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Examination of the Tax Treatment of Cryptocurrency Transactions in Nigeria

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Abstract

Tax is assessed and paid in the legal tender in which the transaction was conducted. A legal tender is a fiat currency centrally issued by the government through its Central Bank and is legally declared and designated as money to meet all kinds financial obligations including payment of taxes and debts within the boundary of a particular country. However, advancements in technology led to the emergence of virtual medium of payment such as 'cryptocurrency' which do *not enjoy legal tender status like fiat currency. Over the past decade, there has been an increased number of transactions in Nigeria where cryptocurrency was the means of payment. This raises the question as to how such transactions will be assessed to tax bearing in mind that tax can only be assessed and paid in the currency in which the transaction was conducted. In addition, the virtual nature of cryptocurrency creates opportunities for tax avoidance thereby constituting a serious tax challenge for a developing country such as Nigeria. It therefore becomes necessary to address the taxation of cryptocurrency transactions to prevent tax avoidance that can arise therefrom. This objective of this article is toexamine the nature and the legal status of cryptocurrency. The article will also examine the tax treatment of cryptocurrency in some selected tax jurisdictions as well as the tax challenges posed by cryptocurrency transactions.*

Keywords: Taxation, Legal Tender, Virtual Currency, Cryptocurrency, Tax Avoidance, Tax Evasion.

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1.0 INTRODUCTION

The term 'Legal tender' is generally used to refer to the money approved in a country for the payment of taxes, debts, the purchase of goods and other exchanges for value.[1] Thus, a Legal tender is any medium of payment recognised by law that can be used to liquidate public or private debt or meet financial obligations. A legal tender is usually the national currency of a country which is generally accepted for payment of goods and services, repayment of debt and payment of taxes.[2] The most common form of legal tender is Fiat currency (bank notes and coins) which is usually issued from a centralised designated body that has the monopoly to issue such. For example, in Nigeria, the Central Bank of Nigeria (CBN) is the sole issuer of legal tender (Naira) in the country.[3] Likewise, the Treasury Department is the sole issuer of legal tender (US Dollars) in the United States of America.[4]

Such Fiat currency (bank notes and coins) are legally declared and designated as money for payment of goods and services, repayment of debt exchange and payment of taxes within the boundary of a country. This can be seen from the fact that vendors accept money in exchange for their goods while employees agree to accept money in exchange for their labour.[5] Some of the world's major fiat currency include the Nigerian Naira, South African Rand, United States dollars, the Euro, Pound sterling, Indian rupee, Japanese yen, Swiss franc and Chinese yuan.

Legally, in Nigeria and other countries, tax is assessed and paid in the legal tender in which the transaction was conducted.[6] This means that the tax on a

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1 Garner B. A, Black's Law Dictionary (9th Ed. 2009) 979.

2 Investopedia, 'Legal Tender' <https://www.investopedia.com/terms/I/legal-tender-asp> accessed 1 June 2022

3 Central Bank of Nigeria (CBN), 'Currency Management' <https://www.cbn.gov.ng/currency/legaltender.asp>accessed on 30May2022

4 U.S. Department of Treasury, 'Role of Treasury' <https://home.treasury.gov/about/generak-information/role-of-the-treasury.> accessed 30 May2022

5 Bunjaku Flamur,'Cryptocurrencies – Advantages And Disadvantages' *Journal of Economics* (2017) 27(1) 31

6 Section 54 of the Companies Income Tax Act CAP. C21 Laws of Federation of Nigeria (2004 as amended) makes it mandatory for a taxpayer to pay tax in the currency in which the transaction was made.

transaction is assessed and paid in the currency in which the transaction was conducted. For example, where the currency of the transaction is in Naira, tax will be paid in Naira. Likewise, where the currency of the transaction is in US Dollars, tax will be paid in US Dollars. Accordingly, Fiat currency therefore represents the standard medium of assessment and payments of taxes in Nigeria as well as in other countries.

However, various advancements in technology led to the emergence of virtual currency (e-currency) such as 'cryptocurrency' which are now utilised for the payment of certain goods and services.[7] Cryptocurrency is virtual in nature and just like the fiat currency, also constitute a means of payment of goods and services but they do not enjoy legal tender status.[8] Cryptocurrency is not seen as a replacement for traditional fiat currencies but is only regarded as a form of new payment system.[9]

Over the past decade, there has been an increased number of transactions in which cryptocurrency was the means of payment. This position is corroborated by a report which indicated that transactions in which cryptocurrency was used as means of payment in Nigeria was more than US$115 million in 2017.[10] However, the use of cryptocurrency as a means of payment in transactions raises questions as to how tax will be assessed and paid in respect of such transaction bearing in mind that tax can only be assessed and paid in the currency in which the transaction was conducted. This constitute a serious tax challenge because cryptocurrency is not recognised as a legal tender in Nigeria and such tax cannot be assessed and paid with cryptocurrency.[11] In addition, cryptocurrency constitute a serious tax challenge as its virtual nature create opportunities for tax avoidance and evasion which can have negative impact on the revenue generation capability of the government.

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7 Berentsen A. & Schär F., 'The Case for Central Bank Electronic Money and the Non-case for Central Bank Cryptocurrencies' <https://doi.org/10.20955/r.2018.97-106> accessed 19 April 2021

8 Srokosz W. & KopyĞciaĚski T., 'Legal And Economic Analysis of the Cryptocurrencies Impact on the Financial System Stability' *Journal of Teaching and Education* (2015) 4(2) 620

9 Westhuizen C., Future digital money: The legal status and regulation of bitcoin in Australia, (LLM Dissertation University of Notre Dame Australia 2017) 55

10 Oyamada A. and Russo C., "Bitcoin Trading thrives wherever Regulators crack down most" <https://www.bloomberg.com/news/articles/2017-12-14/bitcoin-trading-thrives-wherever-regulators-crack-down-most>accessed 1 June 2022

11 Section 54 of the Companies Income Tax Act CAP C21 Laws of Federation of Nigeria (2004 as amended) makes it mandatory for a taxpayer to pay tax in the currency in which the transaction was made.

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The objective of this article is to examine the possible tax treatment of cryptocurrency transactions in Nigeria. The article adopts a doctrinal research methodology toexamine the nature of cryptocurrency and its legal status in some selected countries. The article also considered the tax treatment of cryptocurrency in some selected tax jurisdiction and the tax challenges presented by cryptocurrency transactions.

2.0 NATURE OF CRYPTOCURRENCY TRANSACTIONS

Cryptocurrency is a cryptographically decentralised digital currency used as a means of exchange.[12] A working definition of Cryptocurrency is provided by the European Commission as follows:

> "It is a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically"[13]

The above definition of cryptocurrency is suggestive of the fact that the significant and fundamental nature of cryptocurrency, which is perhaps its most endearing allure, is that it is not issued by a central bank, government or public authority thereby rendering it theoretically immune to government interference or manipulation.[14] This means that cryptocurrencies are not recognised as legal tender. This is in stark contrast to traditional fiat currencies such as Nigerian Naira, the US dollars, the Euro, Pound sterling, Indian rupee, Japanese yen, Swiss franc, Chinese yuan, South African Rand, that are usually issued by the central bank and are legally designated as legal tender within the boundary of the issuing country.[15] The issuance by a central authority is the basic characteristics which a currency must complied with before it can be legally designated as a means of payment.

It can therefore be rightly posited that cryptocurrency is not a currency in a literal sense because it is not legally acknowledged as a means of payment. Therefore, the fact that cryptocurrencies are generally not recognised as 'legal tender' or declared the official currency of a country makes it to be fundamentally different from the traditional fiat currencies.

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[12] Cvetkova I. , 'Cryptocurrencies Legal Regulation'*Brics Law Journal* (2018) 5(2) 130
[13] European Commission, 'Proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC (Jun. 18, 2018)' <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CeleX%3a52016PC0450.>accessed 1 June 2022
[14]Bunjaku Flamur, 'Cryptocurrencies – Advantages And Disadvantages' *Journal of Economics* (2017) 27(1) 35
[15]ChuenD. L. K., *Handbook of Digital Currency: Bitcoin, Innovation, Financial Instruments and Big Data*,(1st edn.,Academic Press,London2015) 310-320

It can also be deduced from the definition given by the European Commission that cryptocurrency can be accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically. This means that cryptocurrency transaction is a peer-to-peer (P2P) decentralised form of transaction whereby the buyer and the seller transact and interact directly with each other without the intermediation by a third party. In this regard, when two individuals want to exchange cryptocurrency as a means of payment, they do not have go through a third party such as a bank acting as an intermediary between them. The advantage of this is that it makes transactions to be quicker and cheaper as it allows the users of cryptocurrency to avoid paying a hefty transaction fee which may result from steep fees and processing fee usually charged by most banks and lawyers acting as intermediaries.[16]

Cryptocurrency transactions are enabled by an online database known as 'blockchain'.[17] Blockchain is a publicly-viewable digital ledger that is used to record transactions between two parties in a verifiable permanent way. One of the key features of blockchain is that it is a distributed database which allow different parties to share information without requiring a central administrator. By decentralising its data, blockchain eliminates the risk of centralised database which can easily be a lucrative target for hackers. This is unlike transactions in government-backed currencies that are tracked by central clearing houses or banks.[18]

Another key feature of blockchain is that each transaction on the blockchain is signed digitally, using public key cryptography. Public key cryptography involves the use of two keys – a public and private key. The public key is used to sign and encrypt the sent message and anyone can see this key. However, only the recipient of cryptocurrency has the private key. The private key guaranteesprivacy andanonymity of the transactions and the parties involved as it is only the recipient of cryptocurrency that can decrypt the transaction.[19] The

[16] Bunjaku Flamur, 'Cryptocurrencies – Advantages And Disadvantages' *Journal of Economics* (2017)27(1) 32

[17] Cvetkova I. , 'Cryptocurrencies Legal Regulation' 5(2) *Brics Law Journal* (2018) p.132

[18] Donovan P., 'Cryptocurrencies: Beneath the bubble' <https://www.ubs.com/gobal/en/about_ubs/follow_ubs/ubs-economic-insights/paul_donovan/2017/10/16/cryptocurrencies-beneath-the-bubble.html> accessed 29 May 2022

[19] Bitcoin Exchange Guide, "An Introduction to Blockchain: Distributed Ledger Technology Application Benefits" <https://www.bitcoinexchangeguide.com/blockchain-distributed-ledger-technology/> accessed 31 May 2022

implication of this is thattracking cryptocurrency transactions within the blockchain can prove difficult especially for people who do not have access to the blockchain. This privacy and the anonymity feature of cryptocurrency transaction creates a challenge for tax authorities as it will be difficult if not impossible to track such transactions for tax purposes.[20]

The above unique features of cryptocurrency, most especially its privacy and anonymity features, gives it some advantages over the traditional fiat currency money and made it to become popular as a new method of payment.[21] It is therefore not surprising that research has projected that by the year 2023, the value of cryptocurrency transactionwill hit US$16.16 billion as more businesses accept digital currencies as payment.[22]This represents a 177.3%increase from US$2.20 in 2021 and the projected cryptocurrency transactions of US$6.10 billion in the year 2022.[23] Research has further projected that by the year 2027, the global cryptocurrency market will cross US$32.4 trillionat a compound annual growth rate (CAGR) of 58.4% between 2022-2027.[24]

The most popular types of cryptocurrencies are Bitcoin, Litecoin, Ethereum, Dash and XYO.[25] Cryptocurrency is not without its own disadvantages.According to Ivaschenko,[26] one of the major disadvantages in this regard is that the use of cryptocurrency is susceptible to strong volatility as it is not regulated. Other disadvantages include the risk of money laundering, terrorism and other illegal activity financing, lack of a central issuer which means that there is no legal formal entity to guaranty in case of any bankruptcy.

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[20] Andersen Tax, 'Cryptocurrency and Taxes: Bridging the Digital Gap' <https://www.andersentax.ng/newsletters/cryptocurrency-and-taxes-bridging-the-digital-gap.>accessed 29 May 2022

[21] Bunjaku Flamur, 'Cryptocurrencies – Advantages And Disadvantages' *Journal of Economics* (2017)27(1) 37.

[22]Sara Lebow, 'Crypto transaction value crosses $10 billion mark worldwide'<https://www.emarketer.com/content/crypto-transaction-value-crosses-10-billion-mark> accessed 4 June 2022

[23] Ibid

[24]Research and Market, 'Global Cryptocurrency Market Report 2022-2027-Industry to Cross a staggering $32.4 Trillion by 2027, Exploding with a CAGR of 58.4%' <https://finance.yahoo.com/news/global-cryptocurrency-market-report-2022-120800380.html> accessed 4 June 2022

[25] Cvetkova I , 'Cryptocurrencies Legal Regulation' *Brics Law Journal* (2018) 5(2) 131

[26] Ivaschenko A. I., 'Using Cryptocurrency in the Activities of Ukrainian Small and Medium Enterprises in order to Improve their Investment Attractiveness. Problems of economy' <http://www.nbuv.gov.ua/UJRN/Pekon_2016_3_35> 29May 2022

3.0 CRYPTOCURRENCY TRADING AND CRYPTOCURRENCY EXCHANGE

Cryptocurrency trading is the act of speculating on cryptocurrency price movements via a Contract for Difference (CFD) trading account or it can be defined as the act of buying and selling the underlying coins via an exchange.[27]CFD trading are derivatives, which enable an investor to speculate on cryptocurrency price movements without taking ownership of the underlying coins.[28] This allows the investor to 'buy' if he speculates that the cryptocurrency will rise in value or 'sell' if he speculates that the cryptocurrency will fall. This represents a barter exchange where investors exchange cryptocurrency among themselves.

On the other hand, a Cryptocurrency exchange is a form of digital currency exchange which allows customers to trade cryptocurrencies or digital currencies for other assets, such as conventional fiat money or other digital currencies. This allows customers to pay for goods and services through cryptocurrency. In this regard, the exchanges may accept credit card payments, wire transfers or other forms of payment in exchange for digital currencies or cryptocurrencies. The exchanges can send cryptocurrency to a user's personal cryptocurrency wallet who can convert the digital currency balances into anonymous prepaid cards which can be used to withdraw funds from ATMs worldwide[29]while other digital currencies are backed by real-world commodities such as gold.[30]

The creators of digital currencies are often independent of the digital currency exchange that facilitate trading in the currency.[31] Digital currency providers are businesses that keep and administer accounts for their customers, but generally do not issue digital currency to those customers directly.[32] Customers buy or sell digital currency from digital currency exchanges, who transfer the digital

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27 IG International Limited, 'What is cryptocurrency trading and how does it work' <https://www.ig.com/en/cryptocurrency-trading/what-is-cryptocurrency-trading-how-does-it-work> accessed 28 May 2022

28 Ibid

29 National Drug Intelligence Center 'Money Laundering in Digital Currencies' <https://www.justice.gov/archive/ndic/pubs28/28675/sub.htm> accessed on 28 May 2022

30 Sood A. K. and Bansal R. and Enbody R. J., 'Cybercrime : Dissecting the State of Underground Enterprise' IEEE Internet Computing (2013) 17(1) 60-68

31 Ibid

32 Hesterman J. L., *The Terrorist-Criminal Nexus: An Alliance of International Drug Cartels, Organized Crime and Terror Groups*, (CRC PressLondon 2013) 21

currency into or out of the customer's account.[33]A digital currency exchange can be a brick-and-mortar business or a strictly online business. As a brick-and-mortar business, it exchanges traditional payment methods and digital currencies. As an online business, it exchanges electronically transferred money and digital currencies.[34]

4.0 LEGAL STATUS OF CRYPTOCURRENCY IN SOME SELECTED COUNTRIES

There is no global consensus as to the legal status of cryptocurrency. The legal status of cryptocurrency differ from country to country depending majorly on the financial regulatory bodies. To provide a better understanding, this article will consider the legal status of cryptocurrency in some selected countries such as Nigeria, South Africa, Japan, Canada and the United States of America.

4.1 NIGERIA

Cryptocurrency is not recognised as a legal tender in Nigeria. In fact, the Nigerian government has been proactive in issuing notices about the pitfalls of investing in the cryptocurrency markets. For example, in January 2017, the Central Bank of Nigeria (CBN)[35] and the Securities Exchange Commission[36] issued two separate circulars advising Nigerians, Banks and other Financial Institutions to desist from the trade and use of cryptocurrencies as they are not recognised as legal tender in Nigeria.The CBN also issued another circular dated 28 February, 2018 warning Nigerians on the inherent risks in engaging in cryptocurrency transactions on the basis that cryptocurrencies are not regulated all over the world.[37]

On the 5 February 2021, the Central Bank of Nigeria (CBN) released a letter addressed to Banks and other Financial Institutions which stated that dealing in cryptocurrencies and facilitating payment for cryptocurrency exchanges are

33 Ibid
34 Ibid
35 Central Bank of Nigeria (CBN), 'Circular to Banks and other Financial Institutions on Virtual Currency Operations in Nigeria' Ref: FPR/DIR/GEN/CIR/06/010 12 January 2017 signed by Kevin N. Amugo, Director, Financial Policy and Regulation Department
36 Securities Exchange Commission 'Public Notice on Investments in Cryptocurrencies and other virtual or Digital Currencies' <http://www.sex.gov.ng/public-notice-on-investments-in-cryptocurrencies-and-other-virtual-or-digital-currencies/>accessed 1 June 2022
37 Central Bank of Nigeria (CBN), 'Again, CBN warns on virtual currencies' <https://www.cbn.gov.ng/FeaturedArticles/2018/articles/CBN_VirtualCurrencies.asp.>accessed on 1 June 2022

prohibited.[38] The CBN further instructed all Banks and other Financial Institutions to identify individuals or entities who transact in cryptocurrency or operate cryptocurrency exchanges and close the accounts of such persons or entities.[39]This letter generated uproar in the financial sector of the and serious concern was raised by stakeholder on the potential negative effect the ban on cryptocurrency could have on Nigeria's growing cryptocurrency market and innovation in the fintech industry.[40] In response, the CBN issued a press release on the 7 February 2021 to clarify that the CBN did not place any new restrictions on cryptocurrencies given that all banks in the country had earlier been forbidden through the CBN Circular dated 12 January 2017 not to use, hold, trade and/or transact in cryptocurrencies.[41]

However, the Vice President of Nigeria, Prof. Yemi Osinbajo, recently called for the regulation of cryptocurrency transactions in Nigeria rather than an outright ban. The Vice President admonished that rather than adopt a policy that prohibits cryptocurrency operations in the Nigerian banking sector, the CBN should act with knowledge and not fear and develop a robust regulatory regime that is thoughtful and knowledge-based. According to the Vice President, cryptocurrency transactions presents a new challenge to the traditional banking sector and as such there is a need for the country to prepare to overcome these challenges.[42]Pursuant to this, the CBN announced in May 2021 that a digital currency will be created for Nigeria. According the governor of the CBN, Godwin Emefiele, the idea of a digital currency for the country would soon become a reality and that the CBN has already set up a committee which is working on the concept.[43]

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38 Alex-Adedipe A and Atanda O., Nigeria: Prohibition of Cryptocurrency Transactions By the Central Bank of Nigeria' <https://www.mondaq.com/nigeria/fin-tech/1036556/prohibition-of-cryptocurrency-transactions-by-the-central-bank-of-nigeria> accessed on 1 June 2022

39 Ibid

40 Ibid

41 Central Bank of Nigeria, 'Press Release: Response to Regulatory Directive on Cryptocurrency' <https://www.cbn.gov.ng/out/2021/ccd/cbn%2520press%2520release%2520crypto%252007022021.pdf> accessed 3 June 2022

42 Abdulkareem Mojeed 'Osinbajo opposes Cryptocurrency ban' Premium Times (Abuja, 20May 2021) <https://www.premiumtimesng.com/news/headlines/445539-osinbajo-opposes-cryptocurrency-ban.html>accessed 28 May 2022

43 Oladeinde Olawoyin, Nigeria will soon create digital currency-CBN' Premium Times (Abuja, 21 May 2021)<https://www.premiumtimesng.com/news/top-news/463912-nigeria-will-soon-create-digital-currency-cbn.html>accessed 28 May 2022

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It was therefore not surprising that on 25th October 2021, the CBN introduced a central bank digital currency known as 'eNaira' which was launched and activated by President Muhammadu Buhari under the slogan: 'Same Naira, More Possibilities'.[44]The eNairais reputed as the secondcentral bank digital currency fully open to the public after the Bahamas.[45]The eNaira shares a lot of similarities with other types digital currencies. For example, like other types of digital currencies, the eNaira uses blockchain technology and it can be stored in digital wallets and it be used for payment in transactions. It can be transferred digitally and at virtually no cost to anyone in the world with an eNaira wallet.[46]
Nonetheless, there are certain important differences between eNaira and other types of digital currencies.The 'eNaira', unlike other types of digital currencies, is issued and regulated by the Central Bank of Nigeria.[47]This means that 'eNaira'legal tender that serves as both a medium of exchange and a store of value. In addition, unlike othertypes of digital currencies which constitute asset in nature, the eNaira is not a financial asset in itself but a digital form of a national currency and draws its value from the physical naira, to which it is pegged at parity.[48]

Since its introduction in 2021, the eNaira had soared in popularity. The eNaira was projected to be running on about 10,000 downloads per day in the second quarter of 2022. This projection by a source in one of the commercial banks leading in the eNaira platform follows the 7,300 dpd recorded in the first quarter of the year 2022.[49]"However, despite the popularity of eNaira, research revealed that operators are concerned with the low level of Person-to-Person (P2P)

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[44]Ayodeji Adegboyega 'Buhari to launch eNaira as CBN announces new commencement date' Premium Times (Abuja, 23 October 2021) <https://www.premiumtimesng.com/news/top-news/491357-buhari-to-launch-enaira-as-cbn-announces-new-commencement-date.html> accessed 4 June 2022

[45] Jack Ree, 'Five Observations on Nigeria's Central Bank Digital Currency' <https://www.imf.org/en/News/Articles/2021/11/15/na111621-five-observations-on-nigerias-central-bank-digital-currency> accessed 4 June 2022

[46]Ibid

[47]Timothy Obiezu, 'Nigerians Optimistic About Launch of New Digital Currency eNaira' Voice of Nigeria News (VOA) (Abuja, 5 October 2021) <https://www.voanews.com/a/nigerians-optimistic-about-launch-of-new-digital-currency-enaira/6258348.html>accessed 4 June 2022

[48]Jack Ree, 'Five Observations on Nigeria's Central Bank Digital Currency' <https://www.imf.org/en/News/Articles/2021/11/15/na111621-five-observations-on-nigerias-central-bank-digital-currency> accessed 4 June 2022

[49]Emeka Anaeto,'eNaira pushes through difficult environment' Vanguard Newspaper (Abuja, 4 April 2022) <https://www.vanguardngr.com/2022/04/enaira-pushes-through-difficult-environment/>accessed 4 June 2022

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transaction which is an indicating that actual usage by individuals is not as active as the downloads.[50]

[50] Ibid

4.2 SOUTH AFRICA

Cryptocurrency is not recognised as a legal tender in South Africa.In December 2014, the South African Reserve Bank (SARB), the central banking institution whose responsibilities include formulating and implementing monetary policy and issuing banknotes and coins in the country, issued a position paper on virtual currencies.[51] The position paper expressly stated that only the SARB may issue legal tender and that decentralized convertible virtual currencies (DCVCs), including Bitcoin and Litecoin, are not legal tender in South Africa. This means that any merchant or beneficiary may refuse virtual currency as a means of payment.

In mid-2017, the South African Reserve Bank made indications that it is trialling cryptocurrency regulations, with a view to potentially recognising digital currencies as a form of legal tender. Alongside this, the South African Revenue Services, the revenue arm of the South African government, is exploring ways in which cryptocurrency transactions and investments can be appropriately taxed.[52]

4.3 JAPAN

Unlike what is applicable in Nigeria and South Africa, the Japanese government recognised cryptocurrency as a legal tender having the same function as money.[53] In this respect, the government of the country had developed a regulatory framework for the full integration of the cryptocurrency into the banking system of Japan.

Cryptocurrency is regulated in Japan through the Payment Services Act which was amended in June 2016.[54] The amended Act defines cryptocurrency as follows:

> 'property value that can be used as payment for the purchase or rental of goods or provision of services by unspecified persons, that can be purchased from or sold to unspecified persons, and that is transferable via an electronic data processing system; or property value that can be mutually

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[51] South African Reserve Bank, 'Position Paper on Virtual Currencies' <https://www.golegal.co.za/wp-content/uploads/2018/01/Virtual-Currencies-Position-Paper-Final_02of2014.pdf>accessed 3 June 2022

[52] Ecobank Research, 'Middle Africa Briefing Note Digital African crypto regulation' <https://cdn.crowdfundinsider.com/wp-content/uploads/2018/08/Middle-Africa-Briefing-EcoBank-Note-Digital-African-crypto-regulation-August-2018.pdf> accessed on 3 June 2022

[53] Cvetkova I., 'Cryptocurrencies Legal Regulation' *Brics Law Journal* (2018) 5(2) 131

[54] The Law Library of Congress, 'Regulation of Cryptocurrency Around the World' <https://www.loc.gov/law/help/cryptocurrency/index.php> accessed 2 June 2022

https://doi.org/10.53982/alj.2021.0901.09-j

> exchangeable for the above property value with unspecified persons and is transferable via an electronic data processing system.[55]

Under the Payment Services Act, only business operators registered with a competent local Finance Bureau are allowed to operate cryptocurrency exchange businesses.[56] Such operator must be a stock company or a 'foreign cryptocurrency exchange business' that is a company, has a representative who is resident in Japan, and an office in Japan. The Act defined a 'foreign cryptocurrency exchange business' as a cryptocurrency exchange service provider that is registered with a foreign government in the foreign country under a law that provides an equivalent registration system to the system under the Japanese Payment Services Act.

The Act requires cryptocurrency exchange businesses to separately manage customer's money or cryptocurrency apart from their own. The state of such management must be reviewed by certified public accountants or accounting firms.[57] The exchange business must have a contract with a designated dispute resolution centre with expertise in cryptocurrency exchanges.[58] The exchange business must keep accounting records of its cryptocurrency transactions[59] and submit a report on the business to the Financial Services Agency (FSA) annually.[60]The FSA may rescind the registration of a cryptocurrency exchange business or suspend its business for up to six months in cases where the exchange business loses one of the requirements for registration or it turns out that the exchange business made the registration illegally or the exchange business violates the Payment Services Act or orders based on the Act.[61]

4.4 CANADA

[55] Article 2 Para. 5 of the Payment Services Act 2009, as amended by Act No. 62 of 2016

[56] Articles 63 of the Payment Services Act 2009, as amended by Act No. 62 of 2016. See The Financial Services Agency, 'Details of Screening for New Registration Application as Virtual Currency Exchange Service Provider' <http://www.fsa.go.jp/en/news/2017/20170930-1/02.pdf.> accessed 1 June 2022

[57] Article 63-11 of the Payment Services Act 2009, as amended by Act No. 62 of 2016

[58] Article 63-12 of the Payment Services Act 2009, as amended by Act No. 62 of 2016

[59] Article 63-13 of the Payment Services Act 2009, as amended by Act No. 62 of 2016

[60] Article 63-13 of the Payment Services Act 2009, as amended by Act No. 62 of 2016

[61] Article 63-17 of the Payment Services Act 2009, as amended by Act No. 62 of 2016

Even though cryptocurrency is not recognised as legal tender in Canada,[62] the government has allowed the use of cryptocurrencies, including Bitcoins to buy goods and services where it is acceptable.[63] According to a Financial Consumer Agency of Canada, cryptocurrencies can be used to buy goods and services on the internet and in stores that accept digital currencies and can be traded in open exchanges called digital currency or cryptocurrency exchanges.[64]

4.6 UNITED STATES OF AMERICA

Cryptocurrency does not have legal tender status in the United States and as such, it is not recognised as a currency.[65] It is however used as a medium of payment and it is not illegal to trade or to possess cryptocurrency in the country.[66]

It is to be noted that some countries have outrightly banned the use of cryptocurrency within their respective jurisdictions. For example, countries such as Algeria, Bolivia, Morocco, Nepal, Pakistan, and Vietnam have banned any and all activities involving cryptocurrencies.[67] Some other countries, such as Bangladesh, Iran, Thailand, and Colombia, while not banning their citizens from investing in cryptocurrencies, impose indirect restrictions by barring financial institutions within their borders from facilitating transactions involving cryptocurrencies.[68]

Countries, such as the Marshall Islands, Venezuela, the Eastern Caribbean Central Bank (ECCB) member states, and Lithuania are seeking to go even further and develop their own system of cryptocurrencies.[69] Some other countries such as like Spain, Belarus, the Cayman Islands, and Luxemburg, while not recognizing cryptocurrencies as legal tender, see a potential in the technology

62 The Currency Act defines legal tender as bank notes issued by the Bank of Canada under the Bank of Canada Act and coins issued under the Royal Canadian Mint Act, <http://laws-lois.justice.gc.ca/eng/acts/c-52/page-1.html.> accessed on 1 June 2022

63 Financial Consumer Agency of Canada, "Digital Currency" <https://www.canada.ca/en/financial-consumeragency/services/payment/digital-currency.html.>accessed1 June 2022

64 Ibid

65 S. J. Hughes and S. T. Middlebrook, 'Regulating Cryptocurrencies in the United States: Current Issues and Future Directions' *William Mitchell Law Review* (2014) 40(2) 828

66 Ibid.

67 The Law Library of Congress, 'Regulation of Cryptocurrency Around the World' <https://www.loc.gov/law/help/cryptocurrency/index.php> accessed 2 June 2022

68 Ibid

69 Ibid

behind it and are developing a cryptocurrency-friendly regulatory regime as a means to attract investment in technology companies that excel in this sector.[70]
In the Swiss Cantons of Zug and a municipality within Ticino, cryptocurrencies are accepted as a means of payment even by government agencies.[71] The Isle of Man and Mexico also permit the use of cryptocurrencies as a means of payment along with their national currency.[72] Much like governments around the world that fund various projects by selling government bonds, the government of Antigua and Barbuda allows the funding of projects and charities through government-supported Initial Coins Offers.[73]

5.0 TAX TREATMENT OF CRYPTOCURRENCY TRANSACTIONS

Categorisation of gains from cryptocurrency transactions is important for the purposes of taxation. This is because, before cryptocurrency transaction can be taxed, it has to be determined whether gains made from cryptocurrencies are to be categorised as income or capital gains. This will go a long way to determine the type of tax and tax rate that will be applicable. However, at present, there is no international consensus as to the proper categorisation of gains from cryptocurrency transaction. This has raised the question as to the type of tax that will be applicable to cryptocurrency transactions.

Countries, have therefore, taken it upon themselves to categorise cryptocurrency transactions the way they like within their respective jurisdictions in order to bring such transactions with the tax net.[74] Accordingly, treatment of cryptocurrency transaction for taxation purposes vary from country to country depending largely on how a country has categorised/classified cryptocurrency and whether the country recognised cryptocurrency as an alternative means of payment.

As stated earlier, some countries have outrightly banned the use of cryptocurrency while some countries recognised it as a legal tender. Some other countries while not recognising cryptocurrency as a legal tender recognised it as an alternative means of payment. The article will consider tax treatment of cryptocurrency in some of the countries in which the legal status of cryptocurrency had earlier been considered.

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[70] Ibid
[71] Ibid
[72] Ibid
[73] Ibid
[74] Ibid

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5.1 SOUTH AFRICA

As stated earlier, the South African Revenue Services (SARS) is exploring ways in which cryptocurrency transactions and investments can be appropriately taxed. Pursuant to this, on April 6, 2018, the SARS issued a clarification on the tax treatment of cryptocurrency. SARS noted that it will continue to apply normal income tax rules to cryptocurrencies and will expect affected taxpayers to declare cryptocurrency gains as part of their taxable income.[75] The implication of this is that taxpayers must declare all their cryptocurrency income and failure to do so could result in imposition of interest and penalties.

It is however important to note the clarification provided by SARS on the tax treatment of cryptocurrency stated that gains made from trading cryptocurrency can be subject to income tax or capital gains tax. The SARS stance on tax treatment of cryptocurrencies states thus:

> 'Whilst not constituting cash, cryptocurrencies can be valued to ascertain an amount received or accrued as envisaged in the definition of "gross income" in the Act. Following normal income tax rules, income received or accrued from cryptocurrency transactions can be taxed on revenue account under "gross income. Alternatively such gains may be regarded as capital in nature, as spelt out in the Eighth Schedule to the Act for taxation under the CGT paradigm. Determination of whether an accrual or receipt is revenue or capital in nature is tested under existing jurisprudence (of which there is no shortage).[76]

5.2 JAPAN

In Japan, the government categorised cryptocurrency as an income. Thus, according to the National Tax Agency (NTA),[77] the profit earned by sales of cryptocurrency is, in principle, considered a miscellaneous income,[78] rather than capital gains,[79] under the Income Tax Act. Miscellaneous income is added to the amount of other income, excluding specified capital gains,[80] when a person's

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[75] South Africa Revenue Services, 'SARS'S Stance on the Tax Treatment of Cryptocurrencies' <http://www.sars.gov.za/Media/MediaReleases/Pages/6-April-2018---SARS-stance-on-the-tax-treatment-ofcryptocurrencies-.aspx.> accessed 31 May 2022

[76] Ibid

[77] The National Tax Agency is the official tax collecting agency of Japan. See <http://www.nta.go.jp/> accessed 31 May 2022

[78] Article 35 of the Income Tax Act No. 33 of 1965, amended by Act No. 74 of 2017

[79] Article 33 of the Income Tax Act No. 33 of 1965, amended by Act No. 74 of 2017

[80] Article 8 of Act on Special Measures concerning Taxation Act No. 26 of 1957, amended by Act No. 4 of 2017,

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taxable income is calculated and taxed.[81] To further educate the public on the tax treatment of cryptocurrency, the NTA compiled questions and answers regarding the tax treatment of cryptocurrency and posted it online on 1 December,2017.[82]

5.3 CANADA

The Canada Revenue Agency (CRA) characterised cryptocurrency as a commodity and not a government-issuedcurrency.[83] Cryptocurrency is recognised as a means to pay for goods and services and is therefore categorised as an income.[84] This means transactions made with cryptocurrencies are subject to the income tax.

According, to the Canada Revenue Agency (CRA), the use of cryptocurrency to pay for goods or services is treated as a barter transaction as follows:

> "where digital currency is used to pay for goods or services, the rules for barter transactions apply. A barter transaction occurs when any two persons agree to exchange goods or services and carry out that exchange without using legal currency. For example, paying for movies with digital currency is a barter transaction. The value of the movies purchased using digital currency must be included in the seller's income for tax purposes. The amount to be included would be the value of the movies in Canadian dollars."[85]

The implication of this is that goods purchased using cryptocurrency must be included in the seller's income for tax purposes. Goods and Services Tax (GST) and Harmonized Sales Tax (HST) also applies on the fair market value of any goods or services bought using cryptocurrency. This means that when taxes are

[81] Article 89 of the Income Tax Act No. 33 of 1965, amended by Act No. 74 of 2017

[82] The National Tax Agency, 'Calculation Method of Income Relating to Cryptocurrency (Information) Individual Taxation Information, No. 4, NTA (Dec. 1, 2017), (Dec. 20, 2018, 3:15 PM) <http://www.nta.go.jp/law/joho-zeikaishaku/shotoku/shinkoku/171127/01.pdf.> accessed 5 June 2022

[83] Canada Revenue Agency 'What You Should Know About Digital Currency' <https://www.canada.ca/en/revenueagency/news/newsroom/fact-sheets/fact-sheets-2015/what-you-should-know-about-digital-currency.html.> accessed 5 June 2022

[84] Financial Consumer Agency of Canada, "Digital Currency" <https://www.canada.ca/en/financial-consumeragency/services/payment/digital-currency.html.>accessed 1 June 2022

[85] Ibid

filed, it must include a report of any gains or losses from selling or buying cryptocurrencies.[86]

5.4 UNITED STATES OF AMERICA

The United States, perhaps, has the most detailed guidance on the tax treatment of cryptocurrency. The Internal Revenue Service issued a detailed guidance in 2014 in respect of tax treatment of cryptocurrency.[87] The guidance acknowledged the fact that cryptocurrency which it termed as 'virtual currency' may be used to pay for goods or services or held for investment.

The guidance defined Virtual currency as a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. It stated that virtual currency operates like "real" currency, i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance but it does not have legal tender status in any jurisdiction. The guidance further stated that virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency such as Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.

For taxation purposes, cryptocurrency is treated as property and as such, the general tax principles applicable to property transactions apply to transactions using cryptocurrency. Thus, a taxpayer who receives virtual currency as payment for goods or services must, in computing gross income, include the fair market value of the virtual currency.

For U.S. tax purposes, transactions using virtual currency must be reported in U.S. dollars. Therefore, taxpayers will be required to determine the fair market value of virtual currency in U.S. dollars as of the date of payment or receipt. If a virtual currency is listed on an exchange and the exchange rate is established by market supply and demand, the fair market value of the virtual currency is determined by converting the virtual currency into U.S. dollars (or into another

86 Al-Shikarchy M., "Canadian Taxation of Cryptocurrency" <https://www.lexology.com/library/detail.aspx?g=6283077e-9d32-4531-81a5-56355fa54f47.> accessed 5 June 2022

87 Internal Revenue Service (IRS), 'IRS Virtual Currency Guidance' <https://www.irs.gov/irb/2014-16_IRBNOT-2014-21.> accessed 5June 2022

https://doi.org/10.53982/alj.2021.0901.09-j

real currency which in turn can be converted into U.S. dollars) at the exchange rate, in a reasonable manner that is consistently applied.If the fair market value of property received in exchange for virtual currency exceeds the taxpayer's adjusted basis of the virtual currency, the taxpayer has taxable gain. The taxpayer has a loss if the fair market value of the property received is less than the adjusted basis of the virtual currency.

Where virtual currency is received by an independent contractor for performing services, it will be regarded as constituting a self-employment income. Consequently, the fair market value of virtual currency received for services performed as an independent contractor, measured in U.S. dollars as of the date of receipt, constitutes self-employment income and is subject to the self-employment tax.

Also, where virtual currency is paid by an employer to an employee as remuneration, it will be regarded as constituting wages for employment tax purposes. Consequently, the fair market value of virtual currency paid as wages is subject to federal income tax withholding, Federal Insurance Contributions Act (FICA) tax, and Federal Unemployment Tax Act (FUTA) tax and must be reported on Form W-2, Wage and Tax Statement.

The guidance also indicated that a payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property. For example, a person who in the course of a trade or business makes a payment of fixed and determinable income using virtual currency with a value of $600 or more to a U.S. non-exempt recipient in a taxable year is required to report the payment to the IRS and to the payee. Examples of payments of fixed and determinable income include rent, salaries, wages, premiums, annuities, and compensation.

It is also important to note that the guidance stipulated that payments made using virtual currency are subject to backup withholding to the same extent as other payments made in property. Therefore, payors making reportable payments using virtual currency must solicit a taxpayer identification number (TIN) from the payee. The payor must backup withhold from the payment if a TIN is not obtained prior to payment or if the payor receives notification from the IRS that backup withholding is required.

The guidance also provide for penalty. It stated that taxpayers may be subject to penalties for failure to comply with tax laws. For example, underpayments

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attributable to virtual currency transactions may be subject to penalties. In addition, failure to timely or correctly report virtual currency transactions when required to do so may be subject to information reporting penalties. However, penalty relief may be available to taxpayers and persons required to file an information return who are able to establish that the underpayment or failure to properly file information returns is due to reasonable cause.

From the above examination of tax treatment of cryptocurrency, it seems most countries have decided to tax cryptocurrency in ways they deem fit. While some countries have levied income on cryptocurrency, others have decided to levy capital gains tax. Some countries have even levied Value Added Tax on cryptocurrency. What is important to note is that the type of tax that a country will apply to cryptocurrency depends largely on the way that country has categorised it.
The growth of transactions in cryptocurrency has skyrocketed over the last decade which makes it desirable to regulate cryptocurrency for taxation purposes in order to prevent tax avoidance and evasion. Countries that have taken the bull by the horn to regulate cryptocurrency must therefore be commended for setting the pace in this regard. South Africa, which is an African country like Nigeria, must also be commended for setting the pace for other African countries who have not deemed it fit to regulate cryptocurrency.

It is the opinion of the author of this article that countries that are yet to regulate cryptocurrency transactions such as Nigeria and those that have outrightly banned cryptocurrency transactions will have to consider regulating trade in cryptocurrency to prevent loss of revenue.

6.0 TAX CHALLENGES OF CRYPTOCURRENCY TRANSACTIONS

The unique technological features and nature of cryptocurrency present some tax challenges to tax authorities. The most recognised major tax challenge in this regard is that the use of cryptocurrency as a means of payment may likely result in tax avoidance due to its anonymity and privacy features.[88]

As stated in the earlier part of this article, one of the unique features of cryptocurrency is that it guaranteesprivacy andanonymity of transactions and the parties involved as there is no financial institution involved or third party

[88] Westhuizen C., 'Future digital money: The legal status and regulation of bitcoin in Australia', (LLM Dissertation, University of Notre Dame Australia 2017) 114

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interference.[89] The anonymity nature of cryptocurrency transaction means that such transactions are usuallyundetectable and tax authorities are usually unable to track the transactions for taxation purposes. The undetectable nature of cryptocurrency transactions may therefore impede the ability of tax authorities to subject transactions in cryptocurrency to taxation which may create opportunities for the parties to avoid paying tax on the transactions thereby leading to loss of revenue that could have accrued to the government.[90]

What this portends is that parties can carry out their transactions without paying tax. It is therefore not surprising that cryptocurrency transactions have been classified as 'a digital Cayman Island'.[91] This is because cryptocurrency is created with the aim of keeping transactions private and anonymous and ultimately untraceable, which makes cryptocurrency transactions suitable for tax avoidance.

It is further argued in this respect that cryptocurrencies possess the two most important characteristics of a tax haven.[92] First, because there is no jurisdiction in which they operate (they are 'held' in cyberspace accounts known as online 'wallets'), they are not subject to taxation at source. Second, cryptocurrency accounts are anonymous. Users can start as many online 'wallets' as they want to buy or sell cryptocurrency and trade them without ever providing any identifying information. Therefore, cryptocurrency makes it easier to avoid taxes because of its characteristics of anonymity and privacy of users and their information.[93]

The anonymity nature of cryptocurrency also creates opportunity for tax evasion. With the advancement in technological payment systems, businesses and consumers became conscious of the fact that cryptocurrency can be used as a means through which tax can be evaded when purchasing or selling goods or services with the intention to obtain a financial benefit through the decentralised

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[89] Bitcoin Exchange Guide, "An Introduction to Blockchain: Distributed Ledger Technology Application Benefits" <https://www.bitcoinexchangeguide.com/blockchain-distributed-ledger-technology/> accessed 1 June 2022

[90] Westhuizen C., 'Future digital money: The legal status and regulation of bitcoin in Australia', (LLM Dissertation, University of Notre Dame Australia 2017)115

[91] Mirjanich N., 'Digital Money: Bitcoin's Financial and Tax Future despite Regulatory Uncertainty' *DePaul Law Review* (2014)64 pp. 213-222

[92] Marian O., 'Are Cryptocurrencies Super Tax Havens?' *Michigan Law Review* (2013) 1(12)38-42

[93] Gruber S., 'Trust, Identity, and Disclosure: Are Bitcoin Exchanges the Next Virtual Havens for Money Laundering and Tax Evasion?' *Quinnipiac Law Review* (2013)32 135-204

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payment networks.[94] Accordingly, due to the anonymity provided by cryptocurrency, there is the potential for individuals to withhold reporting cryptocurrency-related income and thus evade taxes.[95] It has therefore been held that cryptocurrency raises untested legal concerns related to tax evasion, consumer protection and money laundering.[96]

7.0. TAX TREATMENT OF CRYPTOCURRENCY TRANSACTIONS IN NIGERIA

Presently, there is no specific regulation on the tax treatment of cryptocurrency in Nigeria. This is probably attributable to the fact that cryptocurrency does not enjoy legal tender status in Nigeria and is not recognise as a means of payment. In fact, as stated earlier, both the Central Bank of Nigeria (CBN) and the Securities Exchange Commission have issued series of circulars advising Nigerians, Banks and other Financial Institutions to desist from the trade and use of cryptocurrency as it is not recognised as legal tender.This may account for the reason why the government of Nigeria has not considered the possibility of regulating trade in cryptocurrency for taxation purpose.

However, despite the fact that cryptocurrency is not recognised as a legal tender, estimate have shown that trading in cryptocurrency in Nigeria generated more than US$115 million in 2017.[97] Nigeria is also the second largest Bitcoin market in the world with over $500 million worth of Bitcoin traded over the last five years.[98]

This reported volume of cryptocurrency trade in Nigeria is a confirmation of the need for the government of the country to put in place necessary machineries to widen the tax net to capture cryptocurrency transactions and prevent tax avoidance or evasion. For a country that is seeking to break its dependence on oil

[94] Torgler B. & Murphy K., 'Tax Morale in Australia: What Shapes it and has it Changed over Time?' *Journal of Australian Taxation* (2004)7 298

[95] Ly M. K., 'Coining Bitcoin's Legal-Bits: Examining the Regulatory Framework for Bitcoin and Virtual Currencies' *Harvard Journal of Law and Technology* (2014)27 587-595

[96] Cindy C., 'Electronic Frontier Foundation and Bitcoin' <http://www.eff.org/deeplinks/2011/06/eff-and-bitcoin.> accessed 2 June 2022

[97] Oyamada A. and Russo C., "Bitcoin Trading thrives wherever Regulators crack down most" <https://www.bloomberg.com/news/articles/2017-12-14/bitcoin-trading-thrives-wherever-regulators-crack-down-most> accessed 1 June 2022

[98] Alex-Adedipe A and Atanda O., 'Nigeria: Prohibition of Cryptocurrency Transactions By the Central Bank of Nigeria' <https://www.mondaq.com/nigeria/fin-tech/1036556/prohibition-of-cryptocurrency-transactions-by-the-central-bank-of-nigeria> accessed 1 June 2022

https://doi.org/10.53982/alj.2021.0901.09-j

revenue, it is important for the Nigerian government to be proactive in this respect and put in place machineries to subject gains derived from cryptocurrency transactions to taxation. Being one of the largest economies in Africa, it is important for Nigeria to take the lead and set the pace for other African countries. At present, South Africa is the only country in Africa that have published guidelines on the tax treatment of cryptocurrency. It is therefore important for the country to emulate the South African government in this respect to prevent tax avoidance and evasion.

It is hoped that the recent announcement by the CBN to create a digital currency for the country will spur policy makers in the country to come up with guidelines to regulate cryptocurrency transaction. This is will go along way to provide clarification on the appropriate tax treatment of cryptocurrency from which the government can generate more revenue.

It is, however, the contention of the author of this article that even though Nigeria does not have specific guidance on the tax treatment of cryptocurrency, the taxation of cryptocurrency can be accommodated under the existing tax legislations in the country. Depending on how cryptocurrency transactions are conducted, classified and reported for accounting purposes, they may either be seen as income from the ordinary course of business or capital gains.[99]

Accordingly, it is postulated that where cryptocurrency is paid as an income or remuneration to an individual instead of the traditional money, such cryptocurrency will constitute a chargeable income for personal income tax purposes pursuant to the provision of Section 3 of the Personal Income Tax Act 2011 (as amended) which stipulates any gain or profit arising from any trade, business, profession or vocation is liable to tax. In such situation, the cryptocurrency may be converted to be fair value of Naira upon which it will be taxed. In a similar vein, where a Company in Nigeria earned its income or profit in cryptocurrency, such income or profit will be chargeable to tax under Section 9 of the Companies Income Tax Act 2004 (as amended) which stipulates that a company is liable to tax on the income or profitsaccruing in, derived from, brought into, or received in Nigeria.

In addition, cryptocurrency can be treated as chargeable asset under Section 3 of the Capital Gains Tax Act CAP. C1 LFN 2004. This means that when

[99] Andersen Tax, 'Cryptocurrency and Taxes: Bridging the Digital Gap' <https://www.andersentax.ng/newsletters/cryptocurrency-and-taxes-bridging-the-digital-gap.>accessed 29 May 2022

cryptocurrency is disposed, the capital gains from such transaction will be subjected to a capital gains tax. It is also important to note that since cryptocurrency is not a recognised legal tender in the country, it can be as classified as a 'currency other than Nigerian currency' under Section 3(b) of Capital Gains Tax Act which will make it a chargeable asset under the Act and upon which capital gains tax will be applicable. Taxpayers can take advantage of tax planning in this respect by investing in cryptocurrency and disposing them thereafter because the capital gains tax payable on such disposal is 10 percent as opposed to income tax payable at 19 percent (effective tax rate) or 30 percent by individuals and companies respectively.[100]

Furthermore, where taxpayers make use of cryptocurrency as means of payment for goods and services, the government can consider charging value added tax on such supply of good and services as provided under Section 2 of the Value Added Tax Act CAP V.1 2004. This is because Section 5(2) of the VAT Act provides for instances where the supply of goods or services are for a consideration other than money. In such situation, the Act provides that the market value of such supply shall be deemed to be the value for VAT purposes.

From the above, it can therefore be rightly posited that even though Nigeria, unlike South Africa, does not have a specific guidelines on the tax treatment of cryptocurrency, the taxation of the cryptocurrency can be accommodated under the existing tax legislations such as the Personal Income Tax Act, Companies Income Tax Act, Capital Gains Tax Act and Value Added Tax Act depending on the type of the transaction. It is therefore left for the Nigerian government to be proactive in this regard and ensure that the existing tax legislation are properly applied to cover cryptocurrency transactions to prevent tax avoidance and evasion pending the time a specific guidance will be issued.

8.0 CONCLUSION

This article provides an in-depth examination of the nature of cryptocurrency transactions. The article found that the legal status of cryptocurrency vary from country to country. While some countries recognised it as a legal tender, others have outrightly ban its use and others recognised it as an alternative means of payment. The article also found that trading in cryptocurrency is a peer-to-peer (P2P) decentralised transactions whereby the buyer and the seller transact and interact directly with each other without the intermediation by a third party. This ensures privacy and anonymity of the transaction which constitute a challenge to

[100] Ibid

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tax authorities to track such transactions and therefore creates opportunities for tax avoidance and evasion.

Finding from the article also revealed that some countries have issued specific guidelines on the tax treatment of cryptocurrency with the one issued by the Internal Revenue Service of the United States being the most detailed and comprehensive one. Nigeria, at the moment, has not issued any guidelines on the specific treatment of cryptocurrency. The attempt by the CBN to create a digital currency for the country may eventually spur the government to issue guidelines to regulate cryptocurrency transactions.

This article however contended that the taxation of cryptocurrency can be accommodated under the existing Personal Income Tax Act, Companies Income Tax Act, Capital Gains Tax Act and Value Added Tax Act. It is therefore the recommendation of this article that the Nigerian government should leverage on the existing tax legislations in the country to subject cryptocurrency transactions to tax to prevent tax avoidance and evasion pending the time a specific guidance will be issued in this regard. It is also recommended that guideline should be issued on the treatment of cryptocurrency transactions in the future to prevent revenue loss and also to prevent arbitrary taxation of cryptocurrency transactions.