



Latest Developments on Crypto Assets in Turkey: How the Recent Regulations Going to Effect Taxation and Enforcement of Crypto Currencies?

Authors: Att. Aslihan Erdem and İlarya Duranoğlu of AKT Law Firm.

Crypto Assets, referred as 'Crypto Currencies' in practice, are encrypted, decentralized articles of exchange. Due to their decentralized nature, they have the infrastructure of *distributed ledger technology* and *mining activities* and only exist in the digital environment. Turkey has accelerated the legal recognition process of Crypto Assets with the recent regulations issued by the Central Bank of Republic of Turkey (“**CBRT**”) and the Financial Crimes Investigation Board (“**MASAK**”).

Turkish Authorities have not regulated or defined Crypto Currencies until the year 2021, except the one official press release¹ dated November 25, 2013 regarding Crypto Assets made by the Banking Regulation and Supervision Agency (“**BRSA**”), stating that Crypto Assets cannot be considered as electronic money within the scope of the “Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions” and that surveillance and supervision cannot be carried out within the framework of the said law.²

The Presidential Press Release³ and the Economic Reforms Action Plan⁴ published on March 12, 2021, defined Crypto Assets and introduced some prohibitions and regulations in respect thereof for the first time in Turkey, followed by the “*Regulation on Non-Use of Crypto Assets in Payments*” (“**the Regulation**”)⁵ which came into effect on April 30, 2021 and the “*Regulation Amending the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism*”⁶, issued by MASAK regarding Crypto Asset service providers, which came into effect on May 1, 2021.

The Term “Crypto Assets” and its Taxation

The first matter in question about the recent regulations is the definition of Crypto Assets. According to the Article 3(1) of the Regulation, Crypto Assets shall be deemed as “*intangible assets that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks, but are not qualified as fiat currency, fiduciary money, electronic money, payment instrument, securities or other capital market instruments*”. The ambiguous issue here is that, the Regulation grounded the definition of “intangible assets” on what crypto assets do not constitute of, rather than their legal status which will be discussed hereinafter.

The aforementioned definition is primarily interpreted as an indication of preparations for the taxation of Crypto Assets. As in some other countries but most particularly in the United



States, following the identification of Crypto Assets as “intangible assets”, they were considered as asset value and income tax principles were applied on increments and taxed within the scope of capital gains.⁷ Accordingly, pursuant to the Official Opinion⁸ published by the Edirne Tax Office on September 23,2020 on the grounds that “*As per the Article 3(1) of the Inheritance and Transfer Tax Law numbered 7338, the term “Commodities” refers to all other rights and receivables that can be subject to movable and immovable property*”, Bitcoin assets should also be declared with an inheritance and transfer tax return and the tax to be accrued should be paid. Moreover, the concept of "intangible rights" and “intangibles” are already mentioned and defined in the tax legislation of Turkey. With this regard, it is possible that intangible assets will be considered within the scope of intangible rights and therefore will be subject to taxation in the long term.

Crypto Assets are deemed seizable

Despite the definition deemed by the Regulation on May 20, 2021, the Istanbul Enforcement Law Court ruled that these assets are **seizable** by comparing their nature to securities. The complaint of the obligor was dismissed on the ground of that “... *it is understood that such currencies are also evaluated within the scope of commodities/securities and are considered as a type of digital currency or virtual money. Therefore, regardless of how it is defined in the economic field, in terms of Enforcement and Bankruptcy Law, in order for a property or right to be seized, it must first hold an economic value on its own and it is settled that this factor subsists for cryptocurrencies. The attachment proceedings applied in this case is in compliance with the law.*”. Therefore, by the said decision, a definition made by the Court was contrary to the one made in the Regulation. However, if the decision is finalized, it will set a precedent, being the first and only court decision on Crypto Assets in Turkey declaring Crypto Assets will be considered seizable within the scope of Enforcement and Bankruptcy legislation, irrespective of its economic definition.

The Court states with the related ruling that “*Since it is understood that in the (Turkish) law, the sales of (the seized) movable and immovable property is regulated in detail, the complaint at the sales stage should be evaluated separately*” and doesn’t refer to the procedure of sale of the seized Crypto Assets. Except the issuance of a warrant in accordance with the Article 89 of the Enforcement and Bankruptcy Law to an Exchange Platform of which the Debtor has a wallet. The Court rejected the Debtor’s plea on the subject.

There are several theories manifested within the sector about the proceedings of the seizure of Crypto Assets. The first matter in question is the evaluation and determination of the Debtors property of Crypto Assets since they are digital and have a decentralized nature. Namely, foreclosure of the seizure on any kind of *central ledger* or issuance of a warrant to any kind of intermediary or escrow is not possible. Therefore, the enforcement action may only be conducted by retaining. The Private Key of the Debtors wallet should be identified, confiscated and changed by the Office to block off Debtor’s access.



The second conjecture suggests the Enforcement Office to transfer the Debtors assets to a dedicated Cryptocurrency Wallet owned by the Enforcement Office, in this case the Office may also issue a warrant in accordance with the Article 89 to determine the existence of Debtor's claims of Crypto Assets from third parties and demand the transfer of said Assets to the Wallet. But direct transfer of the Debtors assets to a wallet owned by the Claimant is not possible due to *encashment principle* of the Turkish Enforcement and Bankruptcy Law⁸. Further operation by the relevant Enforcement Office may set forth a different approach to be discussed.

Finally, although the regulations regarding Crypto Assets constitute the initial steps of legal recognition of these assets by the Republic of Turkey, they prohibit direct or indirect use of Crypto Assets as payment instruments and provision of electronic payment services, excluding the Cryptocurrency investment services/exchange platforms. No regulation has yet been made regarding the sanctions to be applied in case of violation of the Regulation. However according to the recent statement of the Vice-Minister of Treasury and Finance, further legislation that is relatively strict but with a Western European/American approach is to be expected in the forthcoming periods that will form the economic, technological and legal infrastructure of digital money in line with the above-mentioned Economic Reforms Action Plan.

References

- Turkey. Banking Regulation and Supervision Agency. Press Release. 25 Nov. 2013. Web. <https://www.bddk.org.tr/ContentBddk/dokuman/duyuru_0512_01.pdf>.
- Turkey, Suç Gelirlerinin Aklanmasının Önlenmesi Hakkında Kanun. No. 5549. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5549.pdf>>.
- Turkey. Economic Reforms Action Plan. Ministry of Treasury and Finance, 12 Mar. 2021. Web. <<https://ms.hmb.gov.tr/uploads/2021/03/Ekonomi-Reform-Takvimi.pdf>>.
- Turkey. Presidency Of The Republic Of Turkey. 12 Mar. 2021. Web. <<https://www.tccb.gov.tr/konusmalar/353/125242/ekonomi-reformlari-tanitim-toplantisi-nda-yaptiklari-konusma>>.
- Turkey. The Banking Regulation and Supervision Agency. 30 Apr. 2021. Web. <<https://www.resmigazete.gov.tr/eskiler/2021/04/20210416-4.htm>>.
- Turkey. Financial Crimes Investigation Board. 1 May 2021. Web. <<https://ms.hmb.gov.tr/uploads/sites/12/2021/05/20210501-5.pdf>>.
- Ciat. "Cryptocurrency Taxation: How to Take a Step Forward." Inter-American Center of Tax Administration. 27 July 1970. Web. 11 June 2021. <<https://www.ciat.org/cryptocurrency-taxation-how-to-take-a-step-forward/?lang=en>>.
- Turkey. Turkish Revenue Administration. Official Opinion. 23 Sept. 2020. Web. 11 June 2021. <<https://www.gib.gov.tr/mirascilara-bitcoin-varligi-karsiliginda-odenecek-tutarin-veraset-ve-intikal-vergisi-yonunden>>.