The metaverse and digital inheritances

28.03.2022 4 min read

Authors

Hermano A. C. Notaroberto Barbosa

Iara Conrado

Related areas

Wealth and Succession Planning

Topics

Wealth and Succession Planning
Metaverse

Digital property is a reality that will be enhanced in the Metaverse. Music, books, photos, social media profiles and data accounts in the cloud are already common digital assets. In the Metaverse, other digital relations and assets having economic value will be part of everyday life, such as cryptocurrencies, digital spaces and NFTs. It stands to reason that inheritance of digital property will increasingly generate discussion.

Some legal commentators take the position that digital assets form part of the deceased's estate and should be divided among the heirs, especially if they have economic content. Others take the view that digital assets are not inheritable, since they would give the heirs undue access to private data belonging to the deceased, which would violate the deceased's right to privacy. Terms and conditions on the use of digital platforms can also prohibit or limit access to content by heirs. These positions are not antagonistic, and should be reconciled. A single profile on social media can provide access to private messages, but at the same time have an economic value that can be used commercially. It is these grey zones that cause uncertainty.

In the absence of legislation on inheritance of digital property, disputes have begun to arrive in the courts, but precedents are few, and there are diverging decisions. The same jurisdiction can see an appeal court decision denying access to digital assets based on the platform's terms of use and personality rights, and a judgment at first instance granting access to heirs.

Estate planning solutions planning can vary. For example, a will can provide for the disposition of digital assets, in order to avoid disputes and ensure that the deceased's intentions, either to pass on assets, or to protect private data, are fulfilled.

There are a few proposals for legislation on digital inheritance. Two bills would give heirs broad access to digital assets, unless the deceased's will stipulates otherwise. Another bill would restrict inheritance to digital assets that have economic value, and require the exclusion of digital accounts after the user's death, unless the user expressly stipulated differently. Even with these proposals, however, there is still room for dispute over whether digital assets constitute property rights or personality rights.

Digital inheritance, including inheritance in the Metaverse, can also have tax implications. The state tax on inheritance and gifts (ITCMD – *Imposto sobre Transmissão Causa Mortis e Doações*) attaches to property and rights of all kinds. In theory, therefore, it would also attach to digital property that is capable of being valued in money and inherited.

ITCMD is levied by the state where the inventory of the deceased's estate is processed, and is calculated on the basis of the real or market value of the property or right at the date of death, as determined by a court-appointed expert and certified by the court, or as declared by the executor or administrator of the estate, and is subject to review by the tax authorities.

Taxation of physical and digital inheritances is similar. Only property and rights that can be valued in money and are not essentially personality rights are subject to the tax. Liquid assets that can be traded on the market are more easily valued. All the same, the lack of regulation for traded assets, like cryptocurrencies, can make it difficult to prove digital assets' value.

Volatility is another challenge. ITCMD attaches to the property in the estate on the date of death, but is payable on conclusion of the inventory of the estate, which can take some time, especially if there is litigation. It's possible for assets to devalue, even to the point where the value of the asset is no longer sufficient to pay the tax, so that the tax becomes confiscatory. There are cases dealing this issue that involve with shares listed on the stock exchange, and a similar risk exists for cryptocurrencies and other volatile digital assets.

If, however, a digital asset or right can be considered to be located outside Brazil, or the inventory of the estate is not processed here, ITCMD is not payable. In 2021, Brazil's constitutional court, the Supreme Federal Court (STF – *Supremo Tribunal Federal*), ruled that the states do not have the power to tax international inheritances arising after the court's decision, until such time as new national legislation is passed.

Clearly, the challenges involved in the legal and tax treatment of digital inheritances, which were already frequent, have found a vast and fertile field for growth in the Metaverse. More than ever, digital property must be taken into consideration in wealth and estate planning.

>>> This article is part of the e-book "Metalaw: Reflections on Law in the Metaverse".
Click here to access more articles.

› PROFESSIONALS

Professionals who combine legal insight and market perspective

Hermano A. C. Notaroberto Barbosa

Iara Conrado