FROM CIVIL PENALTIES TO PRISON: TAXATION OF DIGITAL ASSETS AND CRIMINAL ENFORCEMENT OF CRYPTOCURRENCY NON-COMPLIANCE IN NIGERIA

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Abstract

Nigeria's rapid adoption of cryptocurrencies and digital assets has revealed a significant regulation vacuum existing between revenue law and criminal law. This article will provide an analytical approach to how Nigeria employs criminal laws to enforce compliance regarding the tax duties of cryptocurrency in Nigeria. The paper reviews the statutory provisions under which liability to CGT within the period specified by FIRS. CGT is managed by such taxes on cryptocurrencies can be enforced in Nigeria. The paper finds that the fast-track criminalization approach is one that Nigeria has used to deal with cryptocurrency transactions that have not been declared as tax fraud, sabotage or money laundering activities. This method of handling matters creates maximum deterrence but leads to ambiguity in the law, overlap of agencies involved, and a situation that infringes the rights of taxpayers. In conclusion, the Nigerian approach is one that focuses on punishment at the expense of clarity in order to balance the competing interests of ensuring revenue generation and predictability of law in the unpredictable digital world. For these reasons, this paper suggests that the Nigerian government clarify the mens rea for crypto tax violations, statutorily delineate the process of tax assessment and criminal prosecution, and

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create specific capability within FIRS to conduct blockchain audit before transferring such cases to Economic and Financial Crimes Commission (EFCC).

Keywords: Blockchain, tax evasion, cryptocurrency, criminal prosecution, digital asset, bitcoin

1.0 INTRODUCTION

Digital assets such as cryptocurrencies have been increasingly used in Nigeria at a faster pace than the laws enacted to govern their use. The original purpose of these digital assets was to be alternative currencies to fiat money, but their main uses in Nigeria include serving as investments, payments, and even hedges against fluctuations in naira value and inflation. These characteristics make it difficult to collect taxes using the existing methods. Therefore, the government is now faced with making a decision on whether a failure to disclose crypto earnings would be considered as a civil tax issue or one that merits criminal action.[1]

The response from Nigerian authorities has developed in phases. On February 8, 2021, the Central Bank of Nigeria ordered financial institutions to stop dealing with cryptocurrency accounts for reasons related to terrorism financing and money laundering.[2] Though the directive did not make owning cryptocurrencies an illegal practice, it made people trade using peer-to-peer channels, thus making tax tracking difficult. This situation changed towards the end of December 2023, when

[1] Federal Inland Revenue Service, Information Circular No 2022/07: Taxation of Digital and Cryptocurrency Assets (2022).
[2] Central Bank of Nigeria, Letter to All Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions: Regulatory Directive on Cryptocurrency and Crypto Assets (5 February 2021).

the Central Bank of Nigeria issued new guidelines that allowed banks to give accounts to Virtual Asset Service Providers if they met anti-money laundering requirements.[3] This change came due to the increasing realization that banning could not be enforced and the necessity of regulations.

FIRS Information Circular 2022/07 was released by the Federal Inland Revenue Service for tax purposes. This circular stated that digital assets such as cryptocurrencies are considered “chargeable assets” as per the Capital Gains Tax Act and “intangible assets” as per the Companies Income Tax Act.[4] The amendment of the CITA through the Finance Act 2023 to include ‘digital assets’ under the scope of chargeable assets, together with a 10% withholding tax on gains derived from the sale of the same by individuals, further strengthened this position.[5] This means that the gains accrued from cryptocurrency trading, mining, and staking are taxable and are subject to tax payment by the taxpayer on an estimated tax basis. The FIRS has also relied on the Federal Inland Revenue Service Establishment Act 2007 for the power to require banks and other organizations to provide information on cryptocurrency transactions.

Regardless of all these tax measures, criminal prosecution is the most prevalent aspect of the compliance regime for cryptocurrencies in Nigeria. The Economic and Financial Crimes Commission has filed cases against parties engaging in the use of cryptocurrencies, primarily relying on the

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[3] Central Bank of Nigeria, Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers VASPs (22 December 2023).
[4] Federal Inland Revenue Service, Information Circular No 2022/07 (2022).
[5] Finance Act 2023, s 10 amending s 22 of the Companies Income Tax Act Cap C21 LFN 2004.

Money Laundering Prevention and Prohibition Act 2022 and the Advance Fee Fraud and Other Fraud Related Offences Act 2006. The jurisdiction of the EFCC encompasses all cases related to economic and financial crimes, which also include undeclared gains from cryptocurrency transactions that are associated with fraud or unexplained wealth.[6] Tax fraud and non-filing are also offences under the Federal Inland Revenue Service Establishment Act 2007, attracting both fines and jail terms as punishment. This has resulted in two streams of enforcement actions against offenders; one handled by NRS through civil proceedings, while another stream is undertaken by EFCC through criminal proceedings.

The intersection has had both a deterrent effect and an element of uncertainty. First, the fact that the EFCC raid cases and high-profile prosecution cases are all well-publicized demonstrates that non-compliance when dealing with cryptocurrencies can be very serious. At the same time, there is no clear *mens rea* definition for the crime of crypto taxation, so ignorance or inadequate bookkeeping could also lead to a prison term. It should be pointed out that there is an academic opinion to the effect that confusing tax evasion with money laundering or fraud by not having a specific statutory threshold may undermine voluntary compliance.[7] The issue becomes even more complicated due to the limited administrative capability that FIRS has to conduct audits in relation to blockchain transactions, making the use of the investigative capabilities of EFCC inevitable.[8]

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[6] Economic and Financial Crimes Commission, EFCC Establishment Act 2004 s 6.
[7] KU Obi, 'Digital Assets and Taxation in Nigeria: Challenges of Enforcement' *Journal of Taxation and Regulation* (2020) 5(1) 112.
[8] O Adeyeye, 'Regulation of Cryptocurrency in Nigeria: Challenges and Prospects' *Journal of Business Law and Ethics* (2021) 13(2) 89.

In other words, the article addresses an important issue in relation to Nigeria's enforcement of cryptocurrency taxation in the field of criminal law. The analysis will be undertaken based on statutory provisions, FIRS directives, CBN directives, and reported EFCC cases. This will be aided by some policy papers that were formulated between 2021 and 2024. While the first section of this paper highlights the introduction, the second section deals with the conceptual framework in relation to this particular paper. In the third section, there will be an analysis of the legal and institutional framework regarding the taxation of cryptocurrencies in Nigeria. In the fourth section, there will be a discussion of the apparent gaps that are evident in the legal and institutional framework that was analyzed in the previous sections, while the fifth section looks at the practice of enforcement and interaction among agencies in the cryptocurrency tax issue. Sections seven, eight, and nine examine the policy implications and suggest recommendations to include a clear mental element for cryptocurrency tax crimes, statutory demarcation between FIRS' administrative function and the EFCC's criminal investigation through legislation, and creating special expertise in digital asset audit within FIRS, in order to avoid being excessively dependent on the use of criminal law.

2.0 CONCEPTUALISATION OF KEY CONCEPTS

To avoid misunderstandings, this paper uses working definitions of the concepts that underpin the approach that Nigeria has adopted towards taxing and enforcing crimes involving cryptocurrency. It is necessary to do so because any vagueness in the use of these concepts may create confusion for all involved.

2.1 Cryptocurrency and Digital Asset

The term "cryptocurrency" is used to refer to a digital or virtual currency that uses cryptography for security and is managed through a decentralized platform known as a blockchain.[9] It acts as a means of exchange, standard of value, and/or store of wealth without any dependence on a central institution like a central bank. Bitcoin, Ethereum, and stablecoins are common examples.[10]

The new Nigerian tax laws and regulations prefer to use "digital asset" terminology as a general term. According to the Finance Act of 2023, the definition of digital assets is provided by updating the Companies Income Tax Act.[11] The FIRS Information Circular 2022/07, on the other hand, uses the terms "digital and cryptocurrency assets" interchangeably but emphasizes that digital and cryptocurrency assets include cryptocurrencies, crypto tokens, and other blockchain assets.[12] According to the 2023 Virtual Assets Service Providers (VASPs) Guidelines by the Central Bank of Nigeria, "virtual assets refer to any digital representation of value that is capable of being traded or transferred digitally".[13]

For the purpose of this paper, "cryptocurrency" will refer to decentralised coins like Bitcoin, while "digital asset" will be used as the statutory term

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[9] SO Ashimi, 'Taxation of Cryptocurrencies: Analysing the Evolving Regulatory Landscape for Cryptocurrency Taxation' *Ife Business Law Review* (2024) 6 153.
[10] S Foley, J Karlsen and T Putniņš, 'Sex, Drugs, and Bitcoin: How Much Illegal Activity is Financed through Cryptocurrencies?' (2019) 32(5) Review of Financial Studies 1798.
[11] Finance Act 2023 s 10 amending s 22 CITA.
[12] Federal Inland Revenue Service, Information Circular No 2022/07: Taxation of Digital and Cryptocurrency Assets (2022).
[13] Central Bank of Nigeria, VASPs Guidelines (2023) para 2.1.

that includes cryptocurrencies, tokens, NFTs, and other blockchain-based instruments taxed under Nigerian law. The distinction matters because FIRS and EFCC prosecutions may involve assets beyond Bitcoin, and the legal analysis must capture that breadth.

2.2 Taxation of Digital Assets

In the context provided, taxation refers to the act of levying taxes by the government against income, gains, or values realized through digital currencies. In Nigeria, there are three pertinent tax heads. First, the Capital Gains Tax is levied on the disposal of a digital currency when sold by the taxpayer, at 10% of the gains.[14] Second, Companies Income Tax may apply where crypto is dealt in as part of stock-in-trade or held as an asset by a trading company.[15] Third, Personal Income Tax is applicable to individuals who fall under the category of other income from crypto assets apart from CGT.[16]

The FIRS considers cryptos as "property," like other jurisdictions globally. Therefore, all transactions made through cryptos are taxable and entail the calculation of profit or loss. Section 8 of the Finance Act 2023 introduced a 10 percent withholding tax on the gain earned by individuals from crypto transactions.[17] Taxation therefore covers self-assessment, record-keeping, filing of returns, and payment of tax due.

[14] Capital Gains Tax Act Cap C1 LFN 2004 s 1; FIRS Circular 2022/07.
[15] Companies Income Tax Act Cap C21 LFN 2004 s 9.
[16] Personal Income Tax Act Cap P8 LFN 2004 s 3.
[17] Finance Act 2023 s 10 amending s 69 CITA.

2.3 Tax Evasion and Tax Avoidance

Tax avoidance is a situation whereby you arrange your affairs legally with the aim of reducing your tax burden. Tax evasion occurs when there is a fraudulent attempt not to pay or fully pay taxes.[18] Section 41 of the Federal Inland Revenue Service Establishment Act of 2007 makes it an offense to willfully make any false statement or not declare one's income.[19]

Within the context of cryptocurrency, tax evasion may entail not disclosing one's wallet address, not reporting income from transactions in peer-to-peer trading, or using mixers to hide transactions. Tax avoidance will be achieved by structuring transactions to gain advantage from the holding period or deduction available through CGT and CITA. However, the line between evasion and avoidance gets blurred when taxpayers do not know about the FIRS Circular 2022/07 and the Finance Act 2023. Nigerian courts have ruled that ignorance of the law is not a defense, but scholarly discourse cautions that criminalising acts without prior notice may end up punishing noncompliance instead of fraud.[20]

2.4 Criminal Enforcement

Enforcement is associated with penal sanctions that include imposing fines and imprisonment for violation of the tax laws through tax offenses. In Nigeria, there are two bodies responsible for enforcing tax offenses. These bodies are FIRS and are authorized to enforce tax offenses

[18] *Ibid.*
[19] SA Lawal, 'Tax Appeal Tribunal in Nigeria: An Interrogation of Fundamental Issues and Case for Reform' *UI Law Journal* (2021) 11 253.
[20] *FIRS v Benson & Anor* FHC/L/CS/1234/2022, Judgment 9 June 2023.

according to FRA 2007.[21] The agency fights financial crime based on the provisions of the EFCC Act and Money Laundering Prevention and Prohibition Act 2022 and has tried crypto-related cases as money laundering or fraud.[22]

Enforcement is either civil or criminal, and the latter entails sanctions, interest payments, and fines without incarceration. Determining whether the situation requires civil or criminal handling will depend on several considerations, such as the amount of lost revenue, fraud, and the taxpayer's behavior.[23] The overlap of responsibilities within FIRS and EFCC in Nigeria results in cases involving cryptos being considered criminal despite the main issue being related to revenue losses. In this paper, “criminal enforcement” refers to both the prosecution of direct tax evasion cases by FIRS and indirect prosecution of cryptos by EFCC in cases where crypto gains are linked to predicate offenses.[24]

2.5 *Mens Rea*

Mens Rea is the mental aspect of committing an offense or a crime. The “willfully made” under Section 41 FRA 2007 means that the act committed by the taxpayer must be deliberate or intentional.[25] “Willfully” in Nigerian tax law means deliberate and intentional conduct, not mere negligence.

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[21] Federal Inland Revenue Service (Establishment) Act 2007 s 8.
[22] Economic and Financial Crimes Commission Establishment Act 2004 s 6; Money Laundering Prevention and Prohibition Act 2022 s 18.
[23] Oshisami, ‘Taxation of Cryptocurrency in Nigeria: Legal and Policy Issues’ *Nigerian Journal of Tax Law* (2023) 17(1) 63.
[24] Federal Inland Revenue Service (Establishment) Act 2007 s 41.
[25] Federal Inland Revenue Service (Establishment) Act 2007 s 41.

This is essential in crypto tax matters because many taxpayers actually lack knowledge about the FIRS circular 2022/07 and/or the Finance Act 2023 which introduced taxes on crypto. The academic literature emphasises that without a statutory mens rea threshold for crypto crimes, criminalising ignorance is bound to happen.[26] In EFCC cases based on the Money Laundering Act, there needs to be a proof of intent to hide or disguise the money laundering process, an intention that can easily be proved in the case of the use of cryptocurrencies in fraudulent transactions. However, in cases involving non-payment of taxes, there is no defined *mens rea* element.[27]

2.6 Virtual Asset Service Provider VASP

VASP has been defined by the FATF as well as included in the Nigerian MLPPA 2022 as anyone involved in the exchange, transferring, custody or administration of virtual assets.[28] The CBN 2023 Guidelines demand that VASPs comply by registering, conducting KYC, and maintaining documentation. VASPs play a vital role in FIRS auditing since they can serve as third-party data sources.[29] But, the majority of traders in Nigeria use foreign or peer-to-peer systems that lie outside the jurisdiction of any Nigerian regulations.[30]

2.7 Blockchain and Forensic Evidence

Blockchain is a distributed ledger that stores transactions in blocks through cryptography. The transparency aspect enables forensics software

[26] Oshisami (n 23) 67.
[27] Oshisami (n 23) 68.
[28] Financial Action Task Force (n 2) 9; Money Laundering Prevention and Prohibition Act 2022 s 25.
[29] Federal Inland Revenue Service (Establishment) Act 2007 s 26.
[30] Chainalysis, 2023 Geography of Cryptocurrency Report (2023).

to track wallet activity, while anonymity makes it difficult to identify the owner of a wallet.[31] Blockchain technology can be used as admissible evidence in EFCC cases because Nigerian courts have already accepted blockchain evidence in EFCC cases as credible to prove the transfer of illegal money.[32] As far as taxation is concerned, blockchain technology can assist FIRS in identifying the fact of dispossession and calculating gains, although it requires linking to a taxpayer via banking or Know Your Customer (KYC) information.[33]

This provides the context for the remainder of the essay. Nigeria's model considers digital currencies to be taxable property; however, for criminal prosecution, the model depends on overlapping legislation, which has different levels of intent. It should be noted that the common point of friction in such cases is that of "tax evasion" versus "money laundering / fraud." Understanding these terms forms the basis for analysis.

3.0 LEGAL AND INSTITUTIONAL FRAMEWORK FOR CRYPTOCURRENCY TAXATION AND CRIMINAL ENFORCEMENT IN NIGERIA

The Nigerian government has moved from being silent on crypto taxes to creating a fragmented set of laws governing the taxation of cryptocurrencies. There is no single "crypto tax code," but there are already many legal frameworks that address the tax regulations of cryptocurrencies and sanctions for non-compliance. All these have formed the core of the current law enforcement system, with FIRS being in charge

[31] A Ashiru, 'Artificial Intelligence and the Nigerian Criminal Justice System: An Exploratory Study' *OAU Journal of Public Law* (2025) 6 (1) 80.
[32] *FRN v Ajayi* FHC/L/12C/2021, Judgment 5 October 2022.
[33] NO Ezejiofor (n 21) 208.

of tax assessments and EFCC dealing with criminal investigations. The following are the major parts of the legal framework:

3.1 Companies Income Tax Act 2004 as Amended by Finance Act 2023

The Companies Income Tax Act (CITA) serves as the main legislation that deals with taxation of firms within Nigeria. Section 9 of CITA taxes all profit made by any company in Nigeria.[34] Prior to the enactment of Finance Act 2023, FIRS used to regard "profits" to include earnings from cryptocurrency trading, mining, and staking, as cryptocurrencies were considered intangible assets that could make profits.

The Finance Act 2023 made two significant changes to CITA. The first is that it amended Section 22 by adding 'digital assets' as chargeable assets. By doing this, the amendment has provided legal backing for the taxation of cryptocurrencies. The second is the addition of Section 69A, which taxes any gain or profit received by persons as a result of disposing of digital assets at 10% withholding tax.[35] The responsibility to withhold tax lies with the payer, whether the transaction is between counterparties like exchanges, VASPs, or others. In cases where there is a peer-to-peer transaction involving no intermediary, the liability shifts back to the taxpayer themselves.

CITA is also used to guide the classification of crypto assets by firms. Where the firm has crypto as its stock-in-trade, profits on it are classified as trading income. Where the firm has crypto as its capital asset, then the disposal of that crypto is guided by capital allowances and chargeable

[34] Companies Income Tax Act Cap C21 LFN 2004 s 9.
[35] Finance Act 2023 s 10 amending s 69 CITA.

liability to CGT within the period specified by FIRS. CGT is managed by gain rules in the CITA.[36] The Act mandates that corporations keep records, maintaining books and accounting systems that enable the recording of all transactions concerning digital assets.[37] Failure to keep records is an offence under section 55 CITA.

3.2 Capital Gains Tax Act 2004

The CGT Act provides for taxation of gains made by any individual from disposals of chargeable assets at a rate of 10%.[38]The term "chargeable assets" comprises assets of any kind, and the Finance Act 2023, which amended CITA, is interpreted along with CGT to show that digital assets are included under this definition.[39] The FIRS information circular 2022/07 states that any profit from a person or company who buys the cryptocurrency as an investment and subsequently sells it at a profit is subject to CGT. The cost incurred in acquiring the cryptocurrency, as well as associated costs, is deductible.[40]

This differs from CITA because it does not look at the trading profits but the capital gains. For investors who have cryptos in the long term but dispose of them from time to time, CGT will be applicable.[41] According to the Act, a self-assessment return should be filed by everyone who has a FIRS in respect of federal government, and it is divided into the Federal Account and FIRS cost of collection.[42]

[36] Companies Income Tax Act Cap C21 LFN 2004 s 20.
[37] *Ibid*, s 55.
[38] Capital Gains Tax Act Cap C1 LFN 2004 s 1.
[39] Finance Act 2023 s 10.
[40] Capital Gains Tax Act Cap C1 LFN 2004 s 5.
[41] Federal Inland Revenue Service, Information Circular No 2022/07 (2022).
[42] *Ibid,* 2004 s 36.

liability to CGT within the period specified by FIRS.

3.3 Personal Income Tax Act 2004

The PITA levies a tax on the income of each person, whether resident or non-resident within Nigeria.[43] Under Section 3 of PITA, income includes income from all sources. According to FIRS Circular 2022/07, individuals who engage in buying and selling crypto assets or token mining and staking do pay tax on any profit arising from the activity, provided it is not a business conducted by a company.[44]

Under the Finance Act, 2023, withholding tax on gain arising from sale of digital assets applies to an individual who falls within the category of PITA.[45] This implies that when the payer makes payment to the individual, there is a need to deduct 10% and pay to FIRS. If there is no withholding done, then the individual will be required to declare this income within the PITA.[46] PITA includes sanctions for not filing returns and for income understatement. Interest and administrative sanctions apply.[47]

3.4 Central Bank of Nigeria Regulatory Framework

The regulation of banks and other financial institutions is governed by the CBN through the Central Bank of Nigeria Act of 2007 and the Banks and

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[43] Personal Income Tax Act Cap P8 LFN 2004 s 2.
[44] Federal Inland Revenue Service, Information Circular No 2022/07 (2022).
[45] Finance Act 2023 s 10.
[46] Personal Income Tax Act Cap P8 LFN 2004 s 41.
[47] *Ibid,* s 44.

Other Financial Institutions Act of 2020.[48] CBN's approach to crypto has been regulatory rather than legislative. In February 2021, CBN released a directive for all banks and other financial institutions to freeze and close any account associated with individuals or firms involved in cryptocurrency transactions.[49] This circular warned about the dangers of money laundering, financing terrorism, and volatility.[50] The Act failed to create an offense for possession of cryptocurrency but prohibited official bank channels for such transactions.[51]

The reverse was done by the CBN on 22 December 2023 through the issuance of Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers.[52] These guidelines enable banks to create or sustain bank accounts for VASPs who have been either licensed or registered with the Securities and Exchange Commission.[53] VASP should abide by know-your-customer requirements, monitoring transaction, and report suspicious transactions to the Nigeria Financial Intelligence Unit. The guideline also entails banks carrying out enhanced due diligence on VASP account and preventing VASPs from using the bank account to engage in activities beyond their licensed activities. In the case of 2023 guidelines, banks do not have the responsibility of reporting taxes but help the FIRS in accessing banking information under section 26 FRA 2007 because the

[48] Central Bank of Nigeria Act 2007 s 2; Banks and Other Financial Institutions Act 2020 s 1.
[49] Central Bank of Nigeria, Circular to All Banks: Regulatory Directive on Cryptocurrency (5 February 2021).
[50] Central Bank of Nigeria, Circular 5 February 2021.
[51] *Ibid*.
[52] Central Bank of Nigeria, Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers VASPs (22 December 2023).
[53] Central Bank of Nigeria, VASPs Guidelines (2023) para 3.

VASPs now operate within the formal banking sector.[54] The regulations further mandate that the VASPs must retain transaction data for a minimum period of five years.[55]

3.6 Securities and Exchange Commission Regulation

Capital market activities in Nigeria are regulated by the Securities and Exchange Commission through the provisions of the Investments and Securities Act of 2007.[56] The statement "Digital Asset Classification and Treatment" was made by the Securities and Exchange Commission in September 2020 and categorized cryptocurrencies as securities, unless proven otherwise.[57] SEC issued the Rules on Issuance, Offering Platforms, and Custody of Digital Assets in May 2022, where it laid down a system of registration for Digital Asset Offering Platforms, Digital Asset Exchanges, and Digital Asset Custodians.[58]

Under these rules, a VASP must obtain SEC registration before operating in Nigeria.[59] Registration requires compliance with capital requirements, AML/CFT policies, cybersecurity standards, and disclosure obligations.[60] The regulatory perimeter of SEC ensures that any virtual asset service provider working without registration is violating securities law, thereby making it liable for legal action by SEC and referral to EFCC for fraud.[61]

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[54] Federal Inland Revenue Service (Establishment) Act 2007 s 26.
[55] Central Bank of Nigeria, VASPs Guidelines (2023) para 6.
[56] Investments and Securities Act 2007 s 13.
[57] Securities and Exchange Commission, Statement on Digital Assets and their Classification and Treatment (14 September 2020).
[58] Securities and Exchange Commission, Rules on Issuance, Offering Platforms and Custody of Digital Assets (2022).
[59] SEC, Rules on Digital Assets (2022) Rule 3.
[60] *Ibid*, Rule 4.
[61] Investments and Securities Act 2007 s 97.

FIRS uses the securities registration by the SEC to have information on all registered companies from where it can get information on transactions.[62]

3.7 Money Laundering Prevention and Prohibition Act 2022

MLPPA 2022 repealed and updated all previous laws concerning money laundering by extending its coverage to virtual assets.[63] The definition of "financial institution" under Section 25 is extended to Virtual Asset Service Providers. Requirements for VASPs to identify and verify the identity of their customers and record and report any suspicious transactions to the NFIU are provided for under Section 5. Records should be kept for at least five years following the transaction.[64]

According to section 18, money laundering is illegal and involves the concealment of property that originates from any illegal activity for the purpose of hiding its true identity.[65] Tax evasion qualifies as an unlawful act within the definition of predicate offences in Nigeria.[66] It therefore means that if crypto profits emanate from unreported earnings, the offense becomes not only tax fraud but also money laundering. The MLPPA 2022 provides sanctions involving 10-year prison terms and asset forfeiture for individuals while imposing larger fines for corporations.[67]

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[62] SEC, Rules on Digital Assets (2022) Rule 8.
[63] Money Laundering Prevention and Prohibition Act 2022 s 1.
[64] *Ibid*, s 10.
[65] *Ibid*, s 18.
[66] *Ibid*, s 2.
[67] *Ibid*.

3.8 Nigeria Financial Intelligence Unit Act 2018

The purpose of the NFIU Act is to make NFIU the key body responsible for handling financial intelligence in Nigeria.[68] VASPs under MLPPA 2022 are obligated to report any suspicious transactions to the NFIU.[69] These investigations by NFIU are then analyzed and intelligence is passed on to the FIRS, EFCC, and other security agencies.[70]

Under the mandate of NFIU, there is need for typologies development for the misuse of virtual assets as well as provision of guidance to the reporting entities. In the case of cryptocurrency taxation, the mandate of NFIU will be to close the information gap between VASPs and the tax agencies.[71] NFIU collaborates with the Financial Action Task Force and the GIABA concerning international standards related to the supervision of virtual assets.[72]

3.9 Economic and Financial Crimes Commission Establishment Act 2004

The EFCC is created by the EFCC Act to look into economic and financial crimes.[73] Under section 6, EFCC has extensive powers to implement the provisions of any law governing economic and financial crimes, which includes the MLPPA 2022, Advance Fee Fraud Act, as well as others. Under the crypto law, however, the jurisdiction of EFCC

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[68] Nigeria Financial Intelligence Unit Act 2018 s 3.
[69] Money Laundering Prevention and Prohibition Act 2022 s 5.
[70] Nigeria Financial Intelligence Unit Act 2018 s 4.
[71] Money Laundering Prevention and Prohibition Act 2022 s 5.
[72] Financial Action Task Force, Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers (updated 2021).
[73] Economic and Financial Crimes Commission Establishment Act 2004 s 1.

extends to all matters concerning crimes involving digital currencies.[74] EFCC also implements MLPPA 2022 which pertains to VASPs and their customers. As FIRS is primarily responsible for enforcing laws pertaining to tax crimes through FRA 2007, the EFCC also has parallel authority if there are crypto crimes involved in other financial crimes.[75] The EFCC Act does not set a monetary level that must be exceeded before EFCC can undertake an investigation; hence, EFCC can investigate any transactions, regardless of their monetary value.[76]

3.10 Administrative Guidance by FIRS

The Information Circular 2022/07 of FIRS is the most important circular on crypto taxation.[77] According to the notice, cryptoassets are subject to CGT and CITA, and it is necessary for one to declare any gain made during that period. The guidance says that any income from mining should be declared using the fair market value on the day it was received. Airdrops and staking should be treated as income, while the swapping of cryptoassets is considered disposal for CGT.[78]

This is not a new law but an interpretation of the existing laws that apply to virtual property.[79] The document acts as notification to taxpayers and as guidelines for FIRS auditors. Although it is not law, the FIRS bases its assessment and prosecution actions on it, and it has been cited in court decisions regarding taxes.

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[74] *Ibid*.
[75] Federal Inland Revenue Service (Establishment) Act 2007 s 41; Economic and Financial Crimes Commission Establishment Act 2004 s 6.
[76] Economic and Financial Crimes Commission Establishment Act 2004 s 6.
[77] Federal Inland Revenue Service, Information Circular No 2022/07 (2022).
[78] *Ibid*.
[79] *Ibid*.

4.0 NOTICEABLE GAPS IN THE EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK

Even though there is statutory backing for the taxation of digital assets, there are many structural limitations within the institutional environment in Nigeria, which make it difficult to ensure efficient enforcement. This weakness runs across a variety of areas ranging from the substance of the laws themselves through institutional capability to data availability and taxpayer awareness. The specific weaknesses include the following:

4.1 Absence of a Clear Statutory *Mens Rea* Standard for Crypto Tax Offences

Section 41 of the Federal Inland Revenue Service Establishment Act 2007 serves as the major penal clause regarding non-compliance with tax requirements. According to this section, an act is deemed "willful".[80] "Willfully" is not defined in FRA 2007 or in CITA, CGT Act, or PITA.[81] Within the realm of cryptocurrency, this poses a problem because most taxpayers were subjected to taxation following the issuance of FIRS Circular 2022/07 and the subsequent Finance Act 2023 amendments.[82] No statutory definition exists as to whether the term "willful" entails awareness of tax law, awareness that crypto currency transactions are taxable, or merely involves a deliberate failure to disclose such transactions.

[80] Federal Inland Revenue Service (Establishment) Act 2007 s 41.
[81] *Ibid*.
[82] Federal Inland Revenue Service, Information Circular No 2022/07 (2022); Finance Act 2023 s 10.

According to academic commentaries, this is an area where there exists the potential for negligence or ignorance to be criminalised instead of intentional evasion.[83] While section 18 of the Money Laundering Prevention and Prohibition Act 2022 requires that one intends to hide money, this is not a requirement under FRA 2007 where there is no differentiation made between fraud and failing to declare gains.[84] The end result is that the FIRS can charge tax defaulters for failing to maintain crypto records for reasons of ignorance without having any proof that fraud was committed.

4.2 Overlap and Lack of Clear Referral Protocol between FIRS and EFCC

Section 41 of FRA 2007 empowers FIRS to institute proceedings for offences relating to taxation matters. EFCC Establishment Act 2004 authorizes EFCC to investigate economic and financial crime, which includes money laundering. MLPPA 2022 classifies tax evasion as a predicate offence for money laundering. Therefore, the statutory provisions make it possible to have the same conduct prosecuted either under section 41 FRA 2007 or section 18 MLPPA 2022.

No statute or guideline has established when the FIRS should refer a case to EFCC and when the EFCC should defer its jurisdiction back to FIRS. Failure of referral procedure causes duplication in investigation process, lack of standard charging procedures, and double jeopardy. As reported in GIABA's Mutual Evaluation Report 2023, the collaboration process

[83] Oshisami (n 23) 65.
[84] Money Laundering Prevention and Prohibition Act 2022 s 18.

between FIRS and law enforcement in virtual asset cases needs improvement.[85]

4.3 Limited FIRS Capacity for Blockchain Analysis and Digital Asset Audit

Despite FIRS having extensive audit powers pursuant to section 26 of FRA 2007, their technical capability to perform audits in blockchain transactions is still lacking. While FIRS Circular 2022/07 provides that taxpayers shall comply, FIRS currently lacks a special unit dealing with digital assets forensic work. This is unlike other tax authorities with special crypto units in their respective jurisdictions.

This capacity limitation impacts assessment accuracy. The calculation of crypto profits involves the computation of cost basis, forks, airdrops, staking profits, and exchanges from several wallets and trading platforms. In light of limited tools and resources at FIRS's disposal, it must rely on the accounts of taxpayers or bank statements, most of which lack details regarding peer-to-peer transactions. Another consequence of capacity limitation is that FIRS resorts to criminal prosecution as a means to achieve its ends easily.

4.4 Weak Third-Party Reporting from VASPs and Foreign Exchanges

The CBN 2023 VASPs Guidelines state that all registered VASPs must perform KYC and keep records.[86] Similar responsibilities have been put

[85]Inter-Governmental Action Group against Money Laundering in West Africa, Mutual Evaluation Report: Nigeria (2023) 134.
[86] Central Bank of Nigeria, Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers VASPs (22 December 2023) para 4.

on Digital Asset Exchanges and Custodians by SEC's 2022 Rules for Digital Assets.[87] The MLPPA 2022 recognises the VASPs as reportable entities to the NFIU.[88]

But most crypto traders from Nigeria are likely to be using foreign exchanges or decentralized P2P systems that are neither registered with SEC nor regulated by CBN. These types of foreign exchange systems do not directly owe any reporting duty to FIRS. The 2023 Finance Act withholding tax provision will apply only when the payment comes from a resident of Nigeria. Thus, foreign P2P trades will evade any withholding under the Finance Act 2023. Since there is no reporting requirement, FIRS will have to fall back on Section 26 FRA 2007 for bank and telecom notices. The consequence will be underreporting of crypto tax liability and the use of sensational EFCC arrests to generate deterrence rather than compliance.

4.5 Ambiguity in Tax Characterisation of Crypto Activities

Although the FIRS Circular 2022/07 regards crypto as an asset, the circular does not solve all characterisation problems.[89] For instance, mining gains will be taxed as income at time of receipt but does not give guidance on the deductibility of mining costs such as power and equipment used. On the other hand, cryptocurrency exchanges will be regarded as disposals for CGT purposes, but it is silent regarding valuation of illiquid cryptos or tax deductions on worthless assets.

[87] Securities and Exchange Commission, Rules on Issuance, Offering Platforms and Custody of Digital Assets (2022) Rule 4.
[88] Money Laundering Prevention and Prohibition Act 2022 s 5.
[89] Federal Inland Revenue Service, Information Circular No 2022/07 (2022).

However, there is a difference in tax treatment between CGT and CITA depending on whether there is "intent at acquisition," and yet there is no legal definition to determine what constitutes "intent." A regular trader would pay tax according to CITA, whereas an occasional one would pay taxes according to CGT, although no objective tests such as frequency or quantity can be provided by the law.[90] This ambiguity results in disputes and compliance costs.

4.6 Inadequate Taxpayer Education and Notice

Both FRA 2007 and the tax laws provide for taxpayer liability, but there is no statutory requirement that compels FIRS to educate on new tax liabilities. FIRS Circular 2022/07 is from 2022, but it only applies to retail crypto investors to some extent. The amendments brought about by the Finance Act 2023 were made without adequate guidance on cryptocurrencies.

The position of courts is that ignorance of the law cannot be used as a defense, as was seen in the case of *FIRS v Benson & Anor*.[91] The new technology, regulation, and poor financial literacy levels make it difficult to bridge the gap between the law and the average taxpayer's understanding of the law. This is even worse for young traders who file taxes through mobile phones only.

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[90] O Adeyeye, 'Regulation of Cryptocurrency in Nigeria: Challenges and Prospects' *Journal of Business Law and Ethics* (2021) 13(2) 92.
[91] FHC/L/CS/1234/2022, Judgment 9 June 2023.

4.7 Data Privacy and Access Tension

Sections 26 and 43 of the FRA 2007 allow FIRS to demand information from banks and institutions.[92] The MLPPA 2022 Section 5 requires the VASPs to submit reports to the NFIU. But according to the Nigerian Data Protection Act 2023, personal data processing should always be lawful and proportional. No clarity has been provided regarding the interplay between FIRS's information powers and data protection.

No rules have been set for what crypto-related information the FIRS can require, how long they can keep it, and what protection should exist for the wallet addresses, which could disclose personal data. The lack of such rules presents legal liability issues for banks and VASPs complying with FIRS requests.

4.8 Limited Coordination with International Tax and AML Authorities

Crypto transactions are necessarily international. Nigerians make transactions in other countries, while those from other nations do so with Nigerians. While the country's tax treaties and exchange of information agreements have traditionally been about conventional assets, there is little clarity on how this applies to crypto wallets.

While MLPPA 2022 and NFIU Act have provided international collaboration on money laundering intelligence, there is currently no such regimes of information exchange for crypto tax intelligence purposes. FIRS cannot independently request the documents held by the foreign

[92] Federal Inland Revenue Service (Establishment) Act 2007 ss 26, 43.

exchange since this requires mutual legal assistance, which is a time-consuming process.

Gaps in the Nigerian law regarding compliance to cryptocurrency regulation include: failure to address mental elements in criminal enforcement; the identity of those responsible for enforcing crypto law; auditing requirements; third party data sources; characterisation of violations; education; safe harbour protections; data privacy; international assistance; and regulatory coordination. Each gap hinders the enforcement process and its efficiency.

5.0 ENFORCEMENT PRACTICE AND AGENCY INTERACTION IN CRYPTOCURRENCY TAXATION

The effectiveness of Nigeria's crypto tax regime depends not just on the law on paper, but on how FIRS, EFCC, NFIU, CBN and SEC apply it in practice. In reality, enforcement is multi-agency and often overlaps, with each body deploying different tools, data sources, and priorities. This has created both coordination gaps and operational friction in handling crypto-related tax cases. The main enforcement patterns and agency interactions are discussed below:

5.1 FIRS Enforcement Tools and Practice

The main means of taxing cryptocurrency in Nigeria are by virtue of the statutory powers conferred on the Federal Inland Revenue Service under the FRA 2007 and other tax laws. The FIRS is empowered under section 26 of the FRA 2007 to issue information demands from banks, fintech companies, telecoms companies, and VASPs for taxpayers' details.[93] In

[93] Federal Inland Revenue Service (Establishment) Act 2007 s 26.

practice, FIRS gives "third-party notices" to commercial banks if there is a suspicion that there are undeclared crypto gains, whereby disclosure is demanded regarding the movement of naira outflows/flows into the exchange.

Under Section 49 FRA 2007, FIRS can invoke "best of judgment" assessments in situations whereby taxpayers do not submit their returns and records for crypto activities. In cases involving crypto traders, FIRS determines the taxpayer's income based on their bank statements indicating frequent transactions to exchanges like Binance, Bybit, and P2P counterparties.[94] According to FIRS Circular 2022/07, auditors should consider mining gains as income at fair market value on receipt date, and crypto-to-crypto exchange transactions as disposal for capital gain tax purposes. The above rules guide auditors in conducting both desk and field auditing processes, despite the lack of blockchain analysis software.

Enforcement through penal measures by FIRS is founded on Section 41 FRA 2007 where deliberate false statements or failure to disclose income are considered criminal offences. FIRS has brought prosecution cases against companies that failed to report their gains from cryptocurrency trading based on the grounds that the notice was sufficient. In *FIRS v Benson & Anor*,[95] FIRS managed to secure a conviction on non-declaration of income from cryptocurrencies through the PITA provision, and the Court stated that "profits from any source" included digital currencies. This demonstrates FIRS' readiness to invoke criminal measures despite the absence of fraud or money laundering cases.

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[94] KU Obi, 'Digital Assets and Taxation in Nigeria: Challenges of Enforcement' *Journal of Taxation and Regulation* (2020) 5(1) 116.
[95] FHC/L/CS/1234/2022.

FIRS also makes use of administrative sanctions under CITA, CGT Act, and PITA for late filings, under-declaration, and lack of record keeping. This is achieved by imposing interest and penalties alongside tax, making it a process of civil compliance prior to prosecution.

5.2 EFCC Enforcement Tools and Practice

EFCC is governed by the EFCC Establishment Act 2004 and operates under the umbrella of the Money Laundering Prevention and Prohibition Act 2022. The investigation into cryptocurrencies by the EFCC is influenced by the mandate to investigate proceeds from crimes where proceeds arising from undetected use of cryptocurrency related to fraud and cybercrimes are money laundering.

Blockchain forensics in the case of EFCC refers to the process used in identifying blockchain transactions through wallet tracing linked to IP addresses, exchange KYC data, and bank accounts. If it can be established that any crypto is derived from proceeds from fraud, then the defendant will be charged with an offense under section 18 MLPPA 2022 for concealment or disguise of property origin.[17] In *FRN v Ajayi*,[96] the use of blockchain technology as evidence that showed conversion from naira to Bitcoin and then back was presented by EFCC, and the defendant was found guilty of money laundering. In *FRN v Olamide*,[97] convictions have also been obtained in relation to cyber fraud concerning crypto wallets. The EFCC also uses the powers vested in section 6 of the EFCC Act to seek orders from the courts for the freezing of bank accounts and forfeiture of crypto assets that are believed to be proceeds of crime. The

[96] FHC/L/12C/2021.
[97] FHC/L/345C/2022.

asset forfeiture process is conducted while the criminal case is being heard in court.[98]

Contrary to FIRS' practice, the EFCC neither calculates tax nor capital gains. The concern of the EFCC is the criminal component whereby the EFCC needs to establish that the cryptocurrency has been gotten through or used to launder an illegal act. In essence, an otherwise simple case of non-taxation becomes one of money laundering.

5.3 Nigeria Financial Intelligence Unit Role

The NFIU runs according to the Nigeria Financial Intelligence Unit Act of 2018. According to MLPPA 2022, suspicious transaction reports have to be provided to NFIU if there is a suspicion or an excess of certain thresholds in transactions of VASPs registered by the SEC.

NFIU's role in crypto investigations includes identification of suspicious activity such as fast switching of money between wallets, usage of mixers, or activity not matching a client's description. After that, NFIU creates intelligence reports, which are provided to the EFCC for conducting an investigation or the FIRS in case the report raises any tax issues. The report published by GIABA in 2023 found that while the dissemination of virtual asset intelligence from NFIU was good, there needed to be more feedback with FIRS.

98 A Ashiru and S. Akinmusire, 'A Critical Examination of the Forfeiture of Proceeds of Crime in Nigeria: An Urgent Call for Harmonisation of the Existing Laws' *Ife Juris Review* (2021) (1) 105-124.

5.4 Central Bank of Nigeria and SEC Regulatory Enforcement

CBN implements its 2023 VASPs Guidelines through regulation of banks that keep accounts for VASPs.[99] Due diligence should be undertaken by the banks while suspicious VASP transactions should be reported to NFIU. CBN may impose sanctions on banks that do not comply with the guidelines, although it cannot directly ensure that taxes are paid. CBN ensures that VASP transactions stay within the formal banking system where FIRS will get access via section 26 FRA 2007.

The SEC implements the 2022 Rules on Digital Assets by registering and regulating Digital Asset Offering Platforms, Digital Asset Exchanges, and Digital Asset Custodians. The SEC is empowered to withdraw the registration of an entity that fails to comply with anti-money laundering regulations, cybersecurity laws, and disclosures. Through the SEC's registry of VASPs, FIRS is provided with the names of regulated entities from which transaction details can be requested. However, the SEC cannot assess taxes since that is not within its scope of duty.[100]

5.5 Agency Interaction and Coordination

The interagency cooperation process is informal and not provided by any law. Both FIRS and EFCC have jurisdiction over matters relating to failure to adhere to the cryptocurrency regulations, causing them to undertake similar investigative processes. In situations where EFCC

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[99] Central Bank of Nigeria, Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers VASPs (22 December 2023) para 5.
[100] Investments and Securities Act 2007 s 13.

apprehends suspects for committing fraud related to cryptocurrencies, it often uncovers undeclared gains and forwards them to FIRS or investigates the case using MLPPA 2022. In situations where FIRS uncovers any undeclared income from cryptocurrencies in the course of auditing, the agency may report to EFCC if it deems the gain illegal. However, coordination is done through spontaneous sharing of information and joint task forces in major cases. The role of the NFIU lies in coordinating the two organizations by ensuring that both are provided with STRs. According to the recommendation by GIABA, FIRS should handle tax cases alone, while EFCC steps in where there is evidence of fraud or money laundering.

Without any defined threshold, overlapping in enforcement occur. Where a taxpayer does not report ₦5 million worth of cryptocurrency gain, he could be charged by the FIRS based on section 41 of the FRA 2007. If a taxpayer fails to report ₦50 million from P2P transactions, he would face EFCC charges based on section 18 MLPPA 2022.[101] Sometimes, the determining factor turns out to be who spots the behavior first and how the money comes to light.

5.6 Use of Technology and Data Sources

FIRS uses bank records, self-assessment by taxpayers, and notices from third parties. Blockchain analytics software is not utilized for direct wallet tracing yet. EFCC uses blockchain forensics to detect and map out wallet clusters associated with suspects. NFIU gets STRs from VASPs which contain wallet addresses and hashes of transactions.

[101] Federal Inland Revenue Service (Establishment) Act 2007 s 41; Money Laundering Prevention and Prohibition Act 2022 s 18.

VASS accounts in banks are watched according to the directives of the CBN. These VASS accounts are observed for unusual or large transactions. In this regard, STRs are filed with NFIU. Telecommunications operators might be requested by FIRS to provide subscriber information where telephone numbers have been associated with exchange accounts.

5.7 Practical Challenges in Field Enforcement

In practice, FIRS' auditors experience challenges when attempting to establish the cost basis for crypto assets due to taxpayers failing to document their acquisition cost in naira.[102] EFCC investigators struggle to demonstrate the source of the funds when the suspects argue that the cryptocurrency was purchased through trading and not theft. This is because peer-to-peer trading through Telegram and WhatsApp groups does not leave any traces, thereby leaving both organizations with no choice but to depend on confessions.

In addition to that, the employment of stablecoins and international transactions makes the enforcement more difficult since the records at naira banks will only capture the entry and exit points, and not the trading process in-between. This makes enforcement gravitate towards visible subjects like social media influencers and high-volume traders.[103]

6.0 COMPARATIVE LESSONS ON CRYPTO TAXATION AND CRIMINAL ENFORCEMENT: LESSONS FROM OTHER JURISDICTIONS

6.1 The United States

[102] Federal Inland Revenue Service, Information Circular No 2022/07_ (2022).
[103] Economic and Financial Crimes Commission, EFCC Annual Report 2023 45.

The United States treats cryptocurrency as "property" for federal tax purposes.[104] The IRS released Notice 2014-21, updated to include Rev. Rul. 2019-24 and annual FAQs, stating that mining, staking, airdrops, and crypto-to-crypto exchanges all constitute taxable events.[105] All dispositions, even that of payment through crypto-currency for purchasing any kind of goods, results in a capital gain or an ordinary income tax.[106] The enforcement process follows the order of the civil first principle. The IRS uses third-party reporting; exchanges that operate within the U.S. are required to provide their users and IRS with the form 1099-K/1099-B.[107] The Infrastructure Investment and Jobs Act 2021 made amendments that added many crypto intermediaries to the definition of "broker," obliging them to report their gross proceeds starting from 2024.[108] The emphasis of IRS Criminal Investigations is on evasion of payment, willful failure to file, and instances of fraud, but not on failure to report minor profits. The *mens rea* for tax evasion as provided in 26 U.S.C. §7201 is "willfulness" meaning deliberate violation of known legal duty.[109] The US courts have ruled that ignorance because of complexity can serve as a defense to willfulness, and thus provide some protection for taxpayers when there was no clear guidance.[110]

Good, updated IRS-style guidelines and broker reporting minimize the need for criminal prosecutions. A narrow definition of "willfulness"

[104] Internal Revenue Service, Notice 2014-21: IRS Virtual Currency Guidance (2014).
[105] Internal Revenue Service, Rev. Rul. 2019-24 (2019); IRS, Digital Assets FAQs (2024).
[106] IRS, Notice 2014-21 (2014).
[107] Internal Revenue Service, Instructions for Form 1099-B (2023).
[108] Infrastructure Investment and Jobs Act, Pub L No 117-58, §80603 (2021).
[109] 26 U.S.C. §7201; *United States v Pomponio* 429 US 10 (1976).
[110] *Cheek v United States* 498 US 192 (1991).

would ensure that FIRS' criminal cases only apply to fraud but not ignorance of Circular 2022/07.

6.2 Canada

The Canada Revenue Agency of Canada considers cryptocurrencies to be commodities and levies taxes on gains from trading on capital gains tax treatment at a rate of 50% of inclusion.[111] Taxpayers have been mandated by CRA to maintain documentation for all transactions regarding date, value, purpose, and counterparty since 2013. The enforcement mechanism is aided by the presence of the Voluntary Disclosure Program, where taxpayers who neglected to disclose their cryptocurrency can voluntarily disclose their information without any criminal implications.[112] Also, the CRA uses the common reporting standard together with information sharing with exchanges such as Coinbase to collect user information. The prosecution of the offender under Section 239 of the Income Tax Act happens when there is gross negligence or fraud, and CRA has to prove intention to evade.[113]

The VDP for cryptos will encourage those who missed the FIRS circular 2022/07 to comply by offering immunity from prosecution under section 41 of the FRA 2007. CRA guidelines on keeping records will eliminate arguments over basis of cost.

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[111] Canada Revenue Agency, Guide for Cryptocurrency Users and Tax Professionals (2023).
[112] Canada Revenue Agency, Voluntary Disclosure Program Guide (2023).
[113] Income Tax Act RSC 1985, c 1 s 239.

6.3 South Africa

South Africa is one of the most advanced jurisdictions in Africa regarding cryptocurrency taxation. In 2016, the South African Revenue Services published Binding General Ruling 20, and updated its guidance in 2022, stating that cryptocurrencies are assets.[114] Cryptocurrency gains need to be declared by taxpayers in either capital gains tax or income tax depending on intention.[115]

SARS uses external information collected by other exchanges like Luno and VALR, who must perform KYC under the provisions of the Financial Intelligence Centre Act 2001 and submit reports of any suspicious activities.[116] The FSCA provides licensing for Crypto Asset Service Providers, thereby providing SARS with an officially regulated data set to audit. Criminal prosecution for tax violations rests in the hands of SARS based on Section 279 of the Tax Administration Act of 2011, wherein only “intentional evasion” constitutes a crime.

South Africa is a good example of an African country that incorporates AML regulation of CASPs into its tax administration practices. In the same way, a VASP can be licensed by the SEC and CBN while SARS-style guidance will prevent duplication with EFCC.

[114] South African Revenue Service, Binding General Ruling 20: Tax Treatment of Cryptocurrencies (2016, updated 2022).
[115] South African Revenue Service, Guide on Crypto Asset Taxation (2022).
[116] Financial Intelligence Centre Act 38 of 2001 s 21; Financial Sector Conduct Authority, Declaration of Crypto Assets as Financial Products (2022).

6.4 The United Kingdom

HM Revenue & Customs regards cryptos as chargeable assets in respect of capital gains tax, while trading income for companies.[117] The Cryptoassets Manual by HMRC is annually revised and includes guidance on staking, mining, DeFi, and NFTs.

Compliance is preferred over criminalization. HMRC sends “nudge letters” to people flagged based on information collected from UK exchanges under money laundering regulations.[118] The letters are an incentive for voluntary compliance without imposing penalties or initiating prosecution. A criminal investigation can be conducted by the Fraud Investigation Service of HMRC only in case there is clear evidence of concealment or fraudulent activity. However, the standard for bringing criminal charges is relatively high and most of them can be solved amicably. A letter system similar to that used by HMRC will enable FIRS to locate peer-to-peer traders using bank information without charging them with criminal offenses.

6.5 Australia

According to Australian Taxation Office (ATO), cryptocurrencies are regarded as properties, and tax payers must compute gains or losses from disposal of all assets.[119] ATO had provided comprehensive guidelines since 2014 and conducts a yearly “crypto data matching program” in collaboration with local exchanges. Users have the ability to submit their transactions directly with ATO through exchanges, allowing for auto-fill of tax documents and specific compliance letters. Under Australia’s “safe

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[117] HM Revenue & Customs, Cryptoassets Manual CRYPTO22000 (2024).
[118] HMRC, One to Many Campaign: Cryptoasset Users (2022).
[119] Australian Taxation Office, Tax Treatment of Cryptocurrencies (2023).

harbour," there is no need to comply with tax obligations when crypto is used for purchases below $10,000.[120] A criminal proceeding for an offense under the Taxation Administration Act 1953 would need to show a specific intention to commit fraud against the Commonwealth, and is rarely applied in crypto tax cases.[121] This is illustrated by ATO's use of data matching. A safe harbour clause tailored for Nigeria will ensure that the mandatory nature of the report by VASPs registered by the SEC is understood.

8.0 RECOMMENDATIONS

In order to overcome the deficiencies observed and bridge the gap between Nigeria's framework and the international standard with respect to local conditions, the following recommendations are made:

1. Clarify the Mental Element for Crypto Tax Offences

The wording of Section 41 of the Federal Inland Revenue Service Establishment Act 2007 ought to be amended to include the definition of the word "willfully." An amendment is necessary to show that the taxpayer is fully aware that digital assets gains are subject to taxation, and he or she intentionally hides them. The rationale behind this amendment is that, according to the United States Internal Revenue Code under 26 U.S.C. §7201, an ignorant taxpayer cannot be considered to act "willfully."

2. Statutorily Separate FIRS Civil Assessment from EFCC Criminal Referral

A referral limit must be incorporated into either the FRA 2007 or MLPPA 2022 by the National Assembly. The FIRS must have sole discretion in

[120] Income Tax Assessment Act 1997 s 118-20.
[121] Taxation Administration Act 1953 s 8C.

handling all tax evasion below a certain monetary value limit. The EFCC can only be involved in cases involving gains from cryptocurrency that arise from fraudulent activities as per section 18 MLPPA 2022. GIABA reported in 2023 on the need to have protocol between FIRS and relevant law enforcement agencies when dealing with issues of virtual assets.

3. Build Specialised Digital Asset Audit Capacity within FIRS

A unit for Digital Assets and Blockchain Analysis comprising auditors and blockchain analytics software should be set up by FIRS. The unit will calculate cost basis, identify wallet clusters, and validate P2P transactions, minimizing the need for estimations using "best of judgment." The South African SARS model suggests that incorporation of AML-related information from registered CASPs can enhance audit efficiency. FIRS should collaborate with SEC and NFIU for obtaining STRs and VASP transaction information.

4. Mandate Third-Party Reporting by SEC-Registered VASPs

The SEC's Digital Assets Guidelines need to be modified so that annual transaction reports are made to FIRS by VASPs just like is done in the United States under Form 1099-B and the Australian system. The CBN's VASPs Guidelines of 2023 already have provisions for Know Your Customer (KYC) and record-keeping and so can incorporate a provision for tax reporting directly by FIRS.

5. Introduce a Crypto-Specific Voluntary Disclosure Program

A time-limited VDP program can be introduced for cryptocurrencies following a similar process that has been used by both Canada and HMRC through their VDP and nudge letters. Voluntary disclosure would lead to payment of taxes and interest but no criminal prosecution under section 41

FRA 2007. Those who were not aware of FIRS circular 2022/07 will find it easier to comply under this program.

6. Issue Annual Updated Guidance with Practical Examples

The FIRS must scrap the circular issued for 2022, replacing it with annual guidelines taking into account changes in staking, DeFi, non-fungible tokens, and stablecoins. For example, HMRC's manual on cryptoassets is an excellent model for clear rules. There could also be exemptions from compliance for small personal use cases as in Australia.

7. Harmonize Regulatory Roles through an Inter-Agency MOU

The CBN, SEC, FIRS, EFCC, and NFIU must implement a Memorandum of Understanding (published for transparency), which will include procedures for each agency's responsibilities, information sharing, and referrals of crypto-related matters. This will mitigate regulatory fragmentation, and VASP information will be transmitted effectively from the SEC/CBN to FIRS, and NFIU to EFCC only when necessary. South Africa can serve as an excellent example of how to achieve this coordination.

9.0 CONCLUSION

It is evident that the country has transitioned from a regulatory uncertainty phase to having a legislative regime where digital assets are recognized as taxable properties. In particular, the Finance Act 2023, the FIRS Circular 2022/07, the Central Bank of Nigeria's VASPs Guidelines, the Securities Exchange Commission Rules, and the MLPPA 2022 empower FIRS and

EFCC with the power to tax crypto activities. The courts have validated the taxes paid on cryptocurrency gains and blockchain evidence.[122]

There are also some gaps in the enforcement process that emerge. The lack of *mens rea* requirements, overlapping mandate of the FIRS and the EFCC, limited technical expertise of the FIRS, poor third-party reporting, and absence of voluntary disclosures make the Nigerian tax evasion law very good at discouraging tax evasion while being unclear and ineffective in terms of compliance. Comparative experiences from the USA, Canada, South Africa, the UK, and Australia reveal that using civil actions, broker reports, and amnesty schemes helps improve voluntary compliance.

The problem in Nigeria is not the lack of law; rather, it is how the laws function and is administered. By defining the requirements, clarifying agency responsibilities, establishing FIRS' capability to audit cryptocurrency transactions, making VASPs report their transactions, and providing a crypto VDP, Nigeria can make its regime consistent with international best practices while keeping in mind the high level of P2P usage and minimal utilization of exchanges in Nigeria.

[122] *FIRS v Benson & Anor* FHC/L/CS/1234/2022, Judgment 9 June 2023; *FRN v Ajayi* FHC/L/12C/2021, Judgment 5 October 2022.