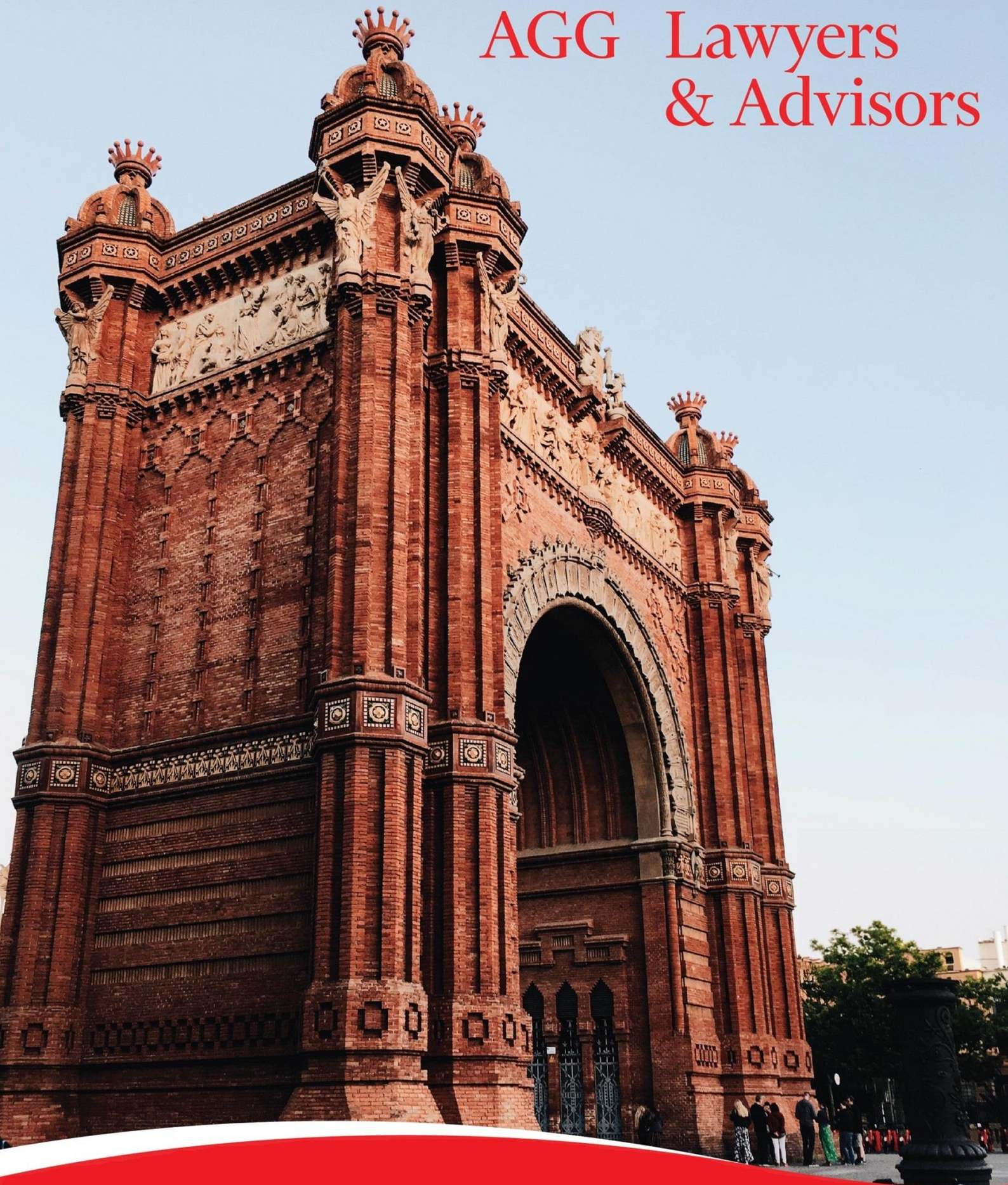


AGG Lawyers
& Advisors



Spain: Cryptocurrency Tax Guide

1. Introduction

Cryptocurrency has emerged as a significant financial asset class globally, offering new opportunities and challenges for investors.

Spain, like many countries, has been navigating the regulatory landscape surrounding cryptocurrencies and their transactions. This document aims to provide an overview of conducting cryptocurrency transactions in Spain, including relevant regulations, tax implications, and legal considerations.

2. Regulatory overview

A. Law on Measures to Prevent and Combat Tax Fraud¹

The Law on Measures to Prevent and Combat Tax Fraud in Spain, enacted in 2021, introduced provisions aimed at regulating cryptocurrency transactions to enhance transparency and combat tax evasion.

Consequently, the following reporting requirements for individuals and entities residing in Spain, as well as permanent establishments on Spanish territory of individuals or entities residing abroad, that provide services for safeguarding private cryptographic keys on behalf of third parties, for maintaining, storing, and transferring cryptocurrency, whether such service is provided primarily or in connection with another activity, shall be obligated to provide the Tax Authority (**AEAT**)²:

- Information regarding all virtual currencies they hold custody of. This includes information about balances in each different virtual currency and, if applicable, in legal tender, as well as the identification of the holders, authorized persons, or beneficiaries of such balances.
- Information about operations involving cryptocurrency (acquisition, transmission, exchange, transfer, receipts, and payments) in which they are involved. This same obligation extends to those conducting initial offerings of new virtual currencies, regarding those delivered in exchange for the contribution of other virtual currencies or legal tender.

¹ Law 11/2021, of July 9th, on measures for the prevention and fight against tax fraud, transposing Directive (EU) 2016/1164 of the Council of July 12th, 2016, establishing rules against tax avoidance practices that directly affect the functioning of the internal market, amending various tax regulations, and regulating gambling.

² Agencia Estatal de Administración Tributaria.

B. Law on Anti-Money Laundering³

Article 1.5 of this law specifies the concept of virtual currency, stating that it refers to a digital representation of value not issued or guaranteed by a central bank or public authority, not necessarily associated with a legally established currency, and lacking the legal status of currency or money. However, it is accepted as a medium of exchange and can be electronically transferred, stored, or traded.

In addition, article 1.6 defines the exchange of virtual currency for fiduciary currency as the purchase and sale of virtual currencies through the delivery or receipt of euros or any other legal tender foreign currency or electronic money accepted as a means of payment in the country where it has been issued.

3. Taxes

A. Cryptocurrency is subject to taxation in Spain

Cryptocurrency transactions in Spain are subject to taxation. The AEAT considers it a form of capital asset, and profits derived from crypto transactions are regarded as savings income, typically subject to taxation under Income Savings Tax. Tax rates vary depending on the type of transaction and the individual circumstances of the taxpayer.

Therefore, it is necessary to include crypto profits in the tax return forms.

For individual investors, the taxation of cryptocurrency in Spain generally follows these principles:

- Profits from the sale, exchange, or use of cryptocurrency are treated as savings income.
- The tax rate on crypto gains ranges from 19% to 28%.
- Income from cryptocurrency mining is classified as freelance business activity and is subject to General Income Tax.
- Earnings from staking are considered as interest, which is subject to Income Savings Tax (between 19% to 28%).
- Depending on the region and the value of the crypto portfolio, cryptocurrency may also be subject to Wealth Tax.

³ Law 10/2010, of April 28th, of prevention of money laundering and financing of terrorism.

- Spanish taxpayers are required to report cryptocurrency holdings abroad exceeding €50,000 starting from 2023 using Model 721.

B. How is cryptocurrency taxed in Spain?

In essence, cryptocurrency transactions in Spain may be subject to different taxes based on the nature of the transaction:

i. Income Tax:

- Income Savings Tax (Capital Gains Tax - CGT)

Capital gains from cryptocurrency transactions are considered savings income and are taxed with Income Savings Tax.

A capital gain occurs whenever you dispose of cryptocurrency, such as selling it for Euros or exchanging it for another cryptocurrency.

CGT follows a progressive tax structure, which ranges from 19% to 28%, depending on the net profit and the financial year, as follows:

RATE	PROFIT
19%	First EUR 6,000 of taxable income
21%	Following EUR 6,000 to EUR 50,000 of taxable income
23%	Following EUR 50,000 to EUR 200,000 of taxable income
27%	Following EUR 200,000 to EUR 300,000 of taxable income
28%	Any amounts over EUR 300,000

- Profits and losses from the transfer of assets:
 - Any change in the taxpayer's net wealth is classified as capital gains. Consequently, proceeds from the transfer of digital assets are categorized as capital gains from asset transfers (article 33.1 of the Natural Person Income Tax Law - **IRPF**).
 - The AEAT has determined that both income derived from the exchange of digital assets and income resulting from the exchange

of digital assets and fiat currencies fall under the umbrella of capital gains.

- The capital gain amount is calculated as the difference between the sale proceeds and the acquisition cost of the asset (article 34 of the **IRPF** Law).
 - In the event of an asset exchange, the sale proceeds are determined as the higher value between the market value of the outgoing asset and the market value of the incoming asset. Both the acquisition cost and the transfer value are converted to Euros at the time of entry or exit.
 - Regarding the acquisition cost of digital assets, it is calculated by adding the agreed purchase price of the assets to any commissions incurred from executing those transactions, as these expenses are directly associated with them.
 - The payment of fees is considered the sale of the corresponding digital asset, so any change in the value of the digital asset is also relevant for tax purposes, following the same calculation.
 - Regarding the acquisition date of digital assets, it is the date on which the assets are obtained.
 - These principles also apply to transactions involving foreign currencies, precious metals, and, for the purposes of our reports, tokenized stocks and other tokenized forms of investment.
- Capital gains and losses on securities:
 - Capital gains encompass all profits obtained from transferring funds or capital to third parties unrelated to an economic activity (article 25.1 and 25.2 IRPF Law).
 - Transactions involving Security Tokens yield income from capital gains, as it is assumed that the the economic entitlements conferred to the holder of the Security Token pertain to the anticipated or agreed return or other economic rights over the underlying project.
 - Income is determined as the total consideration received by the taxpayer, whether for the assignment of its assets to a third party or for the transfer of the asset, and as such, income is treated as capital gains (article 25 IRPF Law).

- In the case of asset swaps, the precedent section on profits and losses from the transfer of assets apply.

- General Income Tax (IRPF)

Income derived from professional endeavours, cryptocurrency mining, remuneration for rendered services, or any other endeavours leading to the acquisition of new coins or tokens is regarded as general taxable income and is subject to IRPF.

Regardless of whether compensation is received in cryptocurrency, obtained through mining, staking, or received by airdrop, it is imperative to acknowledge the income based on the fair market value of the coins at the time of acquisition.

The IRPF system in Spain follows progressive tax bracket (higher than CGT):

RATE	INCOME
19%	First EUR 12,450
24%	Following EUR 12,450 to EUR 20,200
30%	Following EUR 20,200 to EUR 35,200
37%	Following EUR 35,200 to EUR 60,000
45%	Following EUR 60,000 to EUR 300,000
47%	Any amounts over EUR 300,000

ii. Wealth Tax

Most regions in Spain levy a Wealth Tax, and the value of any cryptocurrency in Euros must be taken into account for Wealth Tax computations.

Wealth Tax rates and the minimum exemption threshold vary by region but typically commence at approximately €700,000, with rates ranging from 0.2% to over 3%.

REGION	RATE
Catalonia	between 0.21% and 3.48%
Asturias	between 0.22% and 3%

Region of Murcia	between 0.20% and 3%
Cantabria	between 0.24% and 3.03%
Community of Valencia	between 0.25% and 3.5%
Balearics	between 0.28% and 3.45%
Extremadura	range between 0.30% and 3.75%

Currently, Madrid and Andalusia⁴ are the only Autonomous Communities have applied a 100% bonus on the Wealth Tax. Nevertheless, if the total assets surpass €2 million, a Wealth Tax return must be submitted for informational purposes.

iii. **Inheritance and Donations Tax**

Similar to the Wealth Tax, the tax incurred on inherited or gifted crypto is contingent upon the amount received and the place of residence.

Each Autonomous Community establishes its own tax rate for inherited and gifted assets. However, typically, the taxable rate fluctuates between 7% to 36.5%.

4. **Tax exempt transactions**

Not all crypto transactions are subject to taxation in Spain. Some crypto transactions are exempt from tax, including: purchasing cryptocurrencies; holding cryptocurrencies (unless liable to Wealth Tax); transferring cryptocurrencies between personal wallets; token swaps, inflow from hard forks.

5. **Common scenarios**

After the examination carried out in the previous sections of this document, here is a summary of taxable or exempt transactions, contemplating the most common scenarios:

A. **Selling crypto for fiat**

When selling cryptocurrency for euros or any other fiat currency, capital gains accrued as a result of this transaction are taxable. Thus, CGT must be paid.

⁴ With the creation of the Big Fortunes Solidarity Tax by the State of Spain, Andalusia had to reform the exemption regulation.

B. Swapping crypto for crypto

Trading one cryptocurrency for another is considered a disposal, triggering tax obligations based on any resulting gains. The focus isn't on the acquisition of the new cryptocurrency but rather on the disposal of the original asset. As such, CGT may apply.

C. Receiving payment in cryptocurrency

Receiving payment in cryptocurrency is taxable, but the specific tax liability depends on the individual circumstances. If employed by a company that compensates in crypto, the employer is required to include these payments in the standard information form regarding salaries.

Alternatively, if a freelancer receives payment in crypto, the received value and the invoice issued must be converted into Euro to determine the freelance income.

D. Crypto mining

Mining cryptocurrency is regarded as a business activity. Individuals engaged in crypto mining are considered self-employed workers and any income generated from mining activities is subject to IRPF.

It's worth noting that when you later dispose of the mined rewards, they are considered savings income and taxed similarly to other cryptocurrency disposals (CGT).

E. Holding cryptocurrency

Holding onto cryptocurrency is exempt from tax, unless the Wealth Tax threshold is exceeded in the corresponding Autonomous Community.

F. Gifting cryptocurrency

This action is treated as a disposal, subject to Inheritance and Gift Tax. The exact tax liability varies depending on the Autonomous Community of residence.

6. Inventory Method

In cases involving homogeneous assets, the First In First Out (**FIFO**) method is to be utilized for the accurate computation of capital gains. This principle dictates that assets received first will also be the first ones to be disposed of (article 37.2 IRPF Law).

The AEAT has determined that the FIFO methodology should also govern transactions involving digital assets.

Each type of asset must be individually tracked on a per-account basis. In instances where an appropriate acquisition transaction cannot be identified for disposals, the missing assets are to be recorded at an acquisition cost of zero on the date of disposal.

7. Declaration

A. Deadlines

The fiscal year in Spain spans from January 1st to December 31st, aligning with the conventional calendar year.

For the previous fiscal year, Spanish income tax filings must be completed by June 30th.

In addition, if applicable, Model 721 must be filed between January 1st and March 31st.

B. Model 721

Model 721 Declaration is an informative tax document introduced as part of the reform of Spanish Tax Laws concerning anti-fraud measures, specified in letter A of the first section of this document.

Individuals holding cryptocurrency portfolios valued at a minimum of €50,000 are required to file this Model.

To calculate the value of cryptocurrency, the average price as of December 31st of each fiscal year must be used.

For investors who maintained holdings exceeding €50,000 at any point during the fiscal year but did not reach this threshold as of December 31st, information regarding the date when the cryptocurrency portfolio depreciated below this value must be provided.

Investors obligated to submit Model 721 but fail to do so by the deadline will incur a penalty of €200. Those who submit Model 721 inaccurately will face a penalty of €150.

8. Record keeping

The AEAT mandates the preservation of comprehensive documentation regarding cryptocurrency transactions for a period of 5 years following either the date of record preparation or acquisition, or the completion of the transactions or actions associated with those records, whichever occurs later.

The following records should be retained: the cryptocurrency type; the fair market value of crypto upon receipt; the fair market value of crypto upon disposal; the original receipt date of the cryptocurrency; the disposal date of the cryptocurrency; and information regarding the counterparty engaged in the transaction (including their wallet address, if applicable).

It's essential to emphasize the necessity of recording the fair market value of crypto in Euros. Even if transactions were conducted in a different currency (such as the US Dollar), these values must be converted to Euros to ensure precise tax reporting.