

GRAHAM, SMITH & PARTNERS

International Tax Counsel

Tax on tokens: fungible and non-fungible



John Graham and Erik Herkströter

TTN Austin 27 May 2022

What is a token?

- A token is a crypto asset stored on a blockchain.
- A fungible token can be exchanged for another in the same way as a dollar bill can be exchanged for another.
- A non-fungible token cannot be interchanged.



Non-fungible tokens - NFTs

- A non-fungible token generally consists of two elements:
 - The proof of ownership/authenticity on the blockchain;
 - The underlying asset.

The NFT therefore could be just a link.

- The proof normally also involves a contract.
- A contract can provide for all kinds of rights such as what one owns, or payments on a subsequent sale.



What is in it for the seller?

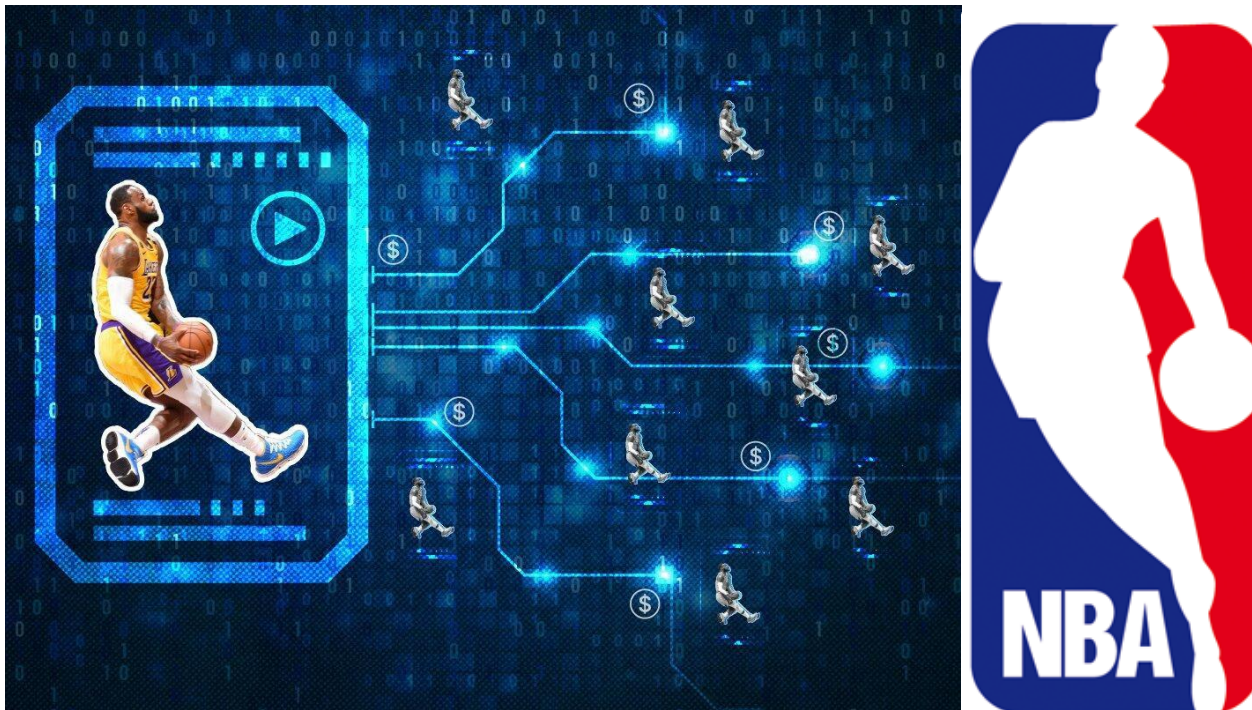
- The seller can retain all kinds of rights. Beeple sold NFT of artwork for USD 69 million and retained the copyright
- Sale of an artwork for a good cause can also bring in income on later transactions: complex in subsequent generations

Digital art by Beeple



Sports NFTs

- NBA Top Shot – have link to a video of part of a match
- Is it art?



Fractional FTs

- Limited edition
- People can invest “shares” in music and art



Tax

- Try to find a similar real world tangible transaction
- What is similar?
- Business or private?
- Investment or trade?
- Long-term or short-term?

Tax issues: income

- Normally no tax till you sell, but not always
- Income from initial sale: work, capital gain, rent?
- Amortisation probably not possible for original owner
- Losses?
- Exchange for other crypto asset?
- Purchase of NFT is a realisation of cryptocurrency used

Tax issues: VAT and sales tax

- What is sold?
- Where is it sold?
- Investment or business?

Tax issues: Gifts and estates

- Sometimes you can pay with art. Does an NFT qualify?
- Donation for charity: value? Is it an asset or a service?
- What if you do not have the codes? Still taxed?

- Wealth tax?

Tax issues: international

- Subsequent payments:
 - Royalties and withholdings?
 - Or work income?
 - AML?
- Payment to artist on licensing out by buyer: pass through for tax purposes?
- Treaty: sale where seller resident
- DAC 6? Reclassification? HTV intangibles?

Fungible tokens: types



- Payment tokens: many types of cryptocurrency
- Utility tokens can be used for goods and services, often in the future. Similar to vouchers
- Security tokens are tradeable and for investment purposes
- Governance tokens give voting rights and similar: often little direct financial benefit to the holder. May be used for voting on blockchain applications.

Fungible tokens

- Can be used to bring in extra income for someone, e.g. sports club, artist
- Football fan tokens can give owners certain perks and voting rights on minor club decisions.
- Some tokens burn when used. Could be akin to share buyback

Tax

Payment tokens

- VAT/GST: Cryptocurrency treated as fiat money (EU)
- Use is like barter

Utility tokens

- Can be subject to VAT
- Timing of income may depend on conditions

Governance/security tokens

- Can be treated like shares or loans
- FIFO?
- VAT exempt

Some tokens can be issued over a period. What is status of unissued tokens? Do they have a value?