UK tax treatment of cryptoassets

A coherent tax analysis when investing, trading and disposing of in cryptoassets by individuals and businesses

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This article outlines the main tax aspects of investing, trading and disposing of in crypto assets. The article distinguishes the tax point of views of individuals and businesses. For individuals, it is of paramount importance to understand whether a "trading" activity can count to a notion of a "trade" relevant for tax purposes: it is a question of fact if an activity of transferring, disposing and selling cryptoassets (and also mining) is to be considered a "trade" for tax purposes, no being predetermined by any legal tests but to be set out under circumstances and according to a number of "badges" inspired by law cases. A material consequence is that, should an activity be qualified as "trade", profits are subject to Income Tax (and not to Capital Gain Tax). The article also outlines a number of special rules for calculating the tax base for Capital Gain Tax purposes, including the pooling method. Special attention is given to the concept of crypto assets location, which may have a deep impact on the resident non domiciled taxation: according to HMRC opinion, the pivotal criterion is the residence of the beneficial owner, irrespective if such crypto are deposited in a wallet or an exchange, with therefore a material erosion of rights connected to such regime and to the remittance basis mechanism. For businesses, cryptoassets may be considered for accounting purposes intangibles or investments, with a quite different tax treatment. Once having summarized the impact of indirect taxes (SDRT, VAT and inheritance aspects), we have attempted to determine some basic tax ideas about a number of crypto and fintech applications like DEFI, DAO and NFT.

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I. General aspects

Crypto assets (also referred to as "tokens", "cryptocurrencies" or "crypto") are cryptographically secured digital representations of value or contractual rights. The tax treatment of crypto assets depends not only on the nature and the use of a token but also and in particular on the tax status of the holder. Crypto assets are not considered to be currency or money and therefore they may be able as any other assets to be transferred, disposed, exchanged and sold, having HMRC confirmed that they cannot be considered also as gambling activities[1].

The UK general approach to crypto assets is to fully accepting the crypto world in order to legitimize its use, and as a consequence to bring into taxation any income phenomena deriving from cryptoassets transactions and activities[2].

II. Individuals and Income Tax

As a general rule, individuals holding cryptoassets, as personal investment, are subject to Capital Gain Tax ("CGT") when they

[1] HMRC, Cryptoassets Manual, CRYPTO10450, 2021.

[2] This article does not deal with regulatory matters; in this sense, for your ease, please see, *inter alia*, HM Treasury, UK Regulatory approach to cryptoassets and stablecoins, January 2021. See also Kalifa Review of UK Fintech, an impressive action points program supported by UK authorities and government.

dispose of their cryptocurrencies. However, there is a number of cases where an individual when disposing of a cryptoasset, would be subject to Income Tax ("IT") and therefore to national insurance contributions. As a consequence, it is of pivotal importance, quite before understanding the type of token, its nature and use, to set out in which circumstances an individual accrues the right to hold a crypto.

A. Earnings from employment

Earnings from employment, mining and staking are similar activities for income tax point of view as they are all subject to IT.

Employment income may assume the form of any asset potentially liable of a valuation: crypto received against an employment relationship count as "money's worth" and they are subject not only to IT but also to national insurance contributions.

In order to be qualified as employment income, a cryptoasset shall be easily convertible: in other words, such crypto shall be provided in the form of a readily convertible asset (in the sense that they need to be likely to come into existence).

If this is the case, the employer is requested to account to HMRC for withholding purposes on the best estimate of the value of assigned crypto[3].

B. Earnings from mining, staking and similar activities

Mining and staking transactions would be taxable as (miscellaneous) income subject to IT[4]. Tokens awarded to "miners" represent the consideration received for an activity and therefore subject to IT and national insurance contribution. Also airdrops, if and to the extent they represent tokens received in exchange of "doing something" are to be taxed as income.

As miscellaneous income there are a number of appropriate relevant expenses for determining the net income[5].

Attention should be paid whether such activities amount to a taxable trade since in such a case other different rules are applicable (see just below).

C. Taxable trade

Whether an activity of transferring, disposing and selling cryptoassets (and also mining) is to be considered a trade is a question of fact, no being predetermined by any legal tests. You shall refer to any circumstances and facts as a whole before stating that an activity is a trade for tax purposes.

HMRC's approach is that only in specific cases such activity qualifies as trade and therefore in first instance, this circumstance shall trigger capital receipts to be taxed as capital gain. In other words, HMRC's approach is that an individual buying and selling crypto is, *prima facie*, within the scope of application of Capital Gain Tax ("CGT"). Only if and to the extent that there is evidence based on "facts" that there can be a trading activity, one shall look at all relevant information and come to a decision according to a "badges of trade" approach.

Badges of trade are used and have been used in the past for determining if buying and selling shares amounts to a trade: even if only in some circumstances a crypto may be assimilated as to a security, it is possible to use case law material in areas of traders in financial instruments[6] for crypto trading purposes.

Typical factors to be considered are (*a*) degree of activity, (*b*) organisation, (*c*) risk and (*d*) commerciality.

Initially, it is useful to preliminarily explore a number of key areas as to understand if there is enough evidence that the activity could qualify as trade. Not exhaustive examples are the experience of the person carrying on the activity, if an activity is carried out in a proper commercial way, the profit-making strategy, the type of instruments used, the kind of research done, the access to financial information providers, the number and frequency of transactions, the length of time for which instruments are held and the time devoted to such activity.

Usually some criteria are considered of paramount importance when dealing with financial instruments: number and frequency of transactions, holding periods and range of instruments[7].

In cryptoassets trading, on the grounds of its peculiar aspects, some parameters appear to acquire a strong relevance: the experience and the technical background, the commitments to other activities, the frequency of the transactions, the involvement in not purely trading crypto activities (like mining, staking etc.), the participation in chats and blogs specifically dedicated to cryptocurrencies as well as to attending courses and events. Last but not least one shall also understand the total value of crypto investments in compare to other assets and whether the trader is disposing its crypto for financing his own personal expenses or for other purposes (in other words, if by its crypto trading activities, he/she is earning or is expecting to earn most of its annual income while other income sources are or become residual).

[3] HMRC, Employment Income Manual, EIM119000. One shall also remind rules about "making good" when employee receives a benefit on which, for its intrinsic nature, the employer is not able to withdraw what is due to HMRC.

[4] Miscellaneous income belongs to the category of "income not otherwise charged to Income Tax or Corporation Tax" (ITTOIA 2005 section 687): therefore this income is subject to a standalone charge to Income Tax or Corporation tax. It is interesting to outline that such income is not subject to a "substitute" tax or any other form of withholding taxation but to marginal tax rates of Income Tax.

[5] HMRC, Business Income Manual, BIM100000. In practice you should follow the rules governing trade profits, so far as they are applicable. Further instructions are contained in HMRC, Guidance, Other taxable Income 2021 (HS325), 6 April 2021.

[6] HMRC, Business Income Manual, BIM56830.

[7] Please see Cathya Djanogli, R Gill v HMRC, Was a securities trader carrying on a trade?, in: Tax Journal, May 2018 and also in reference to the meaning of trading; Anne Fairpo/David Salter, Revenue Law, Principle and Practice, II. What is a trade?, September 2020.

In *Manzur [2011] TC 00830*, the Court highlights a number of interesting points. Once having confirmed that "*there is no definite checklist for determining whether an individual is trading or not*", the judge points out that "*the «badges of trade» provides some guidance but it is not definitive in each case*". In the case aforementioned, the judge has considered a number of factors in order to conclude that Mr. Manzur was managing an investment portfolio: his background (retired surgeon), the time spent (about 2 hours a day) and the circumstance that he used heavily to rely on external brokers suggest such activities are of very peripheral nature and therefore cannot be deemed as trading.

Based on the same case, one may infer that having clients and not depending purely on market movements to make a profit may be considered "badges" of trading**[8]**.

In the light of what stated before, there is a risk that a higher number of crypto traders would be considered as "trading" for tax purposes and therefore subject to Income Tax**[9]**.

III. Individuals and Capital Gain Tax

A. Chargeable assets and disposal

If a crypto activity would not fall into IT as miscellaneous and or taxable trade, positive and negative margins are relevant for CGT**[10]**.

A crypto transaction involving buying and selling assets is to be considered *prima facie* relevant for CGT purposes, amounting to an investment activity while being taxable trade if and to the extent all the circumstances and facts as a whole represent enough evidence to be trading. However, as explained before, if such activity is deemed trading, IT rules prevail over CGT provisions.

CGT is applicable on any disposal of a chargeable asset: a crypto is an asset for CGT if and the extent that it may be owned and it has a value that can be realized. Having said that a disposal is a broad concept counting any type of transfer, exchange, sale or assignment, HMRC basically includes transactions as selling tokens for money, exchanging them for a different token, using them for goods and services and giving away tokens to another person.

In broad terms, a disposal is to be considered when beneficial ownership is changed and or when a new different type of tokens has been acquired; therefore a transaction where a person receives the same tokens shall not be considered a disposal.

B. Taxable base, allowable expenses and pooling

In case of disposal, Section 32 (TCGA) 1992 provides for some basic rules for calculating gains and losses. Usually, the consideration for the disposal of an asset is what the person who makes the disposal gets for it: such a consideration may be money or worth money. In some cases, the consideration is deemed to be equal to the market value at the date of the disposal of the asset disposed of: such market value is the price which that asset might reasonably be expected to fetch on a sale in the open market. In crypto world, it is possible that the asset disposed of does not have a defined market value up to the moment where the asset is disposed of against some other asset which has a market value: in that last case it seems reasonable to assume as allowable cost the market value of the token received.

Allowable costs relevant for deduction include (*a*) consideration paid for the asset**[11]**, (*b*) transaction fees, (*c*) advertising fees, (*d*) professional fees, if and to the extent such fees relate to the buying and the purchasing.

Since it is very common to use an exchange platform, the vast majority of the fees charged by an exchange are to be considered as allowable costs. One should take in mind that sterling or other currencies for buying or selling a crypto represent an allowable cost not because of the nature of the asset (the sterling itself is not an asset for CGT purposes) but since the currency is used to buy a crypto. In case of exchange of token A for token B, transaction costs are to be taken into account for determining the allowable cost of token A. In case the fees relate to more than one token, it is possible to attribute them to all tokens involved using a reasonable apportioning basis (for instance a 50/50 split).

In order to facilitate calculations in case of fungible tokens, HMRC allows using the so called "section 104 pool". Section 104 (TCGA) 1992, which is usually applicable when calculating shares and securities and or "*any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired*", provides for simpler CGT calculations.

Each type of token (acquired and or disposed) represents a single pool. Each pool works as if each acquisition/disposal represents an increase/decrease of the value of the pool. The amount spent on each acquisition is a pooled allowable cost to be added up to the opening balance, while the amount received on a disposal shall be matched with the opening balance (with reference to the number of tokens involved in the transaction), thus producing a new closing balance.

[8] In crypto sector, the second badge (not depending on market movements) could be quite important: participating to chats and blogs, spending hours for setting up wallets, accounts and other IT facilities, attending social and business events may be assumed as decisive factors?.

[9] In financial sector, a professional trader is quite often regulated and or operating trough and by a regulated subject/platform; however, in crypto world, there are a lot of traders, professional miners and crypto experts who act and operate without being regulated, increasing in this way the possibility that some of them are really trading for tax purposes (and therefore subject to Income Tax) without being aware of.

[10] See HMRC, Crypto Assets Manual, CRYPTO22050 and HMRC, Capital Gain Manual, CG12010. In the UK, there are no loopholes when trading – in the financial sense – cryptoassets as outlined before, as such activities can never be considered gambling.

[11] Should the taxpayer has earned a crypto and taxed it as employment or miscellaneous income, the taxed amount shall be deemed an allowable cost for CGT purposes. For more information about the allowable costs, please see HMRC, Crypto Assets Manual, CRYPTO22150.

However, within the general pooling rules, there is a couple of prevailing special rules, the "same day" and "30 days" rules.

According to same day rule, all tokens (of a single type) acquired and or disposed by a same individual on the same day shall be considered for CGT purposes as a single transaction. According to 30 days rule, all tokens (of a single type) acquired and or disposed within 30 days are to be considered as a single asset.

Therefore, in case of a disposal of a pooled asset, one shall before verify whether the same day rule applies and after whether such disposal may benefit from the 30 days rule (*i.e.* whether it is possible to match with assets acquired in the aforementioned period of time) and at the end, whether and to the extent there is a unmatched difference, such a difference shall be ultimately matched with the initial opening balance of the pooled asset**[12]**.

C. Negligible value rule and other valuation issues

There are a number of transactions where it is not straightforward to attribute a value to a token.

In such cases, HMRC suggest to use Section 52 CGTA 1992 to split the allowable cost on a just and reasonable basis. For example, tokens acquired in a blockchain fork are to be added to the same pool and previous allowable cost shall be split among all tokens in the same pool. If new tokens are generated by the fork, the taxpayer may seek to apply negligible value claim rule, assigning no costs to the new tokens.

One shall always keep in mind that if the activity aforementioned is considered as a "trade", the new tokens acquired, on their market value, are to be subject to IT.

According to negligible value provisions, individuals can crystallize losses for tokens that have acquired a nil or negligible value, even if still owned by the taxpayer.

For pooling accounting purposes, a negligible value claim implies that an asset is treated as being disposed of and immediately re-acquired at the amount stated in the claim: the disposal produces a capital loss while the pooling value balance shall be recalculated netting it from the loss.

Negligible value claim may be used also in other situations where it is impossible to recover the tokens and/or to calculate the correct value (for instance, when a token is stolen or an individual misplaces its private keys or he is defrauded)**[13]**.

For CGT purposes (but also for IT purposes), gain/income denominated in a foreign currency should be converted to sterling based on the spot rate for the date of the transaction/receipt. However, while for regular income receipts and deductible expenses arising over time (in respect of a activity conducted in a foreign currency), it is acceptable to use an average exchange rate (monthly, annual or based on other criteria) provided the result is reasonable and consistent, for capital gain purposes it would seem more coherent to continue to use the sport rate**[14]**.

D. Location of the assets and taxation of resident non domiciled

The physical location of the assets may represent a pivotal factor when assessing the tax duties for UK resident non domiciled individuals**[15]**.

According to HMRC (Crypto Asset Manual, CRYPTO22600), since cryptoassets are digital in nature and the only identifiable party is the beneficial owner, the location of a crypto shall be identified by the residency of the beneficial owner.

Should however a token be the digital representation of an other intangible asset, for example a share or a security, the underlying location of such a last asset would be relevant for tax purposes.

Under HMRC's approach, which of course has the merit to be clear, predictable and objective, any exchange tokens, save for those clearly representing an underlying asset, held on the date of becoming UK tax resident will automatically be deemed to be located in the UK, irrespective therefore if a remittance basis has been claimed, with a material erosion of rights connected to the "res non-dom" regime.

The HMRC approach is not actually supported by any law provision neither on some precedent and therefore it would be possible to be reversed in front of a court**[16]**.

It is also questionable why HMRC has not distinguished the case of a wallet and of an exchange account opened in an international brokerage platform. In fact, the last one is usually owned by an overseas company, that may be located in one specific jurisdiction (other than UK), therein regulated as financial entity: it is hard to understand why it is not possible to compare it to a traditional bank account, not considering the case of international banks (and e-money institutions) where you can open on the same umbrella a subaccount for currency and another for crypto assets.

It is also quite interesting to understand the tax treatment of crypto assets when they source from savings and properties

[12] See HMRC, Crypto Assets Manual, CRYPTO22200 and following chapters for some examples. Pooling is applicable only for capital gain purposes, therefore if an individual is trading in crypto (*i.e.* if he is making a trading activity for tax purposes), other rules are applicable.

[13] Martin Mann, Ask an expert: Negligible value claim on shares, in: Tax Journal 13 June 2013 and Capital Gain Manual, CG13120P.

[14] The rationale behind the use of a spot rate against an average value is that if you are an individual subject to capital gain tax rules, you shall have no difficulties to calculate for each transaction a sport rate; if you find difficult such calculation, may be it would be appropriate reconsidering your tax status for CGT and IT purposes.

[15] Gabriele Schiavone, Il resident non domiciled inglese, in: NF 4/2019.

[16] Please see Phil Anderson/Andre Anthony, Location of exchange tokens held by individuals, in: Tax Journal 20 January 2020.

held abroad (and therein ring fenced) under the resident non-domiciled regime.

As to explain the concept and the relating issue, we believe a simple example may illustrate quite well the relevant tax difficulties arising from. Mister Alpha is a res non-dom holding GBP 100 in an offshore bank account (Account n. 1); Alpha, after having opened an account on a different offshore exchange platform (Account n. 2), moves there GBP 30 and exchanges such amount in Bitcoin. Alpha at such point decides that it is time selling such crypto for GBP 50 realizing a capital gain of GBP 20.

According to HMRC's view, GBP 20 shall be reported in Alpha tax return since it is considered of UK source but Alpha does not have enough financial resource in UK accounts to pay CGT and therefore he is obliged to remit GBP 5.

It is evident that Alpha may face at the same time a number of material tax issues: does GBP 5 represent a remittance? May the gain of 20, being of UK source, be freely remitted in the UK assimilating it to "clean capital"? What about the original GBP 30 remained in Account n.2? Are they still ring fenced and may they be returned to Account n. 1 without triggering tax consequences?

At this stage, according to res non-dom general rules, a practicable solution would be to consider (clean) capital the gain transferred from offshore to onshore and deriving from crypto transactions (since subject to tax in the UK), being the "principal" (in our case GBP 30) considered ring fenced for remittance purposes.

The taxpayer shall of course record in an appropriate way its business affairs and maintain properly ring fenced its bank transactions and accounts.

IV. Crypto for businesses

Crypto transactions carried out by businesses and companies (including sole traders and partnership) are subject to a lot of similar provisions applicable to individuals and already object of analysis before, of course with some exceptions.

Businesses may be subject to IT (sole traders and partnerships) and to Corporation Tax (companies) ("CT"): in this section we will focus on corporate businesses.

Cryptos may be assimilated for accounting and tax purposes to intangible assets (Part 8 CTA 2009) or to investment assets (CGTA 1992)[17].

A. Intangibles fixed assets

If a company holds a crypto and it accounts it as an intangible asset or an intangible fixed asset, Corporation Tax intangibles fixed assets rules[18] are applicable and they prevail over other CT and CGT rules.

Generally speaking, an intangible fixed asset has been created or acquired by a company for use in its business on a continuous basis. If a crypto represents a right in an underlying asset, such representation shall be considered for accounting and tax treatment as well. Therefore, if a crypto is a digital certificate incorporating a financial right of a company (for example a dividend or an interest), such a crypto shall be considered as a financial asset.

If a crypto is considered an intangibles asset, CTA 2009 Part 8 provisions are applicable. Under this regime, the tax treatment follows the accounts recognition of debits and credits. Section 730 CTA 2009 provides that a taxpayer may opt for a tax deduction in line with UK GAAP or for a flat 4% tax deduction.

B. Investment assets

The rules above described on intangibles do not apply to a number of assets which cannot be considered fixed intangibles. Examples of these ones are: assets not held for a commercial purpose or otherwise not within scope of corporation tax, rights over land or tangible moveable property and other rights in companies, trusts and partnerships.

In such last cases, a company is viewed to holding the token as investment[19] being subject to CGT rules, even if of course being liable at corporate level to CT (however if the holder is a partnership, such a gain shall be attributed to an individual partner and taxed at CGT).

CGT rules are applicable and therefore reference is made to what stated above for capital gain realized by individuals with some exceptions.

For instance, pooling provisions are slightly different than those applicable to capital gains realized by individuals. While "same day" rule is the same, there is a rule establishing that 10 days (for individuals it was 30 days) disposed tokens shall be matched with same time acquired tokens but on "first in, first out" basis, should within that period be more than one purchase.

V. Stamp duty, VAT and inheritance

Stamp duty or Stamp duty reserve tax is applicable to transfer of "chargeable securities". Therefore, the vast majority of tokens exchange is not within the scope of application of such a tax.

[17] In addition to that, it is important to point out that, while for an individual allowable costs are only those ones relating directly to the relevant disposal, for businesses it may be possible to consider also indirect costs (for example finance costs and other professional services).

[18] HMRC, Crypto Assets Manual, CRYPTO41150. For more details about intangible assets tax treatment please see ICAEW Tax Faculty, Tax Guide 19/20, Intangibles fixed assets and corporation tax deductibility, 10 December 2020.

[19] HMRC considers an exchange token to be an investment (Crypto Assets Manual, CRYPTO41200): this view is appreciable for its clearness and simplicity but does not count any intention and or plan by a company to use such tokens for other specific purposes.

For VAT purposes, being tokens comparable to "currency", they should be treated as currency and therefore be outside the scope of VAT application[20].

In effect, the aforementioned conclusions seem perfectly fit for exchange tokens, but they would not appear strictly in keeping with the nature of other type of crypto assets (for example, security or utility tokens)[21].

Cryptoassets are property for the purposes of Inheritance Tax. The location of assets may be relevant for non-UK domiciled taxpayers. In this regard, it is necessary to point out that the definition of domicile for Inheritance Tax (*IHTA 1984 s 267*) may be different from that one set out for Income Tax purposes, causing in some cases a material boost in the application scope of such tax. For inheritance tax purposes, we find very similar difficulties as for determining the location of the assets, as for direct taxes point of view.

In the UK, there are no wealth taxes or similar provisions, neither a tax requirement to disclose crypto in its tax return, save for from such crypto a profit have been derived.

VI. Special cases

There are a lot of crypto based transactions, some of them organized by smart contracts. In this section, we would try to delineate some basic tax aspects, considering that the best approach seems to find the underlying business rationale[22] behind each transaction and there from attempt to apply the current rules as best we can.

What we try to summarize is just an intellectual exercise and there would be a number of cases where we may miss some nuances of what actually happening in the transaction/activity involving a crypto, not considering that the cases below are just a very little portion of what one may find in the crypto universe.

A. Decentralized Finance (DEFI)

DEFI (decentralized finance) are crypto based platforms, focused on enabling access to financial services such trading, lending and borrowing outside banking system.

When you lend your crypto out, you may receive other same crypto as interest which will be subject to IT.

If a DEFI protocol issues against your lent crypto liquidity pool tokens (LPTs), the tax treatment depends on different factors and how they combine each other.

Should LPTs exchange/assignment be definitive, it is possible to hold the view that CGT is applicable since a disposal has been realized: the value of granted tokens at the day of the exchange is the allowable cost and the difference realized after such exchange is capital gain. However, should LPTs exchange be provisional, no gain has been realized up and to the extent LPTs swap is becoming fully (and easily) convertible.

Similar conclusions may be reached for a number of decentralized exchange platform like Uniswap, Maker and Balancer.

It is quite interesting to understand if (passive) interest paid on a crypto loan may be tax deductible. Should an individual carry out a non-tradable activity, there would be no chance to use this expense against other income/gain.

It is of paramount importance to point out again that in case of trading activity, the party involved in the LPTs exchange is realizing a profit to be taxed according to Income Tax rules.

B. Decentralized Autonomous Organization (DAO)

DAO may be defined as an (decentralized) on-chain contract or a series of on-chain contracts that interoperate to complete some greater organizational function. DAOs may include a variety of different purposes, facilities and schemes.

Generally speaking, a DAO is usually characterized by a "pledger" (sending an asset) and a "receiver" (receiving the asset).

In DAO Collateralized Debt Position (CDP), a user opens up a loan (or another "financial" transaction) with a smart contract, sending crypto (typically Etherium), as collateral and receiving another crypto and or a CDP. In this case, it would be reasonable to record all transactions as if they were capital transactions and only when the CDP is closed, one may think to calculate if there is a capital gain or an income receipt. As to calculate CGT and or IT, it would be required to consider not only the margin but also the potential exchange currencies movements.

In other cases, DAO may be used for collecting funds/crypto for a specific purpose. In this case, one shall understand if such transaction represents an investment and or an expense. In fact, DAO may be used as a "club deal" vehicle and therefore it could be assimilated to a kind of partnership for a tax point of view: if and to the extent such DAO generates some form of remuneration, the last one is subject to Income Tax while if the margin derives its value from a capital transaction (sale, disposal, assignment or exchange), capital gain tax seems be applicable.

In commissioning DAO, pledged crypto would have to be classified as costs and therefore they shall have been considered as allowable expenses should the pledger receive in the future some benefit to participating into the DAO.

[20] Santhie Goundar, CJEU bitcoin VAT ruling, in: Tax Journal 28 October.

[21] For instance, in case of transfer of security tokens whose underlying assets are shares, one can doubt whether the disposal of such a token may be considered relevant for stamp duty reserve tax: it seems that, even if business rationale behind such disposals would be quite similar to a share transfer, being missed *inter alia* the physical legal instrument to be registered, such a tax would not be *prima facie* applicable. We find the same difficulty in case of utility token for VAT purposes. A clarification from HMRC would be quite appreciated.

[22] We prefer to attempt to apply current tax rules focusing on business rationale instead of trying to find a legal meaning to each crypto activity and transaction: we feel that characterizing any crypto phenomena in legal terms would be – surely at this stage – very difficult and in some cases impracticable. Business rationale seems to be a little more circumscribed and effective approach.

In some other cases, DAO protocol may provide with a so called "oracle", an individual, a company or another smart contract acting according to DAO protocol as "manager" of the project. The tax treatment depends on how the smart contract has been drafted: they may be basically two solutions, the first assimilating the contract to a partnership and the second to a loan relationship.

C. Non fungible Tokens (NFT)

A NFT is a digital certificate of an asset. At this stage, it is possible to create a NFT only on digital asset (for example a twit or an animated sticker) but in the next future it would be interesting to understand how there would be possible to link a NFT to other intangible assets (for example to a brand).

From a tax point of view, NFT may trigger CGT and or IT: the most complex issue in NFT is determining the allowable costs and the relating net taxable base. In most of the cases, all consideration (fiat or crypto currency) represents a tax relevant margin since there is no allowable cost to be matched.