

Analysis of the legal regulation of cryptocurrencies in Brazil¹

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SUMMARY

With the advent of virtual currencies, this market has become increasingly attractive, leading users to view them as a profitable way to invest and store wealth, aiming to increase financial capital. This issue is being questioned due to the lack of results in the application of the law to regulate and prevent future fraud, litigation, and cybercrime. However, it is important to note that the currencies of each country, such as the dollar, euro, and real, fluctuate according to investment fluctuations. The methodology was based on a literature review, using digital material as a reference. The objective of the study is to discuss the practical application and regulation of this market. Therefore, after analysis, it is considered that Brazil still seeks improvements to comply with regulations, actively seeking to prevent fraud. Currently, while insufficient, they offer the opportunity for greater leaps forward in the national financial system.

Keywords: Cryptocurrencies. Financial market. Regulation.

ABSTRACT

With the advent of virtual currencies, there has been an increasing attraction towards this market, so that those who use them have started to evaluate them as an advantageous form of investment and storage of wealth, aiming to increase financial capital. The problematization of the topic occurs due to the lack of results and greater information in the application of Law in order to regulate and prevent future fraud. However, it is considered that the currencies of each country, such as the dollar, the euro and the real. The methodology was based on a bibliography review, using the search for digital material as a reference. The objective of the study is to discuss the practical application of its regulations, in addition to seeking incisively to prevent the occurrence of fraud. Therefore, after analysis, it is considered that, currently, the regulation of virtual currencies in Brazil is still insufficient, however, it offers the opportunity for greater leaps forward in the national financial system.

Keywords: Cryptocurrencies. Financial markets. Regulation.

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1. INTRODUCTION

The current scenario of virtual currencies (cryptocurrencies) has increasingly reached unimaginable levels that were previously unattainable in the market financial, so that it began to gain more and more followers in the market. That is, the people have become adept at using cryptocurrencies and have sought, through of them, safer and more effective ways of investing, in addition, they fostered a form innovative investment method, adept individuals find in virtual currencies a way to store their wealth.

Cryptoassets hold economic value, so each type of asset has a value and the value of each currency varies according to its rise and movement. Thus, as the currencies of each country, such as the dollar, the real and the euro, undergo changes according to with the variation of investments. Currently, some countries do not have good acceptance in concerning the use and investments made through virtual currencies and, due to Furthermore, there are countries that prohibit its use, however there are countries that have permissive legislative regulation regarding the use of virtual currencies.

In this context, it is essential to pay attention to the fact that some countries, when implementing the legalization of virtual currencies ended up including them as a form of payment, since these can be transacted without the need for intermediation by third parties, such as in cases where financial institutions intervene.

Virtual currencies can be traded between individuals without third parties need to intervene, it is worth highlighting that third parties are understood as institutions financial institutions and similar companies, without the need for intermediaries, financial institutions will only be responsible for validating transactions carried out through virtual currencies, with the purpose of assigning real value to transactions carried out.

For a given individual to have values as part of their assets in virtual currencies, there are two ways, being: (a) mining or (b) receiving from an individual that already holds them. Mining consists of a computational procedure, where generated the data that will be incorporated into a blockchain, which are incorporated into existing chains in an infinite process, which makes it possible to verify their respective transactions, providing security between the transaction between individuals which takes place through transfers.

Currently, cryptocurrency exchanges, which operate as institutions that convert cash into cryptocurrencies, however, as

virtual currencies can have different values, the exchange is very subjective. The exchange of current currency for virtual currencies when carried out at exchange offices, is carried out through bank deposits or other forms of payment, where the individual who makes the payment with the aim of receiving a certain amount of cryptocurrencies.

Some of the exchange offices have the same characteristics and operation similar to the securities market, which allows for changes in values, virtual currencies may experience an increase or decrease in value initially invested by the individual who chooses to invest in cryptocurrency assets.

The possibility of suffering a significant difference between the amount invested and the amount obtained can be justified by the volatility of virtual currencies, since there is a possibility for the individual who owns them to carry out various purchase and sale operations of assets, analyzing the risks, rises and falls of each type of cryptocurrency. The individual who has investments in cryptocurrency can choose how to store them assets, being: storage in virtual wallets, which can only be accessed with the use of a private password also called an access key, which is combined directly with a public key that is recognized by the network.

This configures both types of passwords, making it possible provide security to virtual wallets and prevent third parties from accessing the wallet virtual. In other words, the country still has legislation that is not very specific regarding the nature legal framework of cryptocurrencies, sometimes making it difficult to determine the real incidence of its economic value, at the time of conversion into currency in the country, as there is no body that regulates and promotes the setting of specific values for virtual currencies in national currency.

Furthermore, the lack of specific regulation is due to the impossibility of framing virtual currencies with what is defined and attributed to the Union by law, since, legally, only the Union has the power to issue currency monetary, however, virtual currency, as it is not issued or controlled by the Union, does not falls under art. 43 of the CTN, which makes such regulation even more difficult.

2. ECONOMIC OVERVIEW OF CRYPTOCURRENCIES

With the emergence of this platform called digital plan, which has intelligence to send or collect information and has the ability to store information such as any physical means, with the difference not being the final content of the information, but rather the

format for viewing and reading this knowledge directly from the bits, the
The dominant question about digital assets is to understand their legal structure,
in order to define its economic valuation. Its specifications are intended
define which concepts should be applied in the standardization of goods according to their
categorization (Pereira, 2002).

Digital goods are considered software and can be commercialized and have
economic recognition, that is, they can be considered as assets within the
legal system and, even though they do not have a physical existence, they have a
economic valuation (Emerenciano, 2003).

This is because, in current legislation, tangible assets are also considered and
intangible. Tangible goods are those that have physical existence, while
intangible goods are completely devoid of this existence, being exclusively
conceptual. For Diniz (2005), intangible goods are those that do not have a
concrete existence. They are assets belonging to the rights of a specific natural or legal person that
have economic value, such as copyright.

The practical interest of distinguishing between corporeal and incorporeal things, which
in Roman law was situated in the form of transmission, since *corporeales res* had to
obey the ritual of *mancipatio* or *traditio*, while *res incorporales* were transferred by other
forms, such as *in successione*, in modern law has been reduced, although it can still be
indicated.

This is how corporeal things are transferred through purchase and sale, donation, etc.,
while incorporeal things are transferred through assignment (PEREIRA, 2002, p. 258).

Regarding digital assets, the doctrinal classification is aimed at understanding
the classification of these assets as intangible. Given the recent emergence of this type of
Well, the discussion initially focuses on the field of Tax Law, due to the
need to understand whether digital assets are subject to certain taxation or
also not a possibility (SANTOS, 2014).

The import of virtual goods cannot be subject to Import Tax,
because these goods are intangible, which prevents the existence of such a tax, this happens
precisely because of the impossibility of the physical existence of these goods. It may also occur
possibility of a good characterized as tangible becoming an intangible good,
as occurs, for example, when a physical book becomes digitized (MACHADO, 2020).

The First Chamber of the Federal Supreme Court, in the judgment of the Extraordinary Appeal
176626-3-SP, also dealing with tax matters, took the following position:

[...]Computer program ("software"): tax treatment: necessary distinction. Not having as
its object a commodity, but an intangible asset, on the operations of "licensing or
assignment of the right to use

computer programs” – exclusive subject of the dispute, states can –, actually not institute ICMS: from this possibility, however, it does not follow that, immediately, the circulation of copies or examples of computer programs produced in series and sold in retail – such as the so-called 'off the shelf software' – which, materializing the corpus mechanicum of the intellectual creation of the program, constitute goods placed on the market – is also being removed from the constitutional scope of ICMS incidence (BRAZIL, Supreme Federal Court, 1998).

A classic example is software, which by its nature is defined as an intangible asset, according to the Judgment, but it may be qualified as a tangible asset, as in the case of the well-known “off-the-shelf software” that is sold at retail, normally in the form of CDs. Digital goods, basically, because they can be classified as intangible goods, can be valued economically, thus having legal protection consistent with this condition, therefore, has repercussions in the legal field.

Considering digital assets and their characterization, initially, in goods intangibles that can be changed to tangible goods, counting from their use, is done necessary that, for a long time, there was a gap in the digital assets market, a since there was no platform that could meet the expectations of Brazilian traders who started investing in digital currencies.

Cryptocurrencies have their origins dating back to 2009, when they became known and conquered new spaces, having their operation from their environment decentralized virtual which makes it possible to move and transfer between individuals without the need for intermediation by any financial institution, which makes so that virtual currencies are not subject to the same regulations as the system traditional monetary finance.

Since cryptocurrencies act as digital money, however, it is essential to add that have recently become accepted and, as a result, have become regulated, because the only difference is the digital nature and not being issued by any government. It is the cheapest, fastest and safest way to make online transactions and its value is defined freely by individuals in the market. For the author, Bitcoin is an innovative technology, is the greatest technological innovation since the internet, having the potential to change the world in a form never seen before.

Therefore, a specific process for use is essential and, among the these virtual currencies currently exist: Bitcoin, Litecoin, Terracoin, Peercoin, Namecoin, Primecoin, Zcash, Ethereum, and Feathercoin. Each of these currencies has specific characteristics for its use and the form of transaction. Broadly speaking, the

virtual currencies have the facility of carrying out transactions without the obligation third party intervention, which has contributed to the dissemination of its use, which also makes it easier for it to be accepted in the market.

In a simplified way, cryptocurrencies are seen as a new environment of carry out financial transactions virtually without the need for intervention third parties, such as banks and similar institutions or even credit card operators credit that will sometimes be assigned to ensure the completion of the financial transaction carried out through virtual currencies.

This is because, as a result of a previous regulation, institutions financial instruments are not directly subject to all changes in value such as currency current of each country in which it is used, since, as there is no relationship with the institutions, there is no government control falls on them, so cryptocurrencies cannot be considered as a currency of a given country, exclusively, not subject to control and real money quote

However, it is worth noting that, in order to use cryptocurrencies, it is necessary to use of a technological system called 'blockchain', where they are formalized the transactions carried out, making them public, preventing the same virtual currency from being used later in a new transaction, ensuring greater security, as well as The use of virtual currencies allows transactions to be carried out in a more secure manner. quickly and generate less costs.

Because the storage of virtual currencies occurs in a decentralized manner and independent, these being stored together with electronic addresses that are created direct way for this purpose and in some cases digital wallets are created and registered in order to guarantee the anonymity of users who aim to make it impossible to tracking of transactions, which, in theory, is considered to be safer, as it makes it impossible to identification of the amount of virtual currencies these individuals have.

Thus, situations that may lead to such loss include, for example: (I) the occurrence of information leaks from the databases of users of certain providers that are used for storing virtual currencies, so there are chances of that stop in strange places, such as the deep web, opening space for are acquired by strangers, since, through the use of specific software, they become if possible to have access to virtual currencies, whose authorizations are given through this a given server.

Another recurring means of losing digital assets related to virtual currencies is (II) individuals who provide services to providers, through malicious actions, employees who have administrator records and have access to more tools advanced tools can access virtual wallets and steal cryptocurrencies from accounts users, imperceptibly, at first; (III) the occurrence of attacks and problems in cryptocurrency exchanges, which can cause total or partial loss of customers/investors who trust such platforms; and (IV) encryption of files existing on the hard drive of the computer used for investments, through installation of Trojan horses that allow the identification of access links to virtual wallets.

Some cryptocurrency users adopt cold storage, that is, they store in places that cannot be accessed via the internet, in order to protect themselves from "unforeseen" events mentioned above. A good form of cold storage found by cryptocurrency enthusiasts is storing it on external HD devices and similar devices to the pendrives that are developed exclusively for storing these assets, which guarantees greater protection against fraud or leaks as can occur in virtual wallets of its users.

Some users even choose to redeem physical coins as an alternative ensure the maintenance of investments, thus avoiding being exposed to risks that they deem unnecessary. There are 3 (three) means of 'storage', some of the users of cryptocurrencies opt for cold storage, as described above, because cold storage is not subject to internet attacks, ensuring greater security for users, thus offering less risk and the possibility of greater returns on assets invested.

3. CURRENT CRYPTOCURRENCY SCENARIO

Crypto assets have been traded since mid-2009 and some of the cryptocurrencies currently used have their origins dated back to before, as is the case with Bitcoin started in 2008, after the financial institution Lehman Brothers declare bankruptcy. Although they are becoming a great attraction for investments considering the value they have, it is clear and visible that, every day, virtual currencies are gaining more and more space and attracting more and more attention from investors, which is understood as a new way of carrying out transactions without the need for intermediation, based on blockchain.

With the creation of virtual currencies and their decentralization, what makes these are not dependent on third parties and financial institutions, it is necessary that the movements and financial transactions carried out using crypto assets present greater risks, which caused some countries to rush to enact laws aimed at regulating transactions financial, thus, given the existence of risks, some countries begin to develop legal protection measures, as well as beginning to analyze ways to control the movements.

Cryptocurrencies, because they are used in conjunction with the internet, have circulated in different countries and, in a way, have been challenging monetary monopolies since they do not are regulated by central banks, so some countries have regulations on the traffic of virtual currencies and, in this case, regulation may apply from the circulation in the network until the incidence of taxes.

Each country presents a position on the circulation and taxation of currencies virtual, that is, there are countries that have opted for regulation, others have stopped legislating and There are still those who have decided to prohibit the use of virtual currencies, however, when considering the volume and movement of trade, it is impossible for nations to stop import or observe the growth and use of virtual currencies, since the movement These calculations can reach and even exceed the amount of 10 billion dollars monthly.

Currently, there are countries that prohibit the use of cryptocurrencies, imposing penalties severe for those caught trading or transacting, as is the case with Bangladesh, which applies a sentence of up to 12 years in prison, as it understands that negotiation and transactions carried out through virtual currencies and their territorial limits have classification as a crime of money laundering, which makes such transactions prohibited with the imposition of severe penalties on those who carry out transactions using virtual currencies.

In other words, it is necessary to confirm that each country is responsible for deciding whether agree or disagree and decide whether or not to regulate the use of virtual currencies, it is up to the heads of state of each country to decide whether or not there will be taxation on the use and transactions, as well as a ban on use will be established.

Like countries that have already regulated and accept virtual currencies, there are- if the United States has already defined a taxable form, establishing that, for the under the U.S. tax system, cryptocurrencies should be treated as property, not being able to adopt the definition of foreign currency, therefore, in cases where a



individual receiving payment in virtual currencies, he/she must declare the taxation, indicating the form of payment as being made with goods. In cases of mining, the United States recognizes the income earned as earned income autonomous, being subject to the corresponding taxation.

The same understanding of value exists where virtual currencies are compared with real money, in this case, the United Kingdom and Germany began to recognize cryptocurrencies as a private model of money, which should be applied to users and creators alike form specific to the type of taxation.

Among other countries, which have also adopted the use of virtual currencies and, considering the adherence, they decided on regulation, guaranteeing more security to users making cryptocurrencies a means of financial transaction that collaborates in a directly with the development of each country, as is the case of Japan, South Korea and Hong Kong. Like Japan, which is currently understood as the country hosting the main exchanges responsible for cryptocurrency movements in the world, thus already making the regulation of the matter.

Japan's main regulation regarding virtual currencies is the framework payment services that came into force in 2017, which expresses the requirements necessary for companies to use virtual currencies, including the following requirements: (a) have a company representative residing in Japan; (b) maintain, within the country, a company office said company; (c) the company must register with the local finance department; (d) it must carry out the annual delivery of records of transactions carried out; and (e) manage assets or companies that manage foreign virtual currencies.

Japanese regulations dictate that all investors must be identified. South Korea, by allowing the use of virtual currencies, chose to create conditions for carrying out transactions by financial institutions, that is, transactions must occur through banking institutions, in addition to there being rules provided for in ordering, these being:

- (a) users must have accounts with banking institutions that handle virtual currency transactions;
- (b) Korean financial institutions are responsible for verifying the cybersecurity of financial transactions between individuals;
- (c) individuals conducting transactions must have bank accounts with the same banking institutions as exchanges, in order to facilitate cryptocurrency trading;
- (d) restrictions on conducting virtual transactions in the case of foreign individuals;
- (e) all financial transactions carried out using crypto assets are monitored by the Financial Services Commission; and finally,
- (f) in case of suspicious financial movements, these must be reported to law enforcement authorities for investigation.



Brazil is currently seeking ways to regulate the use of cryptocurrencies, making their acceptance and movement within the national territory easier, because currently in Brazil, as there is no legislative regulation on the use, the negotiation or even about storage, it is possible that these are used, as the the lack of a law that defines them, whether the definition is through legalization or prohibition, can make impossible for the individual to suffer any kind of punishment.

For example, Hong Kong has always been seen as a good alternative for investors, but over time it has ceased to be one of the best options for investments, since the Securities and Futures Commission has limited virtual currencies to trading by exchanges that have headquarters or direct relations with the country. However, in In Brazil, there is already a Bill No. 2,303/2015 aimed at regulating the use of cryptocurrencies. currencies, as well as the incidence of taxes on transactions carried out within the national territory.

Bill No. 2,303/2015, which aims to include virtual currencies and programs of air miles together with the category of transactions and arrangements that aim to make payments that are supervised by the Central Bank. Until the project is judged, once the necessary regulations are in place, Brazilian citizens are not obliged to collect taxes on transactions carried out using currencies virtual, thus not being able to be applied to these as they are not recognized as money.

Therefore, the creation of virtual currency became necessary in view of the evolution and advent of the internet which caused control of the financial market to be shifted, leaving from the hands of the government and being exercised globally. Considering the legislation currently in force in Brazil, virtual currencies are classified as one of the forms of monetary value standard, thus having a liberating nature of obligation patrimonial.

Currently, only 8.3% of all global financial transactions are made by through cash, while the rest of the transactions are made in a virtual/electronic and, in the same direction, the national financial system has been moving, being the most financial transactions carried out virtually, through loans banking and financial transactions that do not involve physical currencies.

With the advent of national regulation of virtual currencies, these can also be taxed, directly influencing the income tax of the citizen who uses the virtual currency, however, taxation does not occur correctly, following the assets and

income, not considering dividends. Currently, more than half of the revenue national is due to taxes levied on services and goods, and is considered lowers taxation on individual assets.

As regards virtual currencies, Article 43 of the Code may be applied.

National Tax which provides:

Art. 43. The tax, under the jurisdiction of the Union, on income and proceeds of any nature has as its triggering event the acquisition of economic or legal availability: I – of income, thus understood as the product of capital, labor or the combination of both; II – of proceeds of any nature, thus understood as the patrimonial increases not included in the previous paragraph. (BRAZIL, 1966, p.247).

According to the excerpt transcribed above, it is clear that cryptocurrencies must be taxed, this is because it is known that virtual currencies can be classified under both alternatives described above. Currently, in Brazil, it is estimated that around R\$40.5 million is in circulation billions in crypto assets, with the largest number of national transactions occurring in 2015, when around 10 thousand cryptocurrencies were moved.

It is worth mentioning at this point that the analysis of the regularization of virtual currencies started in 2017, when there were already approximately 15 thousand traders doing use of virtual currencies, with the debate of bill no. 2,303/15, in which it was identified as one of the biggest obstacles to its regulation is the decentralization of movements, even though these virtual currencies still have their movement decentralized.

Considering the statement from the National Bank, it is clear that there are still obstacles regarding the classification of virtual currencies within the concepts already existing in national legislation, since pre-existing categories in national legislation determine that only the Union can issue financial currencies, therefore, the difficulty becomes notorious to frame virtual currency in the currently existing concept, considering that currencies virtual are not issued or regulated by the Union.

Given this fact, it is understood that the best way to frame the cryptocurrencies so far is to assign them the function of an object of exchange and barter, since objects of exchange function through the obligation of one individual to another, which they establish between themselves the obligation to deliver to each other a specific object which may be in this context the cryptocurrency which will be treated as an object and commodity.

3.1 Characteristics of Cryptocurrency Taxation

As already discussed, each country chooses how the system will be implemented when it comes to cryptocurrencies in the current market, based on the monetary policy already in place in

legislation, in addition to legal structures that are directly linked to the financial system of each country. Thus, as already demonstrated previously, in Brazil, the authorities competent authorities analyze ways to regulate the use and taxation of cryptocurrencies, However, it is worth noting that, as demonstrated, Brazil issued warnings and guidelines in order to guide the use and taxation of virtual currencies.

Although they are not yet fully regulated, the Federal Revenue Service has kept an eye on movements made through virtual currencies, however it is It is necessary to mention that, due to the lack of complete regulation of assets digital, these are not understood as financial transactions, thus, the income tax return must qualify virtual currencies as other assets and that therefore, they will be subject to the relevant taxation in this modality.

As already mentioned, the Federal Revenue has an understanding and views currencies virtual as goods, and the type of virtual currency the individual possesses must be indicated, also informing the amount and the exchange that carried out the transaction. Since taxation of virtual currencies occurs on the profit obtained from the sale, as occurs with other assets declared by individuals in their income tax. It is worth mentioning to the Federal Revenue Service that as with the sales of other goods, the movements (sales) of crypto assets, that are less than the value of R\$ 30,000.00 (thirty thousand reais), will not be taxed, however, there is a need to make the declaration.

Tax rates and duties will vary according to the amount that is moved and declared by the individual at the time of filing the tax return income. It should be noted that taxes/duties due on sales and transactions carried out through cryptocurrencies must be collected within 30 (thirty) days after the sale and, If not carried out, the individual is subject to the application of a fine and interest on arrears.

Furthermore, in order to be properly taxed, the individual must declare the income obtained through the sale of virtual currencies in the income sheet that is subject to exclusive taxation, which must include the gain obtained and the source, whether a exchange or third individual, being necessary to inform the CNPJ in the case of exchanges or the CPF in cases where a third party is involved.

Because the taxation of virtual currencies currently only occurs when the transaction is effective. income tax return, at which time the individual must declare the sale of cryptocurrencies, reporting the capital gain from the sale of assets, rights or sets of assets, it is emphasized that the assets sold in the same month must be declared, if you add up the earnings, that is, they must total more than R\$ 35,000.00 (thirty-five

five thousand) reais. This is because this taxation only occurs at the time of declaration of income tax, since only the actual gain is considered taxable, that is, the difference raised between the purchase and sale value, therefore, it will only be taxed on the taxpayer the capital gain and it is essential to mention that the assigned rate will vary according to the amount moved, as well as that the amount due will be collected by means of the collection guide issued by the Federal Revenue Service.

CONCLUSION

Therefore, after analysis, it is considered that these virtual currencies are increasing every day gaining more space in the financial market, as well as followers and in Brazil it was not even is being different, this is because, only in the year 2015 was the largest identified record in national lands obtained through crypto assets, which guaranteed Brazil a huge increase in their investments, including virtual currencies guaranteeing more investments to the country, however, safeguarding its legal security that does not revolve around only from entities or financial institutions.

Thus, it is possible to identify that among the countries that expressed their views on the use of cryptocurrencies, were: (a) those who reject the technology and the adoption of cryptocurrency, prohibiting its use; (b) those that authorize the use of cryptocurrencies and try to adapt as far as possible to local legislation. And finally, (c) Brazil that aims try to adapt to regulations, seeking to incisively avoid the occurrence of fraud, leaving a clean field without regulating them completely or even banning.

Therefore, it is still necessary to develop further studies, as well as new laws are drawn up that aim at better comprehensive regulation and that allow the safe use of virtual currencies, making their recognition possible and bringing more security for users in this financial niche/market, because in the current scenario country is insufficient, however, it offers the opportunity for greater leaps in the system national financial.

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