



Points to consider NFTs

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When you start working with NFTs, there are a number of points to consider, because as you may have noticed already: some people are wildly enthusiastic about NFTs, while others are very critical. Where does that criticism come from and what is based on? Furthermore, converting cryptocurrency into scriptural money (money held in a current account) may be refused. We will explain why and what the current legislation regarding income from NFT sales could mean for you.

Warnings from the Dutch central government

Trading in cryptocurrency on the blockchain is considered very risky by the central government. It is not seen as 'investing', but as 'speculation'. Your token (crypto coin or NFT) can be worth twice as much tomorrow or nothing at all. A crypto coin is not 'money'. It is seen as an 'item', because it does not fulfil the three basic principles of money: medium of exchange, store of value and unit of account.

The central government also warns against digital bank robbers. Hackers empty out wallets or batches of crypto coins disappear. The central government therefore recommends that you first understand the basics of cryptocurrency (how they are created). In addition, you have no legal guarantee in this market, such as the deposit guarantee scheme that safeguards the money on our Dutch bank account.

Abuse of existing copyright

There is no verification of ownership. There is no monitoring of the ownership of what is 'tokenised' (the creation of an NFT). For example, figures and colours are also sold currently. Is everyone allowed to appropriate and sell such items? Anyone can 'tokenise' a painting by Picasso or a pair of trainers by selling a digital photo as an NFT. That does not mean that the person is the owner of the tokenised object. This is also not the case if you buy this NFT and become the 'owner'. Therefore, be careful about what you buy and sell.

In addition, you can create as many wallets on the blockchain as you want anonymously. Malicious persons can therefore, for example, tokenise a digital artwork by an artist and sell it as an NFT. The copyright of the artist is violated, but the wallet is anonymous, therefore enforcement is difficult. In addition, it is also easy to create (and subsequently delete) a misleading account under the name of a well-known artist or museum. However, NFTs continue existing on the blockchain and cannot be deleted, because there is no authority or supervision on the blockchain. Future lawsuits should provide clarity about what is and isn't allowed.

No security or insurance

You can insure a physical artwork against damage, for example due to fire or theft. That is not the case with NFTs, but the risks of loss are greater. Examples include active hackers and viruses that are spread via NFTs. The link of a purchased NFT can also be deleted or the objection on that can link can be changed after the sale. In that case, what you have bought is different or gone. The police can do little to help you in this instance.

Smart contract

In addition, the current 'smart contracts' often leave a lot open still, as a result of which buyers must have a trusting nature. As an example, take the NFT where you become the so-called owner of a song. You receive a percentage of the music royalties, but the contract does not specify on which royalties this percentage is calculated or how and when this will be paid out. It's easy for promises not to be kept or for them to be twisted, because blockchain has no central authority. Enforcement is therefore difficult.



Legislation on income from NFT sales

In practice, converting cryptocurrency (that you have earned with NFT sales) into scriptural money (money held by a bank in electronic or other non-cash forms in a current account) may be refused. This is due to the current legislation, or rather the lack thereof. Because the law does not clearly describe how financial institutions should assess your income, you are at the mercy of their own policies, namely the provider of crypto services that converts virtual currencies into euros and vice versa, the provider of custodial wallets and your bank. Whether you have sold one NFT or a whole collection, this is what you need to know:

Origin of cryptocurrency

Dutch providers of crypto services are under the supervision of De Nederlandsche Bank and must comply with the applicable anti-money laundering and anti-terrorist financing rules and sanction regulations, just like other financial institutions, such as banks. These institutions are required to collect sufficient information about their customers. This is also called 'Know Your Customer' or 'Customer Due Diligence'. This includes identifying the origin of funds and cryptocurrency. On the basis thereof, the financial institutions make a risk assessment in order to determine whether the transaction is related to money laundering and/or terrorist financing. The transaction details of the sale of NFTs are not always sufficient then to rule out money laundering and terrorist financing. Converting cryptocurrency into scriptural money may be refused in that case.

The crypto service or your bank will probably carry out extra research in that case and request information, such as the name and address details of the buyers of your NFTs. In principle, you will not have those details, because buyers on the blockchain are (and remain) anonymous in general. The funds may be kept 'dormant' in that case and they will not be paid out to you until proven otherwise. In this case your credit or account will be 'frozen' so you can't do anything with it.

Foreign crypto services

If you have used a provider of crypto services from another country within the EU, the same rule will apply in principle. However, in practice that could mean that your bank here in the Netherlands may want to carry out an in-depth investigation. The bank will look at the transaction details and the origin of the money: who bought your NFTs and where did that money come from? The bank wants to be certain that there is no relationship with money laundering practices and/or terrorist financing, and that the transactions are not in conflict with the applicable sanction regulations. In short: many financial institutions still find NFTs (just like cryptocurrency) problematic and are still trying to work out how to deal with them.

New legislation

In June 2022, a European agreement was reached on a provisional version of the Markets in Crypto Assets Regulation (MiCAR). This marks the first step in regulating crypto markets within the EU. It will be applicable from the end of 2023/beginning of 2024. However, NFTs will not (after much discussion) be included in this (unless the NFTs fall under the existing 'crypto assets categories', as described in the MiCAR – which is currently (Jan. 2023) still unclear).

In short: NFTs will remain 'unregulated' for the time being. This may cause financial institutions to change their policies and decide that, in the absence of legislation, NFTs (and the cryptocurrencies earned from them) are too risky. For that reason, they may decide not to accept them. As soon as legislation is also introduced for NFTs, financial institutions (such as the bank where you have an account or a provider of virtual currencies into euros) will have more certainty.

Legal advice

Of course, NFTs also offer interesting benefits. Due to the technical character and the legal uncertainty, it is wise to be well-prepared if you want to earn a major part of your income from the sale of NFTs. Seek good legal advice about how you should organise this income and the type of financial institutions where you want to keep your wallet/account to avoid any unpleasant surprises. For legal advice, you can contact a specialized lawyer or attorney (in cryptocurrencies or NFTs).

What can you do yourself?

Are there any methods that you can adopt as an NFT creator that will ensure that you have fewer or no problems with payment? Make sure in any case that you are aware of the policies of the (financial) institutions that you use and, where applicable, base your choice on that too. In addition,



it is also relatively difficult for you as a creator, because you don't know, in most cases, who you will be selling your work to. What you could do, however, is request 'Know Your Customer' details. These details differ for each risk profile (low, medium, high) that a bank, for example, uses. However, name and address details are a good start. Make sure, therefore, that you comply with the General Data Protection Regulation. You are not allowed to simply store or process personal data (without a purpose) if you sell NFTs on a professional basis. What's more, requesting name and address details may hinder your sales, because buyers do not want to share their details. Please note: even if you have the name and address details of the buyers, this is still no guarantee of a trouble-free payment.

More information

On [Beroepkunstenaar.nl](https://beroepkunstenaar.nl) you will find more information about NFTs and a step-by-step plan for making NFTs. In addition, we deal with all kinds of other topics in the field of entrepreneurship and copyright