CHARTER TAX

Helpsheet

UK Tax and Cryptoassets for Individuals

Cryptoassets are now a widely held investment for many individuals, and it is therefore important to understand how HMRC expects this relatively new type of asset to be treated for UK tax purposes. There is still some dispute as to the exact legal nature of cryptoassets, but HMRC have published guidance on how they believe crypto should be treated in the UK.

Are cryptoassets currency?

One thing that is clear from reading through HMRC's crypto manual is that there are a vast array of cryptoassets, and they should not necessarily be thought of in the same way. For example:

- Some are akin to an ownership certificate for a tangible asset (such as gold bullion), or another intangible asset (such as debt)
- Some are separately identifiable assets, whereas others are not (and so could be treated more like shares in a s104 pool)

Once thing that is clear from HMRC's manual is that Cryptoassets are not considered by HMRC to be a currency. The manual is careful not to use phrases which would make the assets sound like currency – referring always to them as "tokens" rather than coins, never referring to the ability to use them to "purchase" etc.

This is an important point because foreign currencies held for personal purposes are not generally subject to capital gains tax. To say that cryptoassets are not foreign currency therefore puts them square in the firing line for capital gains tax.

Is trading cryptoassets gambling?

Some in the early days of Bitcoin sought to argue that their purchases amounted to gambling and the "winnings" should not therefore be charged to tax.

The Crypto manual makes it clear that in the vast majority of cases, acquiring and disposing of cryptoassets would not be considered gambling, but does not completely shut the door on looking at the position on a case by case basis. That said, we think it would be a brave individual to claim gambling in relation to cryptoassets.

Gains and losses on disposal

HMRC identify cryptoassets as a new type of intangible property, capable of increasing or decreasing in value, and capable of being bought, sold, gifted, lost and stolen (but not destroyed).

Gains and losses on the more common types of cryptoassets are likely to be calculated in the same way as for shares under s104 TCGA (that is, the pooling system). S.104 has a catch-all phrase which makes this reading logical. As a result, the bed-and-breakfasting rules which apply to share trades also apply to trades in cryptoassets (though of course you would need to reacquire the same type of cryptoasset in order to engage the rules).

Accessing your cryptoasset usually involves a public and a private key. As the names suggest, the private key is known only to the owner and can be stored electronically or physically (written down and filed securely).

If the private key is lost, the asset still exists but the individual can no longer access the asset. HMRC therefore agree that where there is no prospect of recovering the cryptoasset, a negligible value claim can be made and the loss claimed on their tax return (subject to the usual caveats for such claims). The question as to how you prove that you cannot access the cryptoasset is outside the scope of the present article!

Cryptoassets and income tax

There are broadly three times where income tax may be relevant to those holding cryptoassets:

1. Receipt for services – HMRC confirm that they regard cryptoassets as a readily convertible asset so receiving salary or bonus in the form of crypto will be subject to PAYE and NI. Similarly, receipt for sole trade activities would be regarded as turnover.
2. Mining – where individuals have received payment (usually in the form of more cryptoassets) for confirming a transaction, this will be treated as income in the hands of the beneficial owner. Where it does not amount to a trade, it should be reported as miscellaneous income.
3. Cryptoasset trading – HMRC accept that very few will be regarded as trading in cryptoassets, but it is still possible if the badges of trade are met in relation to the transactions.

Location of cryptoassets

Of great significance to UK resident but not UK domiciled individuals is where cryptoassets are treated as being located.

HMRC accept in their manual that cryptoassets do not fit any of the statutory situs rules for capital gains tax purposes, and in the absence of definitive legislation have put forward their view that in general cryptoassets are located where the beneficial owner is resident.

This is not the case where the cryptoasset represents a physical or other intangible asset (such as gold or debt respectively). In such cases, the situs of the underlying asset is used.

Some of the implications for non-doms of HMRC's view on cryptoassets following their residence are:

- A UK resident non-dom cannot claim the remittance basis in relation to a disposal of cryptoassets
- If a non-dom purchased cryptoassets during a period of temporary non-residence using previously untaxed foreign income or gains, they would be treated as remitting these funds on their return to the UK

- Income in relation to cryptoassets will generally be UK source income and not subject to the remittance basis

Non-doms who own cryptoassets and are moving to the UK for the first time should not need to worry about accidental remittances since they will presumably have been purchased using pre-arrival capital. However, care should be taken if any of the tokens are sold or exchanged.

It is important to remember that the UK does not rebase the value of assets at the time of arrival into the UK. If the cryptoassets stand at a gain, it is worth considering a disposal prior to becoming UK resident (see our helpsheet on pre-residence planning).

Stamp taxes

While HMRC do not consider cryptoassets to be currency, they do recognise that they can of course be used as consideration in the purchase of assets, including company shares and real estate. Based on their knowledge of the cryptoassets currently available, HMRC do not anticipate that any stamp taxes will arise directly from the purchase and sale of cryptoassets (though of course it may arise indirectly as a result of the purchase of marketable securities, land transactions etc.).

HMRC information powers

HMRC are now receiving more information regarding crypto transactions, so it should not be assumed that activity is outside of HMRC's visibility. Where there is doubt as to whether historic transactions have been correctly reported, immediate action should be taken to review and, if necessary, disclose to HMRC.

Conclusions

HMRC's position on cryptoassets is largely as we would expect, and it is useful to have their published view on how existing tax law treats this new type of asset.

One particular area where care is needed will be for non-domiciled and internationally mobile individuals, since they could find themselves with unexpected UK tax liabilities. It may well be possible to mitigate these through an understanding of the rules and appropriate planning. We will be happy to review transactions for clients who are unsure if transactions have been correctly reported.

For more information, please contact **Janet Pierce** on **janet.pierce@charter-tax.com** or **Tom Barker** on **thomas.barker@charter-tax.com** or call us on **+44 (0)20 7084 5771**.

Disclaimer

We undertake to apply reasonable care and skill in the provision of advice. We do not guarantee that tax planning steps will in all circumstances achieve a certain legal effect.

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