How Does a Data Code Become Taxable? A Brief View from A Spanish Law Perspective⋆

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Abstract
The evolution about what could be an expression of taxable wealth has changed along history. It has expanded from land possession to more sophisticated intangible items that have in Internet its raison d'être. Tokens are an example. People create tokens as crypto-assets, and transfer, and possess them into that virtual space. Now, the key point is that they are going to have economic consequences as well, such as: being a source of income, a part of wealth or transferred and consumed. Therefore, due to possibly being an expression of personal economic capacity, they become of the special interest to the public authorities with tax power.

Keywords
token, crypto-asset, tax law, digital assets, digital economy

1. Introduction

The phenomenon of the contribution to the common expenses of a community has been accompanying the human being since the first manifestations of social organizations[1]. As the time goes by, taxes have been linked to the development and maintenance of these communities. We can agree that tax system has raised in complexity parallelly to the evolution and sophistication of social groups. We must think about the evolution that taxes have had: first as an expression of power of conquest and submission of the citizen to the power of a King or Queen to, second, as tax built around an obligation structured according to the Law with a debtor and a public creditor such as tax authorities. [1]

As is widely known, taxes were and nowadays are levied on elements that are grouped into three main categories: property, income, and consumption. Without wishing to be exhaustive in the statement and making historical synthesis, it is observed that in the first civilizations (from Sumer to Rome passing through Egypt) the resources to cover public expenses were obtained from figures based on the person's assets (for example, ownership of land and livestock), on what these elements could produce or the economic activity of people (crops and trade) or

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[1]Recall now Article 54ter of Spanish Real Decreto 1065/2007 of 27 July 2007 approving the General Regulation on tax management and inspection actions and procedures and the development of common rules for tax application procedures. This precept regulates the obligation to report on the transfer of use of housing for tourism purposes to persons and entities that mediate between assignors and assignees of the use of housing, a norm that directly affects well-known platforms such as Airbnb.

on the consumption of goods. This is without prejudice of taxes obtained by the war activity, territorial expansion by conquest and submission of other peoples.

These bases of taxation are reproduced in a later period in which capitalism develops (a period which would comprise from the Renaissance to the 19th-century Industrial Revolution). During this time, we can see a change in the importance of the referents to collect taxes, because the ownership and exploitation of the land lost prominence if rents obtained by economic activities (industrial production, commercial activity), speculation (participation in profits and stock market) and labour are compared. As for the taxation of consumption, it continues to be an essential complement in obtaining public revenues through indirect taxes.

From the Industrial Revolution of the 19th century to the current days, there has been a phenomenon of dematerialization in the economy since the production of wealth goes from goods that have the characteristic of being physical and territorially locatable (economy based on bricks and mortar) to an economy based on the profit opportunities offered by the financial system where technologies have increased the possibility to transfer value internationally. Consequently, sources of income continue to maintain their prominence as a means of obtaining public resources, but there are four new phenomena: a) the need to enhance points of territorial connection to compensate for the mobility of goods, b) the tax increase on elements that do not have as much possibility of territorially dislocating as those obtained by labour, c) the increase in the collection weight in indirect taxation based on consumption which generates inequality between types of taxpayers, and d) how the tax treatment of new products based on data should be. This last question is the object of interest in these lines.

This dematerialization of taxable elements has increased with the development of technology that has change from facilitating the relocation of taxable assets to being a virtual spare room into which individuals develop economic activity. We can remember the first steps involved in the development of Ecommerce in the Internet environment as it allowed online commerce through web pages[2]. The determination of the location of the so-called 'virtual stores' that would allow tax profits generated extensive debates that ended, for example, in adding specific comments to Article 5 of the OECD Model Tax Convention on Income and Capital with the idea of considering the computer server as permanent establishment[3]. Subsequently, the economic activity carried out on the Internet finds another form of development with the collaborative economy. Through platforms created on the network, suppliers of goods and services and their claimants carry out transactions that arouse the interest of the tax authorities . This increases when it goes from facilitating exchanges between individuals to making these platforms true manifestations of economic activities. At this point, the problem faced is, on the one hand, to control the volume of economic activity done by users and, on the other hand, the location of these platforms as they constitute a business activity. [2]

At present, the dematerialization of economic activity using new technologies that allow the exchange of information in the form of data has gone a step further if attention is focused on this fact. The so-called Distributed Ledger Technology (known by its acronym DLT) on

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[2]On this issue, the work within the OECD on BEPS and Action 1 on the digital economy and taxation should be highlighted. From these have emerged initiatives known as Pillar 1 and Pillar 2. The main target of them is both to locate the returns in the jurisdictions in which the multinationals operate and to guarantee a minimum taxation on them. The fundamental cause of these initiatives is the digitalization of the economy that facilitates the dematerialization and relocation of business activity. See [4].

which the Blockchain or chain of blocks is based has allowed the network to go from being a mechanism to transfer information to a means of value transfer with a particularity: that value resides in the data itself. If datum is conceived as a minimum unit of information and can be structured as a non-duplicable element that can make sense, or even represent physical elements in the network, it increases the possibility of transferring wealth in the virtual space that constitutes the network. This becomes a new area in which expressions of wealth will circulate on the net and it will be an asset, generate income or consume. From that point, there must not be question that they are of interest to the tax authorities because they do not cease to be, with their taxation, sources of income with which cover public spending and, in addition, there would not be justification for their non-subjection because they are different from the traditional physical environment because they acquire meaning in spaces built with technology. [3]

In the opinion of the writer at this point, the dematerialization of the economy cited above has found a new expression in data structures. These have been constituted as new goods with their own characteristics to which a value has been attributed: they are crypto-assets [5]. In fact, it is said that a new market has been created for these goods that involve transactions between persons whose object is these technological assets. The concept of Fintech has identified the entire system. Well, as it has been happening in other cases and has been expressed above, the new elements are incorporated into the basic categories of property, income, or consumption and, therefore, are subject to taxation by entities with tax power.

This possibility and its consequences are the object of this study that, with a legal-tax perspective, tries to outline how this manifestation of wealth is assumed by the tax system, particularly, the Spanish tax system. The starting hypothesis is that even crypto-assets are a new asset they do not require new type of taxes because they will be a part of traditional expressions of wealth, such as capital, income, or consumption. The reflections that are going to be offered will be incorporated into those that have been made for some time both from the doctrine and from the public authorities. [4]

The first step in this task that must be taken is apprehending how these goods are generated.

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[3]For instance, people have become an invaluable source of data for companies. With our actions, desires and requirements made through digital devices such as mobile or computer, is gathered an amount of information of extraordinary utility for business activity. Based on it and a correct interpretation, it can be offered new products or existing ones can be optimized, which will have an impact on an improvement in company profits. There would not be justification about no taxing these companies because they are using new methods based on data of getting these profits. On the importance of data in the economy can be seen [6], [7], [8].

[4]A specific example of the necessary adaptation of the tax system to these new assets is given in relation to the tax consequences of trafficking with a type of crypto-asset such as cryptocurrencies. In the enquiry to Spanish tax Administration (AEAT) 2228-13 of July 8th, a first case is submitted to the Tax Administration on these assets. A company intends to be a money changer in the virtual currency market and consults about the tax consequences that arise. The Administration replies that the payments from the service must be taxed by Corporation Tax. To deal with the issue of subjecting to VAT the activity of virtual currency changer, consulted administration guided the consultant at that time by the regime applicable to electronic money regulated by Law 21/2011 of July 26. Tax Authorities admit that if it were possible to make an equivalence between virtual currency and electronic money, it concluded that we are facing an item burden by, but exempt from, VAT. However, the AEAT does not go further in its analysis because, according to the lack of information on the characteristics of the crypto-asset, it is evident that we are facing a new reality for the tax authority about which it must be examined how it fits into the current tax legal categories.

Understanding them from a legal point of view requires a certain knowledge about how they originate within their medium which is the Internet. It is necessary to see how a series of data structured in a certain way become an element on which individuals build relationships. Once the profiles that allow these assets to be recognized from a technical point of view have been drawn, it is necessary to consider how they are assumed by the legal system and analyse the possibility of thinking of them as a foundation of different types of taxes.

2. Technical aspects of crypto-assets: A basic approach

Crypto-assets can be a new element to incorporate into the assets owned by individuals which have a characteristic that makes them unique: they are created within the technological environment that forms the network of networks that is the Internet. They are not physical goods, but intangible, although they differ from the more traditional of this category (such as intellectual property) in that they depend on the data transfer network that forms the connection of different nodes (the existence of music, images from photos or movies or literature only depends on human creation and imagination, they do not come from the net as happens with the crypto-assets). They acquire their meaning and raison d'être in the fact that there is a space constituted by a data communication structure formed by various machines connected to each other that create, transfer, and store them by several mechanisms.

If we left the previous explanation without going a little further, there would be no difference between the goods referred to and other data transmissions that have been taking place through the Internet. There must be a differentiating factor that allows the evolution of the network in the direction indicated above: to move from a communication network to a single element transfer network.

This evolution has been possible by introducing technological innovations in the processing of information and the structuring of its simplest unit: datum[9]. The first is known as DLT through which it is possible to record operations with their data in the various nodes that structure a network. It must be clear that the different components receive, manage, and transmit information maintaining the same level (peer to peer relationship), that is, there is no centre that organizes the whole, but a set of nodes perform the functions. The second innovation is a way of performing the task of recording with which the first has been identified because it is, in fact, one modality: Blockchain. Through this function, the data is transmitted structured as blocks and thus recorded in the nodes that check its validity. These blocks, in addition, have a relationship with each other because a part of the structure of one block, is reproduced in the next. The third piece of the puzzle is that these blocks are formed by the so-called hash functions with which something (a text, a video, a message ...) can be 'transformed' into a unique and unrepeatable combination of digits and letters.

It must add a fourth element so that the transfer between people participating in the network of the data block is secure: cryptography. In a basic way, it is defined as the techniques to protect the content of messages or sets of data that can be transmitted between individuals keeping them off from the knowledge of third parties. It is known that this is achieved encoding the content of a message using different techniques so that only the sender and receiver have the necessary keys for decoding making it understandable to them. It is pursued that only the

affected individuals can access to the message through their passwords and that, in addition, third parties cannot alter it.

The individuals interested in the transmission of a block of data as a message have two keys: one public and one private. The sender must know the public key of the receiver through which the communication is encrypted for sending. On the other hand, the recipient will have to use his private key to access and make use of the scent. This system doesn't allow third parties outside the relationship to intercept the set of data transmitted and make use of it since they do not know the private key of the receiver that gives it meaning.

To close the list of components, we must mention the use of the electronic signature of the parties involved. Through the set of data that form it, incorporated into the transmitted block of data, an added layer of security is given to its transmission. It is possible using it, on the one hand, to identify the signatory person of the message and, on the other hand, to guarantee the integrity of the data set sent.

The combination of DLT technology, blockchain, hashing, cryptography and digital signature allows transmitting unalterable and unique data sets securely on the network. If these sets of data are valid for individuals to be deposits of value, the result is that the Internet network is no longer only a means of communication but also a means of wealth transfer[10],

The denomination that is being used to identify the dataset is 'token' which is common, for example, in the gaming tables representing the value of the bets that can be made. These 'tokens', therefore, will become the element to differentiate within the network and may constitute two types. First, elements whose genesis has occurred on the Internet without having a correspondence or relationship with the real world, being an example cryptocurrency. Second, structured data that are related or represent elements of reality as is the case of Non-Fungible Tokens or NFT [11]. The two basic categories indicated, in addition, host the various modalities of structured codes that can be raised depending on the algorithm that is applied for its creation. It is for this reason that, for example, it is possible to have different species of cryptocurrencies or crypto-assets with different characteristics (Bitcoin, Ethereum, Cardano, NFT collectibles, etc ...).

According to that, given the possibility offered by modern technologies to constitute unique and individualizable structured alphanumeric codes that we can identify as 'tokens', it must be assumed that the individuals are using them in transactions of an economic nature and that, therefore, they are attributed a value by identifying them as crypto-assets. Around this, a market has been created in which, as it cannot be otherwise, there are conflicting interests and on which the tax authorities have focused their attention. In these circumstances, it is necessary to explore what answers the law can give. Of course, we must be conscious that a conclusion depends on how the legal system is [12], [13], [14].

3. Legal nature of crypto-assets

It does not take an exhaustive demonstration to conclude that the law has been facing new phenomena caused by technological advances for a long time. In these lines, the assimilation by the legal system of a new element that is of interest to individuals as they make it the object of their relations is being treated: the 'token'.

If we start from an original moment such as the creation of the legal system in the Roman world, it can be summarized that part of its development occurs in the relationship of the person with the things that surround him. From the full right of property over the thing to the rights in rem it was based on real, tangible, and measurable elements (the land fundamentally). At present, the network has put us before a reality in which elements are created and on which individuals use different kind of capabilities and powers. For this purpose, we are facing the dichotomy of whether a new legal category should be invented given the characteristics of the element or can be assimilated to the existing ones.

To begin with, we must focus attention on the 'token' understanding it as a specific number of digital resources that someone controls and that can be assigned to another person making the corresponding transfer. It is a result in the form of code, product of a computer process or specific algorithm executed on the network. This has got importance from an economic point of view, since it has been attributed a value by the internauts (probably, without this characteristic it would not have a legal interest). Returning to the parallel with the game tables, the chips or tokens have no more value than the material with which they are made until the players attribute a value that is useful to them for the game they make. And, in addition to having the characteristic of being depositary elements of an attributed value, it is added that, due to their computer nature, they can perform various functions according to their programming (be piece of art, coins, shares in real estate, etc. ...) which, undoubtedly, will make the general legal category to which they can be assimilated have as many variants as possibilities attributed to them by the people who design them. A reality is presented that has as a common characteristic, a nucleus formed by data to which value is attributed and that has the characteristic of varying depending on the objectives that are intended to be pursued by the creator of the functions that structure them.

This core of structured data, in any of its facets, has the characteristic that it is attributable to a person who can exercise powers over them in an exclusive way. Its capacity is, once created, to store them, transfer them, delete them, etc... That is, paraphrasing art. 348 of the Spanish Civil Code, the individual may enjoy and dispose of the object. An object on which legal powers can be exercised can be understood as an asset.

In accordance with the above, it can be said that the token is configured as an asset that, due to the absence of the physical, is intangible and over which faculties of enjoyment and availability can be exercised. But, to complete this picture, the approach that ROSEMBUJ gives us to the understanding of the phenomenon of cryptocurrencies is useful. This author focuses on the circumstance that, on them, the person can make effective certain faculties and delves into this fact. He shows that cryptocurrencies can be the object of the person's faculties insofar as [15] these are based on cryptography, its public and private key system, and the digital signature. Through these instruments, people maintain their identity in the network as something of their own and that is part of their own intimacy. In other words, the right to privacy that assists the individual is transformed in the network into a set of instruments such as cryptographic keys and digital signature that allow individualization and exclusive access to the handling of data that are of interest. To better understanding, it is necessary to start from the idea that computer codes, at first, did not present guarantees as they are duplicable by copying. In a second moment, cryptography and digital signature allow that duplication to be avoided and, in addition, link a code to an individual that can handle it according to their options. The

transformation of the individual's data into unique computer codes becomes effective and with it the transfer of value in the network. The person does all this by himself without depending on third parties to validate identities or operations whereas the system in which the tokens are developed already executes that function based on a decentralized registry of operations or DLT. Thanks to this activity of registration in the system, the individual can exercise the operations he deems appropriate on that computer or intangible element on which, by virtue of cryptography techniques, he has exclusive access.

Thus, from an abstract point of view, the token is identified with an intangible good over which owner faculties can be exercised by an individual. [5] This requires, on the one hand, the individualization of said person in the network by processing their data using cryptography techniques and, on the other hand, that this provides the possibility of exercising faculties of access to the good, transferring it, recording it as a single element, the validity of the operations carried out with it, eliminating it without the need for the action of third validators, and excluding others from those possibilities on the same good.

Once the reality on which we are working has been conceptualized, it is time to see how it fits into positive law. The starting point is Art. 333 of Spanish Civil Code[6] according to which all things that are or may be subject to appropriation are considered movable or immovable property. That is, if the term appropriation is understood as the ability of a person to become the owner of a thing and dispose of it and it is known that actions can be exercised on the token in an exclusive way attributable to an individual, it remains to be known if it is a movable or immovable property.

It does not require much depth to consider the token outside the classification established, relative to real estate, art. 334 Spanish Civil Code. Regarding movable property, art. 335 Spanish Civil code defines them according to two ideas: on the one hand, they are not identified with the immovable property and, on the other hand, understand that they are transportable from one point to another. This last characteristic is consistent with the idea of goods of a physical nature that, logically, are subject to transfer. If so, the absence of a physical substantiation of the tokens, as has been advanced, combined with a strict interpretation of the terms in which art. 335 Spanish Civil code is formulated would exclude the token also from this category of goods.

But this conclusion varies if an interpretation of the text of the definition is made according to the current social reality and if the taxonomic purpose of the precept is considered . As mentioned, the token can be subject to appropriation by an individual by virtue of holding

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[5]This definition can well be seen as one more contribution to the various ones that have already been made, as BARRIO ANDRÉS relates to us, see pp. 50ss, see [16]. This author collects different definitions of different entities which points out the confusion involved in working with crypto-assets. According to this author, depending on who studied it, these elements are: - European Central Bank: any digitally registered asset which is not and does not represent a right or financial obligation of any natural or legal person and who does not incorporate a property right against an entity. - Financial Action Task Force: are digital representations of value that can be traded digitally or transfer, as well as used for payment or investment purposes. - Organization International Securities Commission: type of private asset that relies primarily on crypto and DLT technology or similar as part of its perceived value, and which may represent an asset such as a currency, commodity, or security, or be a derivative of a commodity or security. - Financial Stability Board and Bank for International Settlements: A type of private asset that relies primarily on cryptography and distributed ledger or similar technology as part of their perceived or inherent value. - European Securities and Markets Authority: a type of private asset.

[6]References of interpretation these -the reality social and purpose of the precept- in accordance with art. 3.1 of Spanish Civil Code.

private and public keys to manage it. In this sense, it can be considered the existence of a space or point in the network (which we can identify as 'portfolio' or 'wallet' as far as cryptocurrencies are concerned) from which the computer code that constitutes the token can be transferred to another point or space. This idea of transfer can be identified with the meaning of transport which allows to assimilate the token with a movable good.

The equalization that is being carried out requires more precision. The movable property identified by the Civil Code is eminently physical and makes sense in a real world. Computer codes will not have this characteristic of corporeality and, moreover, they do not make sense outside their space. It immediately arises whether these characteristics are an obstacle to equating the token to a movable property as it is being drawn so far. However, it does not seem that this were an impediment of such calibre that it forces us to think about a new category of assets. First, the conception that there are useful items that can be an intellectual creation or are intangible is not ignored by law, for example, rights, obligations, or special properties such as intellectual or industrial properties on creations or inventions. Consequently, as far as the characteristic of intangibility is concerned, there would be no real problem in seeing the token as an intangible or intangible movable asset. Second, the fact that the token makes sense outside the physical world insofar as its natural space is the network does not pose an insurmountable obstacle to the assimilation being described. The space that forms the Internet is undoubtedly one parallel to the real one with its own characteristics (for example, absence of borders or immateriality of elements) in which individuals develop different activities. However, as far as crypto-assets are concerned, the powers exercised over them in that environment are generated from the legal capacity of people. By virtue of this, they translate motu proprio into data information associated with them, exercising powers derived from their right to intimacy and privacy and forming the necessary keys for the management of their space on the network. In other words, the exercise of powers over crypto-assets implies the need for access to the space in which they develop, which necessarily requires exercising capacities of the individual that have their original meaning in the real and physical world. Thanks to the availability of rights in the real world, faculties can be projected on crypto-assets in the technological space that the network means. [7]

According to the above, there is no need to coin or create a new institute for our legal system with which to accommodate what has been defined as intangible movable property on which proprietary faculties can be exercised by a person. This conception fits into the one provided by the, so far, Proposal for a Regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive (EU) 2019/1937 COM (2020) 593 final (known as project MiCA). This European standard, with the aim of establishing a regulation that disciplines the market of some crypto-assets, provides in its art. 3.1 a definition of the concept

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[7]Whether the space in which an intangible movable asset acquires meaning is not the real one and that there are therefore no singular problems of assimilation to a category is not a new question if one thinks of computer programs that constitute or make sense in their operation on the Internet. The Law assumes them naturally as intangible movable property over which to exercise rights by the owner if, for example, article 10.1.i) of Spanish Real Decreto Legislativo 1/1996, of April 12, which approves the revised text of the Intellectual Property Law. Likewise, Spanish Real Decreto Legislativo 1514/2007, of November 16, which approves the Spanish National Chart of Accounts, recognizes in its Second Part regarding the rules of registration and valuation, points 5º and 6ª the category of fixed assets intangible in which includes computer programs.

understanding that it is "a digital representation of value or rights that can be transferred and stored electronically, through decentralized registry technology or similar technology". This definition highlights the fact that the set of data can have the desired functionality because they can represent a value or a right; that they can be transfer and stored and that it has a digital nature that makes it intangible in a decentralized environment. Therefore, whether a token could be a movable intangible asset that represents value, the next step is to analyse how it will be treated by the tax system.

4. Crypto-assets as an expression of taxable wealth

The token has been defined, when it functions as an asset, as a movable property with intangible nature that represents values or rights over which proprietary functions can be exercised. The next question to be solved is under what terms this good can be taxed by the tax system [17] .

It is a starting point for this purpose to recall art. 31.1 of the Spanish Constitutional Law and on what is based the tax system. [8] Basically, on taxing expressions of economic capacity understanding the concept as wealth attributable to a person who will act as a taxpayer. In summary, this concept is a basic principle of Spanish tax system and involves a series of requirements when building it: to tax within a maximum limit and respecting a minimum vital limit of wealth, [9] to issue taxes on manifestations of real or potential wealth that can be income, wealth, or consumption, [10] and that at the time of establishing a tax the legislator has that principle as a fundamental reference for its design. The point, therefore, to be fixed at this stage is whether the digital asset can be taxed within those parameters.

As regards of the token, as we have seen, a series of powers can be exercised that allow it to be created, transferred, stored, or even lost – since it is a computer code, it is susceptible to being deleted-. These are attributed to a person who can exercise them exclusively by virtue of their own data that form their public and private keys and thanks to the application of cryptography. This possibility of accessing a series of computing resources in an exclusive way is what allows an economic value to be attributed to these goods. By virtue of the technological features of the system based on the above elements, people convert tokens into stores of value. Continuing with the simile advanced above, the game tokens by themselves will have no value, until people, by virtue of their characteristics and the needs they can cover, attribute it to them.

If an economically relevant value is attributable to a good for the needs it covers and certain faculties close to the property can be exercised exclusively over it, it becomes part of the assets of a person who, by virtue of his public and private keys, can exercise them. As with other patrimonial elements, it may be the object in legal transactions, with which get economic

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[8]This article says "1. Everyone shall contribute to sustain public expenditure in proportion to his or her financial means, through a just and progressive system of taxation based on principles of equality, which shall in no case be confiscatory in nature".

[9]While giving meaning to the principle of non-confiscation, the Spanish Constitutional Court, in its judgment 150/1990 of 4 October (ECLI:EES:TC:1990:150), in FJ 9, explains that the principle of capacity implies seeking wealth where it is without it being exhausted by imposing a maximum limit on its taxation.

[10]In this sense see Sentence by Spanish Constitutional Court 26/2017 of March 25 (ECLI:ES:TC:2017:26) in whose FJ 2° the jurisprudential line is established in this aspect of the principle of economic capacity. Likewise, Sentence 37/1987 of March 26 (ECLI:ES:TC:1987:37), FJ 13° or Sentence 182/2021 of October 26 (ECLI:ES:TC:2021:182), FJ 3.

benefits. Thus, based on the relationship between intangible movable property and an asset that can be a source of profit, it is considered a manifestation of economic capacity in the sense of being a real or potential wealth susceptible to taxation. Although it means insisting, this affirmation must be completed with the circumstance that it is a wealth attributable to an individual inasmuch as controls digital resources by virtue of their exclusive identification in the network, through the exercise of their keys which are part of their private sphere.

A code formed by letters and numbers with a sense because they are the outcome of a data process into Internet and on which an individual can exert some faculties as owner get a value in a market. This code has a worth by itself and for that reason could be grouped with other movable assets and share with them the taxation on capital. Also, it could be source of income because in a market could be sold and bought producing capital gains that an income tax could levy. Finally, different kind of services related with crypto-asset (such as exchange services of cryptocurrencies) and the transmission of these new assets (such as the creation of NFT) could be charged by indirect taxes such as VAT. In any case, it will not be necessary to create a specific tax on this new asset insofar the tax system charge every economic operation that a person can carry on with them. [11]The fact that we can equalize this new product with a category already created drive us to this idea.

Notwithstanding the foregoing and mentioned as annotation in these lines, this makes necessary analyse other problems [18][19]such as: A) Crypto-asset, being part of its essence, can change and with this its legal nature. This could influence in what tax treatment it deserves. For instance, a crypto-asset could be an asset (a Non-Fungible Token) but it could be a division of an asset (a virtual representation of a real immoveable asset). The first one has a value by itself and the second by reference to another good and this must be considered in the capital tax. B) Crypto-asset could be related with different kind of transactions and this could influence on taxation. For instance, the exchange of cryptocurrency for other assets could be considered by income tax as a swap, though a currency exchange in Value Added Tax.

5. Conclusion

The possibility of a set of data forming a digital code on which and individual can have plein power of disposition and could be used under an economic point of view and the idea that it will be a part of movable wealth, source of income and object of transfer and consumption converts tokens into an expression of economic capacity. Therefore, according with Spanish Constitution and tax system, it should be charge by income, wealth or consumption taxes getting an equal treatment provided to other expressions of wealth as land, royalties, interest, or dividends which have been developed in the real world. Nevertheless, this is only a base to analyse other problems caused by the need to fit this intangible movable asset into the tax system.

Acknowledgments

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[11]OECD has differentiated different key taxable events related to virtual currencies, see OECD p. 13-15 [20].

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