CRYPTOCURRENCIES: LEGAL TREATMENT IN VARIOUS JURISDICTIONS.

JOSE ALEXANDER VELASQUEZ OCHOA [1], ORLANDO CARMELO CASTELLANOS POLO [2], JUAN CARLOS CARDONA ACOSTA [3], WILMAR ALEXANDER RESTREPO ARBOLEDA [4]

Corporación Universitaria Americana[1]
Corporación Universitaria Americana[2]
Institución Universitaria Pascual Bravo[3]
Fundación Universitaria María Cano[4]
jvelasquez@coruniamericana.edu.co [1]
ocastellanos@americana.edu.co [2]
juan.cardona@pascualbravo.edu.co [3]
wilmaralexanderrestrepoarboleda@fumc.edu.co [4]

Abstract - *Through this study, a small investigation related to cryptoactives or cryptocurrencies is reported, analyzing the legal treatment given to them in various jurisdictions, for which the application of a descriptive method that observes the treatment of these cryptocurrencies in countries where, due to the same social dynamics, it has been adapted to be able to observe them as a new way of carrying out transactions, once this small analysis has been carried out, the author's position in relation to cryptocurrencies is generated.*

Keywords: *cryptocurrencies; market; globalization; transactions; regime.*

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INTRODUCTION

Cryptocurrencies have taken over physical money because they serve as a payment mechanism, provide continuity to supply chains, promise great development in the global economy, allow low-cost transactions, and leave no trace of identity. world, is reluctant to break with the assumptions of traditional economic models (Supersociedades, 2020), according to Republic Bank of Colombia (2014) "(...) Cryptocurrencies cannot be used for payments, operations that are under the exchange regime are not recognized by the central banks of the other 4,444 countries and, therefore, are not applicable" (paragraph 3). Similarly, the Financial Regulation Authority (2016) emphasizes avoiding the use of these currencies, as illustrated by the Banco de la República. Please note that regulated entities do not have the authority to hedge, invest in or trade these products. It has also indicated that: additionally, it is up to people to know and assume the risks inherent in the operations they carry out with "virtual currencies". The issue of cryptocurrencies is becoming increasingly relevant in the world economy, which is why, today, different analyzes are being proposed regarding the taxation of cryptocurrencies. Moreno et al., (2018) analyze the operation, risks, regulation, behavior and advances of cryptocurrencies, taking into account the position of international entities regarding licenses and regulation; Hidalgo (2019) examines various components of the digital economy in the Spanish Legal System, it analyzes the corporate tax establishing who will contribute for said tax and for the income tax of non-residents, the tax on digital services and with it the affectation of the digital economy by the value added tax; Vásquez (2019) analyzes the different taxes and the way in which they are taxed, the regulatory scenario after the irruption of cryptocurrencies in Colombia, and therefore is in charge of discussing the current regulations and those that should have in the future, comparing some legislations international organizations and the existing gap in this matter in Colombia.

The lack of regulation in the tax area of virtual currency transactions in Colombia represents a significant tax loss, since it is not regulated in tax matters, the Directorate of National Taxes and Customs (DIAN), cannot exercise its tax function and prevent cases of asset laundering and/or financing of illegal armed groups can be provided; therefore, it is considered that a tax regulation is immediately required for this situation, due to the effect that the MCs produce on the global economy. This article aims to analyze what legislation exists in Colombia and internationally on cryptocurrencies and their fiscal and tax effects, making a comparison between national and international legislation, to know the rules that apply to cryptocurrencies.

METHODOLOGY

The investigation was carried out through the documentary review and interpretation of the regulations applicable to the taxation of cryptocurrency transactions at an international level. Twenty-one documents from repositories and government sources were used as reference. For example, the legal cases considered, previous research dealing with the issue of global cryptocurrency taxation, and the history of cryptocurrency development, research he has conducted. Address global issues with this phenomenon. Pioneer countries, regional powers, global powers and more to update crypto-centric tax laws. We compare the United States, China, Germany, Mexico and El Salvador with Colombia to show the country's progress in taxing cryptocurrencies.

RESULTS

After considering the tax laws on cryptocurrency transactions in China, Germany, the United States, Chile, Spain, Mexico, El Salvador, and Colombia, and comparing the laws of these countries. The study revealed that no country in the world has yet enacted tax laws related to cryptocurrency transactions, but the government's position on this phenomenon is to treat it in compliance with national laws. Country tax requirements.

According to He (2021) from CNN in Spanish, in 2013 the Chinese government recommended that virtual currencies not be used because they are not real currencies, warning of the risks of commercialization and encouraging financial institutions to prohibit doing business with coinciding with growth. Following the cryptocurrency trend, in 2014 China began research to create a digital yuan, a fully electronically managed currency. B. Support China's central bank without the government losing control of the central bank and its international activities. The move is gaining steam today as the digital yuan creates tensions of a different kind between global economic powerhouses like the United States. Some experts believe that this new digital currency from China I think could cause the US dollar to fall. The Chinese government has cracked down on cryptocurrency trading and mining activity, causing cryptocurrency prices to plummet. BBC News World (2021) Since China does not accept cryptocurrency transactions, there are no regulations regarding the taxation of cryptocurrency transactions.

Germany

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USA

In the United States, the regulation of cryptocurrencies has been in force since the day the first cryptocurrency appeared in the day, which is Bitcoin, and although the context for making legislative decisions on the tax on these virtual currencies is still unclear; The United States has referred to cryptocurrencies as "assets" in this way, cryptocurrency is considered a virtual representation of any physical currency because it is exchangeable for goods or services. At first they were considered "currencies", however, this treatment was not possible because cryptocurrencies do not meet all the requirements established in the Stamp Act of 1862, since being a virtual currency, it does not circulate as physical currency. . Its characteristics and value do not depend on the dollar. The Internal Revenue Service (hereinafter the "IRS"), which is the tax authority of the United States, has outlined how general tax principles should be applied to virtual currencies, stating that they should be treated as "assets". IRS Notice 2014-21, part two. Consequently, crypto transactions in the United States must be taxed under this concept, taxpayers who sell goods or services in exchange for cryptocurrencies must declare the amount received and wages paid will be subject to withholding at source will be taxed at their market value at the time of payment IRS Notice 2014-21, part two. Consequently, crypto transactions in the United States must be taxed under this concept, taxpayers who sell goods or services in exchange for cryptocurrencies must declare the amount received and wages paid will be subject to withholding at source.

In the United States, you pay tax on cryptocurrency activity as follows: a. Sale The profit or loss of this transaction must be reported, taking into account the costs; If the investment is held for less than a year and has generated a profit, the investment is taxed as ordinary income, but if the investment has been held for more than a year, the investment will be taxed as value added. if there is a loss, it can be offset by the gain from any other investment. b. For the payment of a good or service provided It is declared as general income in the value in US dollars of the virtual currency on the date of receipt. compare with for a payment to a third party for a good or service It will be counted as a single sale, taking into account the acquisition cost; However, The US Department of the Treasury warns about the risks of this type of investment, so vigilance will increase towards cryptocurrencies since they are seen as facilitators of tax evasion, they are not considered a substitute for the dollar or a useful store of value. (Efe Agency, 2021 paragraph 1)

Mexico

Mexico is one of the leading countries in the laws that govern fintech organizations; the law commonly known as the Fintech Law was published in the Official Gazette of the Federation on March 9, 2018 and has been amended; opens the space to integrate cryptocurrencies into the Mexican economy. This law is of public order and general surveillance in the United States of America, and its objective is to regulate the financial services provided by fintech institutions, as well as their organization, operations and functions of their services, as well as the services of financial institutions. . , are specifically governed by rules that are introduced or applied by innovative means. Fintech Law, (2018). The Fintech Law classifies cryptocurrencies as digital assets, they must be taxed if at the time of sale there is a profit,

El Salvador

El Salvador was the first country in the world to adopt a law that regulates and approves the use of Bitcoin, allowing it to qualify as "legal tender." The Legislative Assembly of El Salvador approved the Bitcoin Law on June 8, 2021 with 10 articles as a general regulation. The Bitcoin Law promulgated by the Legislative Assembly of the Republic of El Salvador in its most important points establishes that the capital generated by the cryptocurrency in the transactions carried out with this means of payment will not be taxed and may be used as a means of payment of taxes. to the State, unlike the countries analyzed that have not implemented any law that legalizes the use of cryptocurrencies, since the countries have previous analyzes such as Chile, Germany, Colombia, Spain and Mexico, if they believe that transactions should be taxed if they produce capital changes. The Central Reserve Bank of El Salvador has prepared the compiled document that includes a project of technical standards to facilitate the adoption of the bitcoin law. This document establishes the banks, cooperative banks and savings and loan institutions interested in providing dollar and bitcoin conversion services, as well as their operating model and obligations with the State regarding the provision of information on risk management and money laundering.

CONCLUSSION

The fiscal and tax treatment of cryptocurrency transactions in the investigated countries is scarce or null, in the case of the Chinese government it has initiated a strategy of repression against cryptocurrency transactions and against mining activities, this government does not accept transactions in cryptocurrencies, Germany CMs must be declared and given the same treatment as financial instruments, Germany approved Law that allows state Special fonds to legally invest up to 20% of their assets in cryptocurrencies. Spain, for its part, does not have an express regulation focused on cryptocurrency transactions; however, they must be taxed if there is a capital gain or loss according to article 33 of the IRPF; For the United States, Cryptocurrencies are considered "property" and must be taxed under this concept, the taxpayer who sells goods or services in exchange for cryptocurrencies must declare the amounts received, in Mexico and Chile they are considered as digital assets, it allows a purely tax treatment and for the purpose of demonstrating the variation in the patrimony of a natural or legal person, They are not taxed. In Colombia there is still no law that classifies and regulates activities and transactions carried out with cryptocurrencies, although they are considered assets, intangible goods, capable of being valued, they are part of the heritage and must be declared. El Salvador is the first country in the world to pass a law that regulates and approves the use of Bitcoin, this law gives it the qualification of "legal tender".

In Colombia there is currently no law that can regulate the operation of cryptocurrencies, however, there is a statement issued by the DIAN through a digital document. 020436 of August 2, 2017, in its context indicates that cryptocurrencies for tax purposes are called intangible assets subject to liquidation, which must be declared in accordance with article 261 of the Tax Code and are subject to withholding at source. at the time of conversion. Colombia launched a sandbox review, which does not analyze the tax part, but focuses on how to buy and sell these assets and IT security for companies that are in the beta phase of carrying out cryptocurrency transactions. Each country has tax regulations that focus on the income of individuals and companies, and governments have treated cryptocurrencies as “assets” of any kind, to regulate the effects they generate on people's wealth, investments, and subsequent earnings. Chile and Mexico treat cryptocurrencies as digital assets, thus they are publicized and taxed under the same rules; they are used in Germany by individuals and legal entities as a means of exchange and must be declared and benefit from the same tax treatment and will operate under the same rules as financial instruments; Spain and the United States consider cryptocurrencies as assets and are advertised based on activity and wealth growth. China and El Salvador are two countries that make a difference, being the first to completely ban any cryptocurrency transaction and second of the first to have laws allowing legal use, while recognizing cryptocurrency as legal tender, it is a guide for countries to assimilate. Experience El Salvador and start standardizing the use of CM. It should be noted that in today's world, not staying ahead of technological, social, economic, and political changes has a negative impact on the country's competitiveness and can cause today's opportunities to be wasted creating years of lagging and unstable economic growth, regional instead of global leadership.

The Colombian government had to choose to adopt some of the mechanisms that have been successful in comparable countries, and today they are pioneers in the control, legislation, and taxation of virtual currencies. The Bank of the Republic must provide the government with a concept to start the process of standardization, creation and definition of its nature when classifying cryptocurrencies as legal tender. The Colombian legislature needs to dedicate more time to the study and approval of the bills in force in the Congress of the Republic. National governments should start training on how the market for these currencies works so that citizens know what products work, what companies they do business with, and the risks and safety of buying them.

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