a donor is to enjoy a tax deduction/tax credit and seeks a certificate from the charity/NGO for that purpose (see Section 4.2(b)), the charity/NGO would have to issue a certificate.

For the certificate, there is no established process, but certain information is to be included in the certificate. What information is to be inserted depends on the applicable law. For example, in the case where it is an individual seeking to enjoy a tax reduction by way of a tax credit, the applicable law would be the *Regulation for Enforcement of the Act on Special Measures Concerning Taxation* (Order of the Ministry of Finance No. 15 of 1957). In such cases, the certificate is to set out the following items:

- donation amount;
- date of receipt of donation;
- statement that the donation will be used for funding charitable activities that are eligible for special tax treatment; and
- name of the charity or NGO.

4.4. Are there any CGT or other tax implications for the charity or NGO arising in your jurisdiction, if the charity or NGO plans to dispose of or transact with the digital asset subsequently?

If the charity or NGO is an Eligible Entity and it disposes of or transacts with the digital assets to exchange them for money to realize the purpose of donation (i.e., to fund the charitable activities), corporate tax will not be imposed on the income from the disposal or transaction. However, if the Eligible Entity engages in a profit-making activity as defined in the *Corporation Tax Act* and will use the proceeds for a profit-making activity, corporate tax will be applicable.

As mentioned in Section 4.3 above, CGT is not imposed separately from income tax. When the charity or NGO disposes of its digital asset, it is required to include the difference between the market value of the digital asset and its book value in its gross profit, under the Corporation Income Tax. Any increased value will be taxed as corporation income tax (although an Eligible Entity is exempted from corporation income tax).

The disposal of the digital assets will not be subject to Japanese consumption tax as long as it is regarded as a “transfer of the payment methods.” The disposal of the cryptocurrency would be generally regarded as this. However, the disposal of NFTs would be usually regarded as the “transfer of assets” and it would be subject to Japanese consumption tax.

5. What is the best practice or guidance?

5.1. 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?

Yes, please see the following:

- Guidelines for the Crypto-asset Exchange Service Providers published by the Financial Services Agency⁵
- NFT Guidelines published by the Japan Cryptoasset Business Association⁶
- Guidelines of Accounting Standards for NPO⁷



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

- List of the organizations which are designated by the government to provide consultation for NGOs⁸
- Online portal to submit questions regarding tax treatment on NPOs⁹

5.3. Have 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?

A notable court case, among others, is the judgement of the Tokyo District Court dated August 5, 2015 (the “**Case**”), which addresses the legal nature or treatment of “Bitcoin” under Japanese law, specifically in the context of a bankruptcy proceeding.

MTGOX, a company that was operating as an online cryptocurrency exchange, entered into bankruptcy proceedings on April 24, 2014. The plaintiff filed a lawsuit against the bankruptcy trustee of MTGOX claiming that the Bitcoins, which were obtained and owned by the plaintiff through MTGOX’s cryptocurrency exchange (the “Underlying Bitcoins”), should be returned to the plaintiff based on the plaintiff’s ownership right to the Underlying Bitcoins, without allocating any of the value of the Underlying Bitcoins to the general creditors of MTGOX.

⁵ See <https://www.fsa.go.jp/common/law/guide/kaisya/16.pdf>.

⁶ See https://cryptocurrency-association.org/cms2017/wp-content/uploads/2022/10/JCBA_NFTguidline_v2.1.pdf.

⁷ See <https://www.npokaikikijun.jp/guideline/>.

⁸ See https://www.mofa.go.jp/mofaj/gaiko/oda/about/shimin/page22_001461.html.

⁹ See <https://www.npokaikikijun.jp/phpbb/viewforum.php?f=4&sid=baece3611a8b3b5b71c4d79923ab0b2c>.

In the Case, the court rejected the plaintiff's claim and held that Bitcoins are not the subject of ownership rights under the Civil Code and the *Bankruptcy Act*. This is because ownership rights can only be claimed over tangible objects, and Bitcoins are not tangible objects. This judgment illustrates that, where a cryptocurrency exchange goes bankrupt, the persons holding cryptocurrencies such as Bitcoin through the exchange would unlikely be able to recover the cryptocurrency by claiming ownership. A relief measure which can be taken by a cryptocurrency holder would be to claim as a "general creditor" in the bankruptcy proceedings of the cryptocurrency exchange, although it is unlikely that the cryptocurrency holder would be able to recover the full value of the cryptocurrency held before the bankruptcy.

Legal regulation of cryptocurrency and NFTs in Japan

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