THE MATTER OF DOUBLE TAXATION AND FINTECH

Alessio SCAMACCI*

ABSTRACT: *The objective of this study is to analyze, from a comparative point of view, the taxation of capital gains in the Italian and US experience, also in the context of the initiatives implemented to avoid double taxation. In an environment characterized by an ever increasing globalization, the tax policies of the various countries assume a crucial role, influencing the choices of international economic operators who are always intent on moving their capital to countries with favorable taxation. In this regard, this work focuses on analyzing the short and medium term strategies that investors put in place to try to reduce the overall tax burden. The constant search for an investment strategy, exempt from taxation, has produced, in recent years, a proliferation of forms of investment applied to cryptographic technology. This scenario leads the writer to believe that the use of tax leverage by individual countries should not affect their economic growth volumes, both globally and locally. In this context, in fact, excessively intrusive taxation could considerably reduce global development rates in the medium and long term. In the opinion of the writer, therefore, fiscal neutrality appears to be increasingly important today, given the growing integration of national systems.*

KEYWORDS: *capital gains; double taxation; tax agreements; blockchain; fintech; non-fungible tokens.*
JEL Code: *K34*

1. INTRODUCTION

A capital gain is an increase in the value of a capital asset. When an asset is sold, it is considered realized. A capital gain can be either short-term (less than one year) or long-term (more than one year) and must be reported on income taxes.

Recognizing and incorporating this differentiation into investment management is especially critical for day traders and those who take advantage of the increased convenience of trading in the market online.

The tax treatment of capital income, such as capital gains, is often regarded as advantageous. When seen in the light of the overall tax scheme, though, there is a tax stigma toward revenue such as capital gains.

This is due to the fact that taxes on borrowing and savings, such as the capital gains tax, form an extra tier of capital income taxation after the corporate income tax and the individual income tax.

* International tax expert, he trained at UNINT University – Rome, ITALY.

Each dollar of income should only be charged once under a neutral tax code. The tax code currently offers neutral tax status only to certain types of investing, such as 401(k) and Individual Retirement Accounts, but saving and investing practices outside of these plans do not (E. York, 2018).

Capital gains are subject to various levels of taxation, although they are not inflation-adjusted. This suggests that investors may be taxed on capital gains resulting from price changes rather than real gains.

Capital gains taxes are particularly detrimental to entrepreneurs because they decrease the return on saving and thereby promote immediate spending over saving.

1.1 The Structure of Capital Gain Taxes

The rise or decrease in the value of a capital asset between the time it is acquired and the time it is sold is referred to as capital gains or losses. Capital assets encompass everything a person possesses and utilizes for personal, recreational, or investment purposes, such as stocks, bonds, residences, vehicles, jewelry, and art. A capital asset's acquisition price is commonly referred to as the asset's basis.

Whenever an asset is sold more than its basis, a capital gain is obtained; when the asset is sold for less than its basis, a capital loss is realized.

When a person in the United States realizes a capital gain—that is, sells a capital asset for a profit, the gain is taxed. Capital gains tax rates vary depending on two factors: the amount of time the asset was held and the amount of income earned by the taxpayer.

If you hold an asset for less than a year and then sell it for a profit, it is considered a short-term capital gain and is taxed as ordinary income. A long-term capital gain occurs when an asset is kept for more than a year and then, again, sold for a profit.

When a taxpayer sells an asset for less than its original cost, resulting in a capital loss, the difference can be used to counterbalance capital gains. If a taxpayer's capital losses exceed his or her capital gains, the difference can be deducted on their tax return to offset up to $3,000 of taxable income per year, or $1,500 if married filing separately.

If such entire amount of the net capital loss exceeds the limit, it can be carried over to the next year's tax return.

1.2 Double Taxation

Cross-border activities or transactions may trigger tax liability in two or more jurisdictions. In order to mitigate the financial burden resulting from these situations, States have entered into numerous double taxation conventions.

If you are a U.S. citizen with investment income from sources outside the United States (foreign income), you must report that income on your tax return unless it is exempt by U.S. law. This is true whether you reside inside or outside the United States.

For this matter 37 countries are members of the Organization for Economic Co-operation and Development, where bilateral tax agreement were signed.

A bilateral tax agreement is a type of tax treaty signed by two nations that mitigates the problem of double taxation that can occur when tax laws consider an individual or a company to be taxed in more than one country (F. Allemès, 1926).

2. CAPITAL GAIN TAXATION IN ITALY

The Italian legislation regarding the capital gain taxation procedure is subjected to every citizen's tax return characteristics. Every capital gain is classified and based on accurate numbers of financial personal data.

The taxation procedure seeks the need for a tax-substitute application payment based on the tax-returns taxes up to 26%.

Different tax returns based on capital gains are calculated as the difference between received compensation and price value of gains free from taxation laws, with a higher production charge, succession, and donation fees included but lacking passive interests.

Positive or negative capital gains is emerged by transferring the ownership rights or personal titles of assets. Such phenomena however cannot be applied whenever a compensation fee is gained.

2.1 Capital gain taxation off company shares

From January 2019 onwards capital gains arising from business corporations are facing a tax fee of 26 percent, no matter what joining fee has been paid (qualified one or not) they still have to pay such tax fee.

Participation is considered qualified only when it represents at the same time such requirements:

- A calculated joining sum of the capital or of the property superior of 25 percent or a percentage of voting rights (which can be applied during a court congress) superior of 20 percent on behalf of non-quoted societies.
- A joining heritage, capital sum superior of 5 percent, also equivalent as a percentage of voting rights applicable during a court congress, superior of 2 percent on behalf of societies whose titles have been negotiated inside regulated markets. These two criteria are cohesive and reliable within each other;

Said so, participation is considered qualified only until one of these two criteria is fully satisfied, if none of these two criteria is fully fulfilled, the results of the qualification are negative.

Capital gains, emerged by the possible retirement of a member with titles and financial tools emerged by societies of privileged territories or countries with favorable fiscality (qualified or non-qualified), contribute with their part the formation of the tax-return scenario which sees the application of relevant numbers calculated with their negative capital gains. It is, indeed, mandatory that during the tax return, in the balance sheet, there is a clear line between positive and negative capital gains.

During such operation, the most recent acquired financial tools are considered as first.

With this procedure the taxation application is not anonymous, it is mandatory to present the year tax-return paperwork and the taxation is operated only to tax-return offices.

2.2 Estate capital gain taxation in the Italian territory

People who are willing to sell their real estate property should be aware that the Italian revenue service "Agenzia delle Entrate" is going to withhold the equivalent to the 26 percent, until December 2019 the tax percentage was 20 percent, on the difference between what you paid for said asset — your basis — and what you sell it for.

Such application relates to the positive capital gains achieved by the disposal of real estate assets, transferred for a consideration, such as buildings, arable land, bought, built or received as a donation for a maximum time term of 5 years, after which no capital gain tax is due.

In case of donations the period of time is calculated from the moment when the property was bought by the donor.

The substitutive taxation is not applicable to the positive capital gains which, regarding the details of art. 67, comma 1 from TUIR, establish capital tax-returns (G. Andreani, et al. 2020).

As an example we find:

- Art Shops and related jobs
- Commercial shops
- Commercial Family membered shops
- Employee-duties relations

Reporting of a capital loss occurs when a negative capital gain exceeds a similar positive capital gain, the disparity will be reflected on the tax return. When such a process is carried out, the amount of taxes to be collected in relation to the four years preceding this taxation is deducted, although the tax-return paperwork is filled at its finest, complementing each section related to this particular period of time caused by the profit loss.

3. CAPITAL GAIN TAXATION IN THE UNITED STATES OF AMERICA

Before we go ahead with the current American capital gain taxation law, it is helpful to take a look at the history of the past legislation regarding these phenomena.

Ever since 1913 capital gains have been taxed with a maximum rate of 7 percent, shortly to be revised to 12.5 percent, on assets held for at least two years.

From 1934 to 1941, taxpayers could exclude percentages of gains that varied with the holding period, meaning, 20, 40, 60, and 70 percent of gains were excluded on assets held up to 10 years. A year later, taxpayers were allowed to take 50 percent off of capital gain on assets kept for a minimum period of time such as 6 months, in an alternative, there was a possibility to deduct 25 percent off their ordinary tax rate.

With great despair, in 1969 tax rates reached a high peak due to “The 1969 Act” which imposed a base tax of 10 percent, gains excluded and restricted the after-native tax of $50,000 of gains. Following up a new act was adapted, “The 1976 Act” which also developed higher capital gain taxes thanks to the new minimum tax rate of 15 percent. Reaching the highest rates, in 1977 and 1978 capital gains were taxed with 39.875 percent as minimum taxes and 49.875 as maximum taxes.

The American Congress cut capital gains tax rates in 1978 by removing the minimum tax on qualified gains, raising the exclusion to 60%, and lowering the maximum rate to 28%. In 1981, tax rate adjustments cut capital gain rates again to a rate of 20% (G. Auten, 1999).

3.1 Taxpayer relief act and tax avoidance strategies

Although recent history of capital gain taxation has been extremely important, there have been and there currently are some phenomena regarding tax avoidance that helped

many taxpayers during the last few decades. There have been, indeed, many opportunities for taxpayers to avoid taxes, but very few knew and used them.

Tax avoidance increased on a high scale, following the Tax Reform Act of 1986. Depending on the ability to avoid taxes for long periods of time, the higher the income and the wealth, the lower the taxes were to be paid. Depending on how long the period of the capital gain was many taxpayers were able to apply this legal strategy, and save taxes by holding assets.

In 1997 a new tax avoidance tool was born: "The taxpayer relief act". This particular act was indeed a game-changer scenario at the time, which established new tax rates. Assets held for at least a year qualify for long-term treatment with a 28 percent tax rate. Assets held for 5 years qualify for long-term treatment with an 18 percent tax rate. This act also exempts from taxes, all gains from sales of owner-house holding occupier.

A point in the taxation system was made clear, although new strategies have been crafted and shaped to reduce tax-avoidance, the real estate's sector was limiting the capability of taxpayers to deduct losses associated with their investments in the real estate.

To sum up this prospective into one key sentence we can state that legislation reflects an underlying tension in how the capital gain taxes are perceived and cutting capital gain taxes but at the same time, seek to eliminate advantages on holding assets.

3.2 Theoretical analysis of tax avoidance strategies

Theoretical analysis have exposed strategies to avoid taxes on capital gains and generate capital losses in order to mitigate income taxation (A. J. Auerbach, et al. 1997).

As stated by Poterba (1987) in his work, we can realize that relatively few taxpayers, realizing capital gains, appear to apply tax avoidance strategies, and only after those taxpayers learned how to be aware of these tools we can definitely notice an increased number of tax avoiders. The ability of taxpayers to shelter their gains from taxes was strictly related to the kind of assets they owned.

It is important to apply our knowledge and try to understand this important topic in both individuals and on major scale scenarios.

As in 1987 to 1994 and thanks to the description of the relevant capital gain tax provisions in effect during this period of time we analyze that in 1987 the maximum tax rate on ordinary income was 38 percent; From 1988 to 1990 the maximum tax rate on ordinary income was 33 percent; In 1991 it escalated quickly from 28 to 31 percent; Lastly, from 1993 onwards, the maximum tax rate on ordinary income was 39.6 percent.

During this process and taken into a deep understanding of tax-avoidance we can surely notice four important regions which present different tax-avoidance strategies scenario; Region A, B, C, D.

Region A tools to avoid the most taxes imply that: A taxpayer with Net-Worth Losses but Net Short-Term Gains, is required to net the long term losses against the short-term gains, tax fully the difference if positive and deduct fully any losses up to $3.000.

Region B tools define: Tax-payers with both Long-Term and Short-Term Losses or Short-term losses in excess of Long-Term Gains, are allowed to deduct any Net-Loss up to $3.000.

Region C tools imply that: Tax-payers with Short-Term plus Long-Term losses in an excess total of $ 3.000, face no current tax on marginal Short-Term or Long-Term Gains since such gains simply reduce the amount of losses that cannot be deducted.

Lastly, region D tools enunciate: Tax-payers with Long-Term Gains in excess of Short-Term Losses are given the opportunity to calculate the difference between the two and pay the tax off of it as Long-Term Gain Rate.

Summing up these conclusions we can enunciate that encouraging and following such strategies can lead to lower taxation, improving so the economic side of taxpayers.

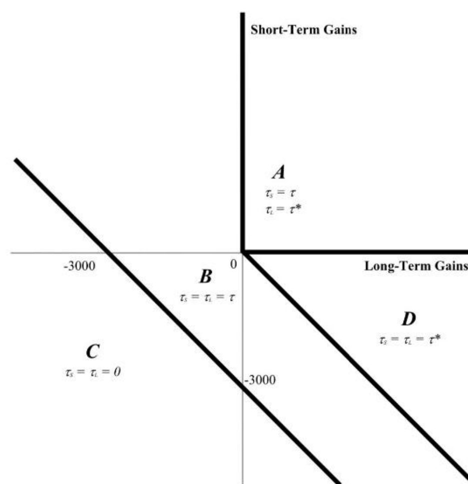

Figure 1 Regions of Taxpayer Behavior

3.3 Tax Avoidance Behavior over Time

The percentage of tax-payers belonged to region A, plummeted immediately after the enactment of The Omnibus budget Reconciliation Act of 1990 which raised tax rates on ordinary income and capped rates on Long-Term Gains. The higher tax rates on both long and short term gains should have deterred also tax-payers from region B.

In the meantime we acknowledge few important phenomena where:

Wealthier taxpayers were more likely to avoid taxes on their capital gains than the less fortunate tax-payers due to a better access to tools and advised strategies;

Gains on liquid assets were lightly taxed than Gains on illiquid assets, such as real estates.

Tax avoidance surely reached a higher peak since tax-payers learned successfully to apply techniques to shelter their gains.

Nonresident aliens are taxed only on their income from sources within the United States and on certain income connected with the conduct of a trade or business in the United States. The general rules for determining U.S. source income that apply to most nonresident aliens are shown in the table that follows.

Table 1. Sources of income

Item of income	Factor determining source
Salaries, wages, other compensation	Where services performed
Business income: Personal services Sale of inventory—purchased Sale of inventory—produced	 Where services performed Where sold Where produced
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties: Natural resources Patents, copyrights, etc.	 Location of property Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home
Pension distributions attributable to contributions	Where services were performed that earned the pension
Investment earnings on pension contributions	Location of pension trust
Sale of natural resources	Allocation based on fair market value of product at export terminal.
*Exceptions include: Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation's gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared. Special rules apply for dividend equivalent payments.	

4. BILATERAL TAX AGREEMENTS AND HOW THEY IMPACT CAPITAL GAIN TAXATION

A bilateral tax agreement, that is a form of tax treaty established by two countries, is an agreement between jurisdictions that reduces the issue of double taxation, which may arise when tax laws deem a person or corporation to be a taxpayer in more than one country, however, a bilateral tax agreement will strengthen international interactions and reduce tax evasion.

Bilateral tax agreements are often based on conventions and standards defined by the Organization for Economic Cooperation and Development (OECD), a 37-country intergovernmental organization. The treaties might include a solution to a variety of problems, including the taxation of various types of income (e.g., company earnings, dividends, capital gains, work income), mechanisms for mitigating double taxation (e.g., by the exemption system and credit method), and provisions such as mutual information sharing and assistance in tax collection.

As a result, they are nuanced and, except in the case of simple income tax commitments, usually necessitate specialist guidance from tax professionals. Most income tax treaties contain a "saving clause," which prevents nationals or residents of one nation from using the tax treaty to avoid paying income taxes in another country.

4.1 Bilateral Tax Agreements and Residency

The determination of residence for tax purposes is a primary concern. Individuals' primary domicile is commonly known as their place of residence. Many countries determine domicile based on the amount of days spent in a country, necessitating meticulous record-keeping of physical stays such as plane tickets, bills, ATM withdrawals, receipts, etc.

In most European countries, for example, someone who spends more than 183 days a year in the country is considered domiciled and therefore accountable for income tax.

The United States requires both residents and green card holders, independently their domicile, to pay federal income tax in the United States.

To avoid onerous double taxation, the United States grants the Foreign Earned Income Exclusion (FEIE), which requires Americans living abroad to deduct up to an amount that is adjusted annually for inflation ($103,900 for 2018, $105,900 for 2019, $107,600 for 2020, and $108,700 for 2021), from their tax return. The earnings can come from either a U.S. or a foreign-based source.

As stated by the IRS, the revenue service of the United States federal government responsible for collecting taxes, an alien is any individual who is not a U.S. citizen or U.S. national. A nonresident alien is an alien who has not passed the green card test or the substantial presence test.

The green card test defines resident for tax purposes an individual that is a lawful permanent resident of the United States at any time during calendar year.

You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant.

You generally have this status if the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued you an alien registration card, also known as a green card.

The substantial presence test defines resident for tax purpose an individual that meets with its physical presence in the United States at least:

1. 31 days during 2020; and
2. 183 days during the 3-year period that includes 2020, 2019, and 2018, counting:

a. All the days you were present in 2020, and

b. 1/3 of the days you were present in 2019, and

c. 1/6 of the days you were present in 2018.

4.2 The Organization for Economic Cooperation and Development

The OECD "Organization for Economic Cooperation and Development" is an institution of international nature officially established on September 30th 1960 with the entry into force of the relative convention signed by the adhering countries.

The first core of the organization was founded in 1948, in the immediate aftermath of the end of World War II.

Formerly, the first operational unit of the OECD was set up to implement the "Marshall Plan", through which the USA committed itself to help rebuild Europe, destroyed by the Second World War.

At the end of the "Marshall Plan" the adhering countries, including the USA and Canada, decided not to despair the accumulated experience, giving life to an international entity with the objective of favoring the economic and social development of the member countries, through collaboration, the exchange of experiences and mutual aid.

Over time, the OECD has also become the most important international institution with regard to the social development of nations and environmental protection practices. Within the OECD, experiences are exchanged for a more effective fight against poverty and underdevelopment, as well as for reducing social inequalities.

The OECD is governed by a council in which the representatives and ambassadors of the member states sit. The council gives strategic directives. Once a year the inter-ministerial committee meets where the foreign and economic ministers of the member countries sit, as well as various personalities and experts in the economic and social field. The head of the OECD council is the secretary general.

The actual operation of the OECD is driven by the committees which are working groups of national experts who examine the various dossiers on the table. It should be noted that the work of the OECD is not limited to the theoretical examination of the various issues, but closely analyzes the possible impacts of decisions and various projects of intervention on the various populations, ecological impact, sociological consequences, impacts on the standard of living and health of the citizens of the different areas of operation.

There are more than 300 open dossiers, in order to cover all subjects of study and intervention.

OECD action is not limited to studying and proposing economic actions and strategies at the global level, but helps to promote bilateral cooperation at the national level, dispute resolution, and sustainable and socially fair growth (D. F. Runde, et al. 2020).

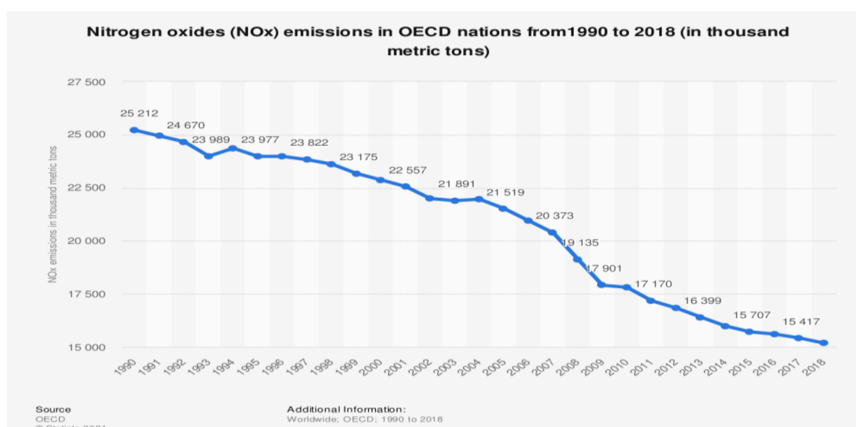

Figure 2 Nitrogen oxides emissions in OECD nations from 1990 to 2018

These initiatives can be translated into recommendations to member countries, so as to organize and make coherent development aid strategies and other initiatives for the promotion of eco-sustainable strategies and the guarantee of eco-access to the planet's resources.

Unlike other international technical institutions, such as the GATT and EURATOM, the OECD is a global organization capable of identifying possible solutions tailored to the needs of the present moment.

As a matter of fact, also in the framework of the harmonization of general taxation, the OECD acts as a forum to promote tax equity among nations and as a meeting place for the fair settlement of disputes.

Similarly, within the OECD, specific committees are set up to guarantee access to resources for the poorest countries.

Currently, the OECD has 36 member countries as well as some candidate countries for membership. There are also some "key partners": China, India, Brazil, Indonesia and South Africa.

The Secretariat is the body that collects, arranges and interprets the various data information systems necessary for the strategic decisions to be undertaken by the General Assembly.

The Secretariat currently employs more than 3,300 specialists in various disciplines.

Member states contribute to OECD funding based on their respective economic relevance.

The headquarters of the OECD is located in Paris, but there are several representative offices located in a number of other capitals: Berlin, Tokyo, Mexico City and Washington DC.

Ultimately, the Secretariat shall submit a series of actions to be taken by the Assembly and the Board.

Another important element is the tax neutrality system, tax neutrality is a system, or a related set of systems, that ensures non-discrimination among economic players with regards to taxation.

This would imply that economic players must act on the basis of criteria dictated by the logic of productive efficiency regardless of the effects of tax burdens. This is because competition between countries based on tax favorability is not able to guarantee an efficient allocation of resources. Furthermore, competition from tax-friendly countries ends up distorting the free play of competition.

In said context, the action carried out by the OECD ensures the reduction of competitive distortions between countries through both bilateral agreements against double taxation and global initiatives against tax "dumping" (T. Alastair, 2011).

That is, achieving greater development not by increasing the overall productivity of the country's system, but through tax leverage. In fact, the benefits deriving from bilateral conventions are many, but can be summarized in four main functions: elimination of international double taxation, dispute resolution, prevention and fight against tax evasion, and prevention of international double tax exemption (C. Garbarino, 2019).

4.3 Convention between the US and Italy for the avoidance of double taxation

The United States of America and the Republic of Italy have signed in Washington DC on August the 25th 1999 the following in order to establish a Convention to avoid double taxation on income taxes and to prevent fraud or fiscal evasion.

Below we examine some of the articles that refer to the taxation of capital gains realized by tax payers who are subject to double taxation, and how these agreements mitigate the tax burden that falls on these economic operators.

Article 1 - Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2. Notwithstanding any provision of this Convention except paragraph 3 of this Article, a Contracting State may tax:

(a) its residents (as determined under Article 4 (Resident); and

(b) its citizens by reason of citizenship as if there were no convention between the Government of the United States of America and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion.

3. The provisions of paragraph 2 shall not affect:

(a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 5 and 6 of Article 18 (Pensions, Etc.), and under Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Professors and Teachers), 21 (Students and Trainees), and 27 (Diplomatic Agents and Consular Officials), upon individuals who are neither citizens of, nor have immigrant status in, that State

Italy and the United States both have tax treaties and bilateral agreements with many foreign Countries to avoid double taxation on income and capital gains and the Organization for Economic Co-operation and Development has set the framework where, under these treaties, residents and nonresident aliens, individuals and corporations of foreign countries are taxed at a reduced rate, or are exempt from taxes on certain items of income they receive from sources within the aforementioned country.

Article 13 - Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by such enterprise in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

5. NON-FUNGIBLE TOKENS AND CRYPTO ART

Non-fungible tokens (NFTs) have been increasingly common in recent months. Digital artworks whose ownership can be checked, much like physical art, are referred to as crypto art. The authenticity of physical artworks may usually be established in a variety of ways, such as by inspecting the artist's signature or obtaining authentication certificates.

In the case of crypto art, unique procedures must be applied. Non-fungible tokens (NTFs), which are unique digital assets kept in Blockchain, are used primarily for authentication and evidence of ownership of digital data. NFTs cannot be replicated and can represent any digital format, including GIF, JPEG, and MP3.

They are not interchangeable, although they can be exchanged with cryptocurrencies. When a digital artwork is submitted to a Blockchain in the format of NFT, it becomes a one-of-a-kind piece of art and the original file will still be identified even though the copies are exchanged forever on the internet.

5.1 The art segment in the non-fungible token market

Throughout the non-fungible token (NFT) market in 2020, the art segment played a significant part. This sector had the second-highest sales revenue in the NFT industry that year. In total, NFTs sold as artworks produced approximately 12.9 million US dollars in 2020. Meanwhile, when considering the sales volume of the non-fungible token (NFT) market, the art segment only accounted for about five percent of all units sold. Aside from the NFT industry, the online contemporary art market has expanded dramatically over the last year. As the coronavirus pandemic pushed auction houses to consider alternatives to in-person gatherings in the first half of 2020, online auction profits from contemporary art purchases worldwide nearly doubled the revenue recorded in 2019 (Statista, 2020).

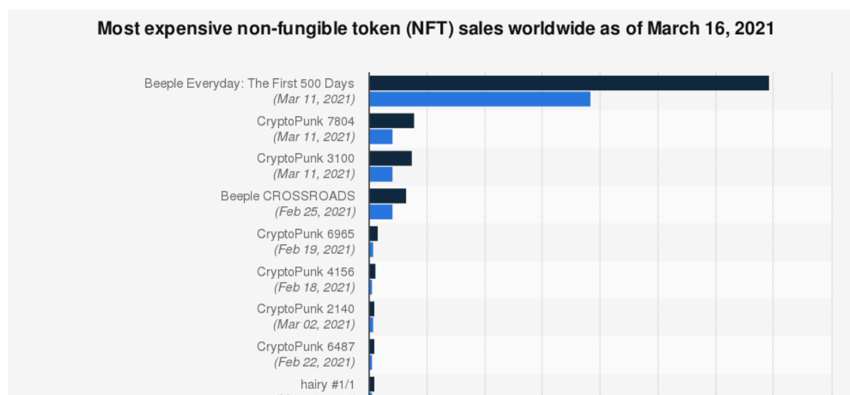

Figure 3 Most expensive non-fungible token (NFT) sales worldwide as of March 16, 2021

Many concerts and live shows stopped in early 2020 due to the ongoing pandemic of COVID-19, which defined a major turning point for the music industry by removing their major revenue source for artists and labels. So, as the world becomes more interactive, musicians are searching for new ways to engage and interact with their fans, and NFTs offer them a new outlet with many advantages.

Artists have a lot of freedom when it comes to the items they would like sell off, such as albums, sound samples, unreleased music, videos and merchandise are just a few examples of non-fungible tokens that musicians are exchanging for crypto currencies. Fans are thrilled to get these rare pieces of art and are willing to pay for the opportunity to get their hands, virtually, on these collectibles.

A noteworthy example connected to both visual arts and NFTs is the American artist Mike Winkelmann known as Beeple. He’s a content creator and one of his works was sold on Christie's, one of the world's largest auction houses in terms of fine art. It promoted an online auction for a single lot and that, indeed, was the first time a large auction house offered an NFT digital artwork for sale and acknowledged cryptocurrency as payment (M. Moscufo, 2021).

The piece, a digital collage titled "Everyday: The First 5000 Days," drew the attention of 33 potential buyers. The lot was sold for the unprecedented sum of 69.3 million US dollars on March 11, 2021, making it the most expensive artwork sold online to date. The collector, who only went by the alias Metakovan, was a Singapore-based businessman and co-founder of the cryptocurrency fund Metapurse.

5.2 How NFTs are taxed

When creators sell NFTs, they are taxed. Assume Joe developed an NFT painting and sold it for one Ethereum (ETH) worth $1,000. He'd declare $1,000 as usual income. If he is in the business activity of creating NFTs, he can also deduct business costs to lower his tax burden. Individuals that purchase and sell NFTs for speculative purposes are classified as investors, and the majority of people fall into this group.

Taxation works in a similar way for NFT investors as it does for crypto traders. Buying an NFT with a cryptocurrency like Ethereum and then selling it for a profit is a taxable event for the investor. Profits are taxed according to capital gains regulations.

Assume Bob acquired a $1,000, valued at 1 Etherum, NFT in January 2021. He utilized one ETH acquired for $100 three years ago to complete the transaction. When he buys the NFT in January, he will make a $900 long-term capital gain ($1,000 - $100).

This is considered long-term since he held the ETH for more than a year before selling it to purchase the NFT. The purchased NFT would have a $1,000 cost basis.

If Bob sold his NFT in March 2021 for $10,000, he would earn a $9,000 short-term capital gain ($10,000 - $1,000). In this scenario, the gain falls under the category of short term as he only held the NFT for less than a year before selling. Short-term profits are taxed at the same rates as ordinary income (S. Chandrasekera, 2021).

6. CONCLUSIONS

The system of taxation of capital gains is part of a more general context of taxation on individuals and companies, particularly in a framework dominated by new information technologies.

In fact, transactions carried out with Information Technology (IT) tools have not only revolutionized the taxation system but have even affected the very production and determination of business income.

At present, the criteria for taxing income are in a phase of profound change, deriving from the criteria for identifying the places where income is produced and, therefore, where it is taxed.

The so-called fintech system represents one of the most striking examples of the delocalization of the places of production, formation, and exchange of wealth.

These events have already produced destabilizing effects on taxation policies between the European Union and the United States.

In this case, the volatility and difficulty in determining the places of production of wealth can generate confusion between the two sides of the Atlantic.

In this way, wealth is increasingly materializing and it is difficult to identify which entity is producing it.

This has knock-on effects on all forms of taxation of wealth produced by companies and individual taxpayers.

These difficulties act on the side of the formation of wealth distribution in such a way as to make the system of tax subjects problematic.

In other words, productive relocations increase the difficulty of identifying the subjects of wealth flows which move rapidly through the chain of distribution and consumption.

In this context, individual aspects of the tax system remain well-identified in the quantifiable and are capable of determining significant effects on the productive system through the choices of taxpayers, who aim to resort to various systems to minimize the weight of taxation.

It seems evident, therefore, that achieving some normative certainty on the taxation of forms of wealth will be decisive in achieving a fair and efficient tax system.

The identification of the effects of tax systems on the production and distribution of wealth indicates how taxpayers try to avoid paying taxes in whole or in part.

Thus, the variation in the value of goods and services and their volatility and make it difficult to identify the amount of increases in the value of goods and services examined.

The analysis of these variations, their genesis, and the dynamics of the relative forms of manifestation are decisive in identifying the tax base to which to apply the tax rates.

But the tax system's attempts to reduce their weight have important repercussions for general and individual economic choices.

Numerous studies on this subject have shown that governments must carefully evaluate the taxation policies of the new instruments representing wealth, to avoid distortions on the general economic system.

REFERENCES

T. Alastair, OECD (2011). “Taxation and Employment”, OECD Tax Policy Studies, No. 21, Paris: OECD Publishing

F. Allemès, (1926). “The Problem of Double Taxation”, In: Economica, No. 17, pp. 148–158. London: The London School of Economics and Political Science

G. Andreani, G. Ferranti, A. Dodero, (2020). Testo unico imposte sui redditi. Commentari IPSOA, Milano: Wolters Kluwer.

Alan J. Auerbach, Leonard E. Burman, Jonathan M. Siegel, (1997). Capital Gains Taxation and Tax Avoidance: New Evidence from Panel Data”, Cambridge, MA: National Bureau of Economic Research

G. Auten, (1999). “Capital gains taxation”, In: Joseph J. Cordes, Robert D. Ebel and Jane Gravelle. (Edited by). The Encyclopedia of Taxation and Tax Policy, Washington D.C.: The Urban Institute

G. Corasaniti, C. Corrado Oliva, P. De’ Capirani di Vimercate, V. Uckmar, (2012). Diritto Tributario Internazionale. Padova: CEDAM

Department of the Treasury, (2015). Technical Explanation of the Convention Between the Government of the United States of America and the Government of Italian Republic: For the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud Or Fiscal Evasion. Scotts Valley, CA: CreateSpace Independent Publishing Platform

G. Falsitta, (2014). Corso Istituzionale di Diritto Tributario. Padova: CEDAM

C. Garbarino, (2019). Diritto Convenzionale Tributario. Torino: Giappichelli Editore

M. Harding, (2013). "Taxation of Dividend, Interest, and Capital Gain Income", OECD Taxation Working Papers, No. 19, Paris: OECD Publishing

OECD, (2013). OECD Insurance Statistics 2012, Paris: OECD Publishing

P. Pistone, (2019). Diritto Tributario Internazionale. Torino: Giappichelli Editore

James M. Poterba, (1987). How burdensome are capital gains taxes?: Evidence from the United States. Cambridge, MA: Elsevier B.V.

G. Tinelli, (2016). Istituzioni di Diritto Tributario. Padova: CEDAM

SITOGRAPHY

Agenzia delle Entrate - Tassazione plusvalenze immobiliari. Text available at: https://www.agenziaentrate.gov.it/portale/web/guest/schede/pagamenti/tassazioneplusvalenze/cosa-tassazione-plusvalenze-immobiliari

An Introductory Guide to NFTs in the Music Industry. Text available at: https://www.mi.edu/in-the-know/introductory-guide-nfts-music-industry/

Daniel F. Runde, Shannon McKeown, and Thelma Askey, (2020). The OECD Faces a Decision Point in 2021. Center for Strategic and International Studies (CSIS) Text available at: https://www.csis.org/analysis/oecd-faces-decision-point-2021

E. York, (2018). “The Complicated Taxation of America’s Retirement Accounts” Text available at: https://taxfoundation.org/retirement-accounts-taxation/

Enciclopedia Treccani. Text available at: https://www.treccani.it

Internal Revenue Service. Text available at: https://www.irs.gov

M. Moscufo, (2021). "Digital artwork sells for record $69 million at Christie's first NFT auction". Text available at: https://www.nbcnews.com/business/business-news/digital-artwork-sells-record-60-million-christie-s-first-nft-n1260544

The Organisation for Economic Co-operation and Development (OECD). Text available at: http://www.oecd.org

S. Chandrasekera, (2021). "How Are Non Fungible Tokens (NFTs) Taxed?" Text available at: https://www.forbes.com/sites/shehanchandrasekera/2021/03/11/how-are-non-fungible-tokens-nfts-taxed/?sh=4f2894a81f29

Statista – The Portal for Statitics. Text available at https://www.statista.com/