

VIRTUAL ASSETS AS A TAXABLE OBJECT: DIRECTIONS OF LEGAL REGULATION AND KEY PRINCIPLES

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DOI: <https://doi.org/10.61345/1339-7915.2024.5.11>

Annotation. The article examines the directions and principles of legal regulation of virtual assets in Ukraine, taking into account their specifics as an object of taxation. The constitutional, tax, administrative, criminal and civil aspects of regulation that ensure the integration of virtual assets into the national legal system are considered. Key challenges and problems are identified, in particular the lack of clear taxation mechanisms, the need to harmonize national legislation with international standards, as well as the issue of ensuring transparency, consumer protection and state sovereignty in the financial sector. Particular attention is paid to the principles of legal regulation, in particular legitimacy, transparency, technological and tax neutrality, adaptability of legislation and international cooperation. It is noted that a comprehensive approach to the regulation of virtual assets will contribute to the effective functioning of the digital economy, attracting investments, protecting the rights of owners and developing innovative technologies. The emphasis is on the importance of ensuring the harmonization of the regulatory framework with constitutional principles and international standards. The role of criminal law regulation in combating fraud, money laundering and terrorist financing is emphasized. The need to create legal mechanisms for resolving disputes, licensing activities related to virtual assets, and implementing effective control over financial transactions is also considered. The author concludes that the implementation of legal frameworks focused on the rapid changes in the digital economy will allow Ukraine to ensure the stability of the financial system, increase the competitiveness and effectiveness of state economic policy in the field of virtual assets.

Key words: legal regulation, principles, directions, virtual assets, taxation.

1. Introduction.

In today's globalised world, virtual assets have become an integral part of financial and legal relations, becoming increasingly widespread as a tool for investment, settlement and value preservation. However, their legal nature, specifics of circulation and taxation remain the subject of active discussions at the national and international levels. In Ukraine, as in many other countries, the legal regulation of virtual assets is only beginning to take shape, which leads to a number of theoretical and practical problems related to the determination of the legal status of these assets, development of mechanisms for their accounting and taxation.

The issue of taxation of virtual assets is particularly relevant in the context of Ukraine's integration into the global economy and bringing its regulatory framework in line with international standards. At the same time, the specific nature of virtual assets, such as their volatility, decentralisation and the possibility of anonymity, requires the development of special approaches to taxation that would meet the realities of the digital economy and ensure effective control.

Thus, the issue of taxation of virtual assets is a multifaceted problem that covers various aspects of legal regulation. A comprehensive approach to addressing this issue is an important step towards creating an effective tax regime that meets the current challenges and needs of Ukraine's economy.

2. Analysis of scientific publications.

At the current stage of scientific and legal doctrinal development, insufficient attention has been devoted to the study of the directions and principles of legal regulation of virtual assets as an object of taxation in Ukraine. However, scholarly works do focus on the general directions and principles of legal regulation of social relations. Therefore, we can highlight the contributions of researchers such as K. V. Andriievskyi, V. H. Baranova, R. V. Barannik, V. O. Boniak, O. M. Ivanchenko, T. O. Kolomoiets, V. K. Kolpakov, Ya. M. Kostiuhenko, D. S. Kremova, O. V. Lukianenko, V. F. Nesterovych, and others.

3. The aim of the work.

The aim of the article is to examine the directions and principles of legal regulation of virtual assets as an object of taxation in Ukraine.

4. Review and discussion.

The directions of legal regulation should cover a wide range of issues, including legal certainty regarding the status of virtual assets, establishing rules for their circulation, implementing an effective taxation mechanism, ensuring the protection of user rights, counteracting financial crimes, and harmonizing with international standards. The adoption of a comprehensive approach to regulating this area is key to ensuring the legal security of virtual asset owners and the effective administration of tax revenues in this sector.

The development of a holistic regulatory strategy is a necessary condition for achieving these goals. Such a strategy should take into account the dynamic development of technologies, the economic needs of the state, and advanced international experience. An important aspect is not only the adoption of separate regulatory acts but also the creation of a systemic approach to regulation, which ensures long-term stability and adaptability of the legal framework to new challenges.

As V. O. Boniak notes, constitutional and legal regulation should not be carried out through the entire legal system but only through those elements that can directly influence the behavior of subjects of constitutional law. Such regulation should be considered as one of the components of constitutional and legal influence, alongside informational influence aimed at shaping the consciousness of subjects of constitutional law. The dynamic nature of constitutional and legal regulation is manifested in the sequence of its stages, from organizing social relations and ensuring their protection to stimulating further development. The effectiveness of this regulation depends on how successfully these processes contribute to maintaining and improving social order [1, p. 21].

The constitutional and legal regulation of virtual assets in Ukraine must consider the fundamental rights, freedoms, and obligations of citizens enshrined in the Constitution, as well as the principles defining the functioning of the state. Specifically, Article 41 guarantees the right to property, which extends to virtual assets as objects of ownership. The state must ensure the legal protection of such assets, taking into account their economic value and the rights to possess, use, and dispose of them.

Article 42, which guarantees the right to entrepreneurial activity, necessitates the regulation of virtual assets in business, including their use for transactions and investments, to safeguard the rights of entrepreneurs and promote the development of the digital economy. Additionally, under Article 67, all income, including that derived from operations with virtual assets, is subject to taxation. This provision applies to individuals' income regardless of its source.

Article 34, guaranteeing freedom of expression and information, is relevant in the context of virtual assets, particularly NFTs associated with creativity and intellectual property. Regulation should

balance free access to information with the protection of intellectual property rights. Furthermore, Article 32 ensures the right to personal data protection, which is critical for blockchain technologies where personal information is used for client identification.

Legal regulation must also protect citizens from fraud, manipulation, and cybercrimes, as provided by Article 42, which guarantees protection against unfair competition. In this regard, the state should establish effective mechanisms to foster healthy competition and ensure the stable development of the digital market.

Particular importance is given to ensuring sovereignty in financial, economic, and security domains, as stipulated in Article 17 of the Constitution. This includes preventing capital outflows, tax evasion, protecting national interests, and counteracting the financing of terrorism. Article 55 guarantees every individual the right to judicial protection, which should extend to relationships involving operations in the virtual assets sector.

Overall, the legal regulation of virtual assets must align with the constitutional principles of the financial system, as outlined in Articles 92 and 99, which mandate the state to oversee financial flows, establish tax rules, and ensure monetary system stability. This approach will create a balanced legal framework for developing the virtual assets market while adhering to constitutional foundations [2]. Virtual assets, as a significant component of the global financial system, have a substantial impact on Ukraine's national security, particularly its financial system, an integral part of the state's economic sovereignty. The lack of adequate tax regulation in this area poses risks to the economy, such as tax evasion, money laundering, and financing illegal activities. Effective tax regulation of virtual assets is a critical factor in ensuring Ukraine's economic stability. Clear tax rules will facilitate the legalization of cryptocurrency transactions, attract investments, stimulate the development of innovative technologies, and enhance the state's economic security. Simultaneously, efficient taxation will prevent tax evasion and support the preservation of the country's economic sovereignty.

As K. V. Andriievskiy notes, legal regulation, particularly in the tax sphere, should directly address subjects by ensuring compliance with tax norms. Given the sectoral peculiarities, regulatory mechanisms must adapt to the specificities of relationships governed by various branches of law. Such an approach is necessary to establish an effective and stable legal framework for virtual assets [3, p. 27].

Regarding administrative and legal regulation, we concur with T. O. Kolomoiets, D. S. Kremova, and V. K. Kolpakov that administrative-legal regulation, given its multifaceted functions, involves classification based on the criteria of the regulatory sphere and economic function. This approach is grounded in educational, doctrinal, and sectoral sources that justify the conditional differentiation of administrative-legal regulation components according to the functions of the legal field. Based on this, administrative-legal regulation encompasses the economic, administrative-political, and socio-cultural spheres. Specifically, the economic function of administrative law aims to organize public-administrative relations in the economic sphere, utilizing specific mechanisms and instruments of administrative law. This function ensures effective management, control, and regulation of economic processes within the framework of public administration, which is a crucial element of the overall system of legal regulation [4, p. 201].

Summarizing the above, we conclude that the main directions of administrative regulation of virtual assets in Ukraine include primarily the licensing of activities related to them, monitoring financial operations on cryptocurrency exchanges, ensuring cybersecurity, and protecting consumer rights. It is also worth noting that these initiatives will not only ensure the safe functioning of the market but will undoubtedly contribute to the development of the cryptocurrency industry in Ukraine. Given the current challenges of war, the need for criminal-law regulation of virtual assets in Ukraine has become critically important, especially in the context of the ongoing digitalization of the economy.

The creation of legal frameworks to prevent and combat crimes associated with virtual assets, such as fraud, money laundering, and terrorism financing, is necessary under conditions where the risks

of unlawful use of virtual assets to undermine national security and finance illegal armed groups are significantly increasing. Effective criminal-law regulation not only protects the economic interests of the state and its citizens but also fosters greater trust in digital financial instruments, ensuring stability and national security.

At the same time, the legal regulation of virtual assets in Ukraine should be based on principles that ensure legality, transparency, operational security, and are aimed at guaranteeing the effective functioning of this sector.

As O. M. Ivanchenko notes, law as a value-based foundation of society defines the parameters of legitimacy, its role, and its significance in the development and functioning of civil society. It serves as a cornerstone for ensuring a decent standard of living for the majority of society's members, forming the necessary level of legitimacy. Thus, legitimacy integrates into all key areas of legal reality, ensuring its stability and effectiveness [5, p. 16].

In our view, the implementation of the principle of transparency in legal regulation is a key element in shaping state policy in the field of virtual assets. This involves ensuring access to information on virtual asset transactions, licensing for activities in this sector, and other aspects that require openness. Transparency also imposes an obligation on market participants to provide accurate and reliable information about their operations and financial conditions, thereby strengthening trust in this field.

As Y. M. Kostiuhenko points out, adherence to the principle of transparency is a crucial condition for creating a favorable environment for economic and business development [6, p. 149]. Similarly, V. Nesterovych emphasizes that transparency and public awareness are fundamental conditions for a democratic system and the effective functioning of state authorities. Ensuring informational openness should be achieved by improving technological processes, enhancing the reliability of information activities, and adopting adaptive legal regulations. The primary goal of such an approach is to objectively reflect the reality that constitutes or may constitute public and state interest [7, p. 69]. Transparent legal regulation in the field of virtual assets will contribute to creating a stable legal environment that meets the contemporary challenges of the digital economy and the needs of society.

One of the fundamental principles is the protection of market participants' rights. This includes preventing fraud, cybercrimes, financial risks, and ensuring the security of users' funds. A critical aspect is the establishment of mechanisms for dispute resolution and compensation for losses in cases of technical failures or abuses. Institutions responsible for financial market regulation, such as the National Bank of Ukraine and the National Securities and Stock Market Commission, must improve their consumer protection mechanisms, particularly through the technological modernization of complaint processes.

The principle of technological neutrality is key to regulating virtual assets. It involves creating a regulatory framework that can adapt to rapid technological changes without being tied to specific technologies, such as individual blockchain platforms or cryptocurrencies. Technological neutrality promotes transparency in state policy and encourages innovation. However, it requires regular evaluation of regulatory acts to ensure effective implementation and to avoid vague application of laws. This ensures the long-term stability of the legal system and fosters the development of new technologies in the virtual assets sector.

As Gabriele Gagliani notes, when the technology requiring regulation is new and its use is not well-defined, technologically neutral regulation can lead to ambiguous law enforcement and inadequate regulation due to a lack of understanding of the technology. The principle of technological neutrality must account for the fact that different technologies may require different approaches, and regulatory acts governing new technologies must be regularly evaluated for effectiveness [8, p. 727].

Equally important is the principle of tax neutrality, which stipulates those transactions involving virtual assets should be taxed on a general basis, avoiding excessive tax burdens. The specifics of cryptocurrencies, including their volatility and anonymity, necessitate the introduction of special

rules for declaration and reporting. Effective tax policy should contribute to the formation of public finances and ensure a fair distribution of the tax burden among all taxpayers.

V. H. Baranova points out that the principles of fairness and convenience in tax payment are often considered components of tax neutrality in academic literature. According to this principle, all taxpayers, without exception, are required to pay legally established taxes and fees, and the process of payment should be as convenient and accessible as possible. At the same time, not all types of taxes and fees can be calculated simply due to their complexity, requiring specialized knowledge. Nevertheless, it is crucial that the procedure for paying taxes is understandable and accessible to all taxpayers [9, p. 53].

O. V. Lukianenko, in his research, emphasizes that the economic theory of international tax neutrality is aimed at enhancing economic efficiency. It is based on the assumption of capital mobility, as opposed to labor or land, which necessitates analyzing the impact of tax policy on decisions related to the capital market. Tax policy interventions in such decisions can lead to societal costs for social needs. Therefore, tax neutrality should promote the creation of tax systems that do not distort economic decisions, particularly those related to capital utilization [10, p. 149].

The process of establishing and collecting taxes should exclude any preferences for specific taxpayers compared to other obligated persons. Accordingly, the principle of tax neutrality is aimed at ensuring fairness in taxation and avoiding the negative impact of tax policy on market participants' competitiveness.

International Cooperation is a crucial element in the development of effective regulation of virtual assets. The integration of international standards, such as FATF recommendations, and coordination with the European Union contribute to combating money laundering and the financing of terrorism. Reciprocity and voluntariness in international cooperation enhance trust in Ukraine's regulatory system and facilitate its integration into the global crypto-economy.

As R. V. Barannik points out, in the realm of international cooperation, the principles of voluntariness and reciprocity are among the key components. These principles are not always codified in the form of explicit legal norms, but their presence stems from the legal nature of international normative acts to which Ukraine is a party. They ensure the flexibility and effectiveness of international interaction, especially in cases where the diversity of legal systems and states' interests must be considered [11, p. 14].

In addition to the aforementioned considerations, the legal regulation of virtual assets must remain flexible and adaptive to account for the rapid changes in technology and financial markets. Innovations such as DeFi and NFTs underscore the need for a continuous review of the regulatory framework to ensure its relevance. The adaptation of legislation should encompass both a formal aspect, ensuring alignment with existing norms, and a practical aspect, aimed at the effective implementation of these norms in real-world practice. Such a comprehensive approach to regulation will ensure the stability of the financial system, foster the development of innovations, and enhance trust in the Ukrainian virtual asset market at the international level.

5. Conclusions.

The analysis of constitutional, tax, administrative, criminal, and civil aspects of virtual asset regulation in Ukraine highlights the complexity and importance of integrating virtual assets into the national legal framework. Constitutional and legal regulation emphasizes fundamental rights and freedoms, such as the right to property, entrepreneurial activity, personal data protection, and state sovereignty. This necessitates aligning virtual asset legislation with constitutional principles to safeguard citizens' rights and national interests. Tax regulation is critical for the economic stability and sovereignty of Ukraine. Clear mechanisms for taxing virtual asset transactions, harmonization with international practices, and measures to counter tax evasion and money laundering are essential for ensuring economic security. Administrative regulation focuses on establishing the legal status of virtual assets, licensing related activities, overseeing financial transactions, and

ensuring cybersecurity. These measures aim to create a transparent and secure environment for the development of the digital economy and the protection of consumer rights. Criminal regulation addresses the prevention and counteraction of crimes associated with virtual assets, such as fraud, money laundering, and terrorism financing. This is particularly significant given the current security and economic challenges. Civil regulation lays the groundwork for defining property rights related to virtual assets, regulating contractual relationships, addressing liability for breaches of obligations, inheritance, and the protection of personal data.

In conclusion, legal regulation of virtual assets in Ukraine should be based on a set of principles that ensure compliance with existing regulatory acts while enabling a swift and effective response to the challenges of the digital economy. Legitimacy, transparency, consumer rights protection, technological and tax neutrality, international cooperation, and legislative adaptability are the core principles that will form a robust foundation for virtual asset regulation in Ukraine. These principles are fundamental to the efficient functioning of the virtual asset market, the protection of all participants' interests, budgetary revenue generation, and the enhancement of Ukraine's financial system stability.

References:

1. Boniak, V. O. (2017). Metodolohichniy analiz suchasnykh interpretatsii poniattia «konstytutsiino-pravove rehuliuвання» [Methodological analysis of modern interpretations of the concept of «constitutional-legal regulation»]. Aktualni problemy vitchyznianoï yurysprudentsii: Spetsvypusk (Ch. 2), 19–23. [in Ukrainian]
2. Konstytutsiia Ukrainy: Zakon Ukrainy vid 28.06.1996 roku № 254k/96-VR (1996). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian]
3. Andriievskiy, K. V. (2013). Deiaki osoblyvosti metodu pravovoho rehuliuвання u podatkovomu pravi Ukrainy [Some features of the method of legal regulation in the tax law of Ukraine]. Pravovy visnyk Ukrainiskoi akademii bankivskoi spravy, (1(8)), 25–30. [in Ukrainian]
4. Kolomoiets, T. O., Kremova, D. S., & Kolpakov, V. K. (2022). Administratyvno-pravove rehuliuвання realizatsii ekonomichnoi funktsii derzhavy ta ekonomichna funktsiia administratyvnoho prava: pytannia spivvidnoshennia [Administrative and legal regulation of the implementation of the economic function of the state and the economic function of administrative law: issues of correlation]. Yurydychnyi naukovyi elektronnyi zhurnal, (2), 198–201. [in Ukrainian]
5. Ivanchenko, O. M. (2022). Lehitymnist prava yak osnova pravovoho poriadku derzhavy [The legitimacy of law as the basis of the legal order of the state]. Aktualni problemy vitchyznianoï yurysprudentsii, (1), 14–19. [in Ukrainian]
6. Kostiuchenko, Ya. M. (2017). Pryntsyp «prozorosti» yak osnovopolozhnyi ta naskriznyi v Uhodi pro asotsiatsiiu mizh Ukrainoiu ta YeS [The principle of “transparency” as a fundamental and pervasive principle in the EU-Ukraine Association Agreement]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu, 44(2), 148–151. [in Ukrainian]
7. Nesterovych, V. F. (2016). Pryntsypy vidkrytosti ta prozorosti v diialnosti orhaniv derzhavnoi vlady yak peredumova utverdzhennia demokratii uchasti [Principles of openness and transparency in the activities of public authorities as a prerequisite for the establishment of participatory democracy]. Filosofski ta metodolohichni problemy prava, 2(12), 67–76. [in Ukrainian]
8. Gagliani, G. (2020). Cybersecurity, technological neutrality, and international trade law. Journal of International Economic Law, 23(3), 723–745. [in English]
9. Baranova, V. H. (2014). Podatkova systema [Tax system]. Odesa. [in Ukrainian]
10. Lukianenko, O. V. (2009). Teoretychnyi aspekt neitralnosti u mizhnarodnomu opodatkuванні [The theoretical aspect of neutrality in international taxation]. Visnyk Khmelnytskoho natsionalnoho universytetu, 5(1), 149–152. [in Ukrainian]

11. Barannik, R. V. (2017). Pryntsypy mizhnarodnoho spivrobitnytstva ta mizhnarodnoi pravovoi dopomohy pid chas kryminalnoho provadzhennia [Principles of international cooperation and international legal assistance in criminal proceedings]. Visnyk kryminalnoho sudochynstva, (2), 11–18. [in Ukrainian]

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