



UK taxation of cryptoassets

Briefing

November 2019

HMRC has published its guidance on the tax treatment of cryptoasset exchange tokens for businesses. A key point to note is that HMRC do not consider that exchange tokens are money, currency or securities. The guidance only covers exchange tokens such as Bitcoin. HMRC will publish separate guidance relating to security tokens and utility tokens.

In preparing the newly published guidance, HMRC has consulted widely and taken comments into account. It is to be hoped that, in time, HMRC will publish further guidance – for example, considering in what circumstances cryptoasset mining could result in a non-UK person having permanent establishment in the UK and whether the investment manager exemption could apply where funds hold cryptoassets. It is also likely that HMRC practice will develop over time.

As ever, it should be noted that the HMRC statements are guidance; they represent HMRC's views but ultimately it may be the courts that determine the correct UK tax treatment of cryptoassets.

Corporation tax

HMRC's view is that corporation tax will be imposed on transactions involving cryptoassets, applying general principles as to whether taxpayers have made a gain or loss, and the basis on which corporation tax is accounted for. Typically this will result in taxpayers being taxed on cryptoasset profits either as a trading profit or a chargeable gain. Which side of the line activities fall will be determined on general principles. Since cryptoassets are not considered to be money, a loan of (for example) Bitcoin to a company would not fall within the loan relationship rules.

One interesting point is that HMRC's approach when cryptoassets are received as a result of a "hard fork" where the single blockchain splits into two and a new type of cryptoasset is created. In this situation, for capital gains purposes, HMRC will treat the value of the new cryptoassets created by the hard fork as derived from the original cryptoassets, and according costs will be split between the original and the new cryptoassets to calculate any gain on disposal. As a result, no tax will generally be payable on receipt of the new cryptoassets. By way of contrast, the IRS seeks to tax the market value of the cryptoassets on receipt.

Employment taxes

Where an employee receives exchange tokens as earnings from his employer, the value of the asset is subject to income tax and National Insurance contributions. Whether the tax charge arises under PAYE will depend upon whether the tokens are readily convertible assets in the normal way.

Stamp taxes

HMRC does not consider that the transfer of any current exchange tokens should be subject to stamp duty or stamp duty reserve tax on the basis that such tokens are not stock/marketable securities or chargeable securities.

Interestingly, HMRC take the view that exchange tokens are not typically consideration for stamp duty purposes, save where they are treated as debt. By way of contrast, exchange tokens are treated as consideration for stamp duty reserve tax purposes. This has led to difficulties that where shares are sold intra-group, for example for Bitcoin, stamp duty group relief should not be available and so it is not possible to "frank" the stamp duty reserve tax charge.

VAT

HMRC generally accept that no VAT is due on the transfer of an exchange token. However, where goods or services are acquired with tokens, VAT is due on the underlying service in the usual way.

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