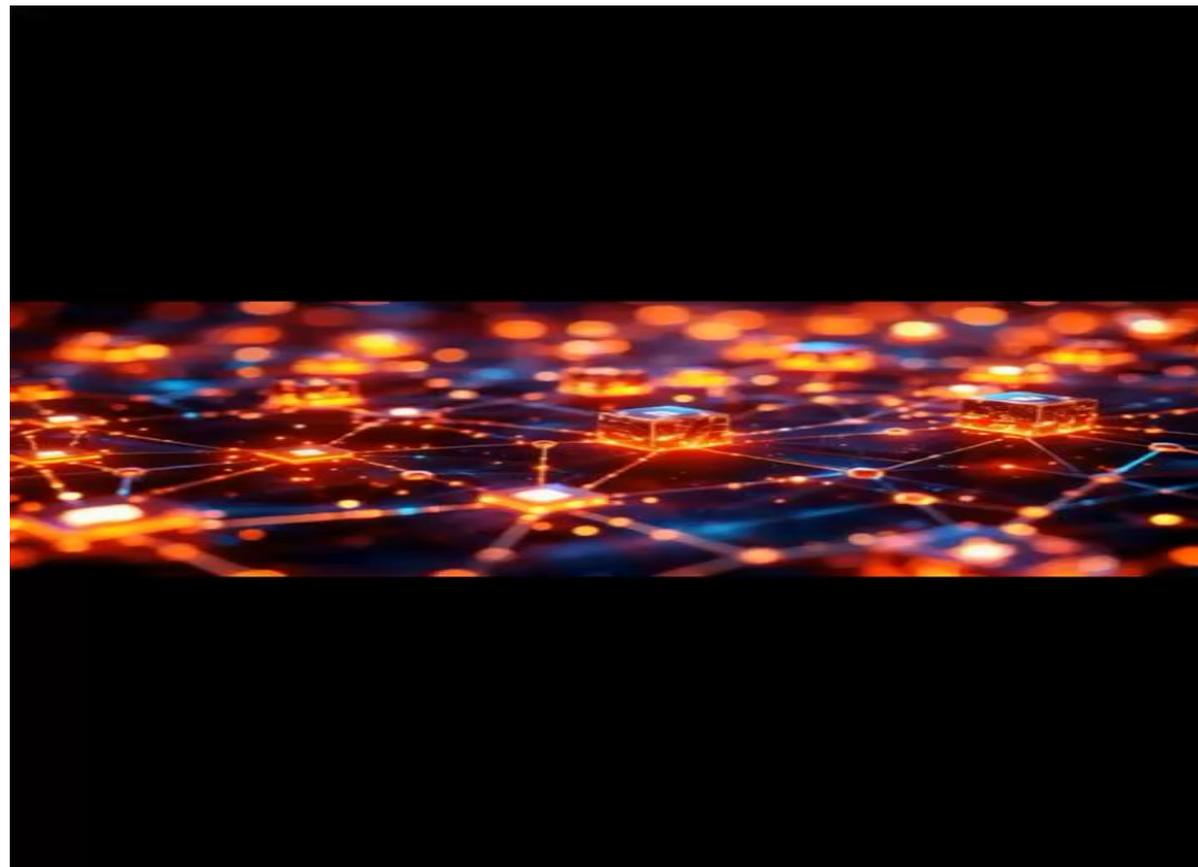# Required features of the Colombian Tax System for the treatment of Cryptoassets in the context of the OECD CARF

Dirección de Impuestos y Aduanas Nacionales – DIAN
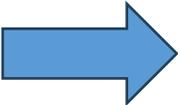
Bogotá D.C., Colombia

Basis for building the taxation of the future

The search for global tax transparency

Common Reporting Standard (CRS)

(Estándar Común de Informes)

Crypto Asset Reporting Framework (CARF)

(Marco de Informes de Criptoactivos)

- It was designed in 2014 to counter tax evasion with other jurisdictions and to support transparency in financial investments.
- Its control and oversight is channelled through traditional financial channels of state supervision.

Under a similar structure, the CARF was designed with the objective of performing control and monitoring of decentralised networks, such as "blockchain" platforms.

Its success was reflected in obtaining information on 111 million financial accounts, representing assets worth 11 billion euros.
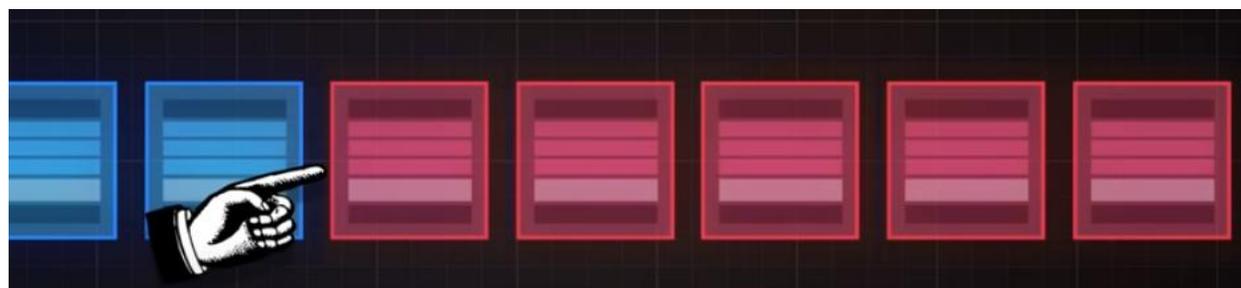
Currently, decentralised blockchain networks lack state supervision as they are not a traditional channel.

The blockchain, or Blockchain, contains :

DATA: Data consists of the parties to the transaction, such as:
- The sender's data.
- The recipient's data.
- The type of digital asset being traded or exchanged.

BLOCK IDENTIFIER HASH: A code that uniquely identifies a dataset or block on the blockchain.

PREVIOUS BLOCK HASH: This is a unique identifier that is included in the header of each block to link it to the previous one.

DECENTRALISED NETWORK

CENTRALISED AND DECENTRALISED NETWORK

CENTRALISED

DECENTRALISED

LEGISLATIVE INITIATIVES AND DOCTRINE

➤ Bills No. 139 of 2021 'By which crypto-asset exchange services are regulated'.

➤ No. 267 of 2022 'By which Virtual Asset Service Providers are recognised'.

It lacked one debate to become law of the Republic.

➤ Unified Concept on cryptoassets DIAN No. 18075 (1621) of 2023

Recognised the treatment of crypto-assets as intangible assets, their treatment depending on whether they are fixed or movable assets (art. 60 ET) and their tax cost (art. 74 ET).

Cryptoassets shall be deemed to be in the national territory when they are exchanged for the legal currency (pesos) in accordance with art. 265 E.T.

A factual configuration is made with the existing standard.

Rules and comments associated with the tax treatment provided by the OECD CARF Framework.

DIAN

The CARF is supported by four (4) fundamental cardinal points:

1

The scope of cryptoassets to be covered

CRYPTOASSETS RELEVANT (USD 50.000)

➤ Exchanges between relevant cryptoassets.

2

Entities and natural persons obliged to comply with data compilation and reporting requirements

Establishment of Virtual Asset service providers

○ Are tax resident in different jurisdictions.

○ Carry out operations and/or transactions in relevant cryptoassets through a branch based in a jurisdiction that adopts CARF rules.

Rules and comments associated with the tax treatment provided by the OECD CARF Framework.

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3

The transactions or operations that are the subject of the report and anything relevant to their environment.

➢ The full name of the relevant cryptoassets.

➢ Acquisitions and disposals of relevant cryptoassets against other relevant cryptoassets.

➢ Payment transactions to reportable retailers.

4

Due diligence procedures to detect holders and/or users of crypto-assets and to identify tax jurisdictions for the purpose of automatic exchange of information.

It imposes the obligation to issue a self-certification of all traders and holders of cryptoassets, by means of which due diligence is carried out to determine the identity and tax residence of users and/or clients holding cryptoassets.

Comparative scale of regulation between the UK and Germany
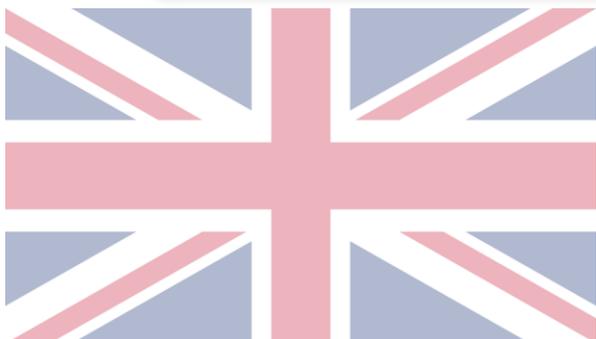
Regulation based on the principles :

"same activity, same risk,

same regulation"

- Crypto-assets are treated as <u>intangible assets</u> and are integrated into financial practices.
- Intangible assets comprise rights and are susceptible to sale, transfer or lease.

Rules-based regulation to ensure investor confidence and stability in the crypto-assets market.

- Crypto-assets are treated as *<u>financial instruments</u>*.

- Financial instruments resemble a right, but they are not, it is a medium of exchange for goods and services. They lack the features of cash.

CLASSIFICATION OF CRYPTOASSETS

	EXCHANGE TOKENS	PAYMENT TOKENS	SECURITY TOKENS	UTILITY TOKENS	TOKENS AS E-MONEY
UNITED KINGDOM	It was established to be used as a means of transacting and holding value, such as BITCOIN and ETHER (Ethereum platform).		Considered as ownership rights, shares, debt obligations and profit participation in a company or project. This category of tokens is governed by **the intangible asset regulations**.	These cryptoassets serve as access keys or units of account within a specific digital ecosystem such as a platform or application, to access services or make payments; they have no inherent investment characteristics.	
GERMANY		They are used to carry out transactions as a means of payment such as BITCOIN and ETHER. However, these cryptoassets do not constitute securities or investments, but are considered as **financial instruments.**	It is categorised as a financial instrument and often represents property rights or other financial interests such as company shares or debt securities. Given their nature, these tokens are subject to specific regulations.		This class of cryptoassets aims to maintain a stable value by reference to the value of an official currency. These tokens represent a claim against the issuer of the token on the same platform that can be used for payment transactions within the platform.

Alternative legal mechanisms to consider

➢ **The implementation of mechanisms to prevent the repurchase of crypto-assets is crucial to ensure fairness and equity in the market. The use of these assets as tax avoidance tools that reduce the tax base should be avoided.** This intervention is necessary in the current Colombian tax system, as it could prevent the sale of digital assets at lower prices and punish it for accounting purposes, taking advantage of market volatility to obtain future profits.

The CARF establishes a legal framework:

- to protect the rights of investors and users of cryptoassets in Colombia.

- that provides clarity and legal certainty for service providers and exchange platforms. In other words, it establishes clear rules of the game for determining taxable income in the digital market.

- that seeks to strike a balance between innovation and investment protection, prevent market manipulation and mitigate associated risks such as terrorist financing and money laundering.

CONCLUSION

The analysis of crypto-asset regulations in the UK and Germany showed:

- the need to implement a tax system in Colombia that is based on principles rather than strict rules.

- For Colombia, adopting clear and transparent guidelines could improve tax compliance and increase cryptoasset-related revenues in the country.

CONCLUSION

- **The Colombian tax system will benefit significantly from the integration of Blockchain technology in the treatment of crypto-assets:**

  - enabling accurate determination of tax residency and tracking of costs and deductions for income tax purposes, in line with current e-invoicing requirements.

  - the immutability of blockchain data improves the quality and security of information.

  - providing legal certainty for the supervision of state economic and tax entities, such as the National Tax and Customs Directorate (DIAN) and the Ministry of Finance.