

CRYPTOCURRENCY AND THE ISLE OF MAN

◀ at the rates of 10%, 10% and 20%, respectively, the standard rate for all resident and non-resident companies in the IOM is 0%. This means that profits will not be taxable in the company and will only become taxable when they are taken out of the company in the form of loans, dividends, wages or any other distributions.

Could trading in cryptocurrency be considered gambling proceeds and thus 'tax free'?

In HMRC manuals, it recognises that a transaction may be so highly speculative that it is not taxable or any losses relievable, i.e. gambling or betting wins are not normally taxable and losses cannot be offset against profits.

However, for most cryptocurrencies, the markets have become (relatively) more established, investors now have specialist and sophisticated investment and trading strategies which do not rely solely upon chance. As such it may be difficult to argue that the profits made on mainstream currencies such as Bitcoin are gambling per se.

For some of the lesser known currencies, the markets may be more random and it may be viewed as gambling.

The HMRC Business Income Manual states that *'the basic position is that betting and gambling, as such, do not constitute trading'*. This refers to the case of *Graham v Green* (1925) 9 TC 309.

The definition of a bet as reflected in HMRC guidance was considered in *Carhill v Carbolis Smoke Ball Co.* (1892) 2 QB 484 "it is essential to a wagering contract that each party under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining uncertain until the issue is known".

However, as stated in HMRC guidance, this will be judged on a case by case basis applying the relevant legislation and case law.

Trading profits and income tax

In the majority of cases, profits and losses made by a non-incorporated business on cryptocurrency transactions will be reflected in their accounts and taxable under normal income tax (IT) rules.

However, due to the lack of legislation in place, under some circumstances, it can be difficult to determine whether the cryptocurrency trading would

qualify as trading activity or a capital transaction and thus be subject to income tax.

Case Law has established nine 'badges of trade' (HMRC) which are to be considered when determining whether or not an activity constitutes a trade for tax purposes. The first badge is "profit seeking motive". The intention to make a profit can indicate a trading activity, however by itself it is not enough. In case *Salt v Chamberlain* Ch D 1979, 53 TC 143; [1979] STC 750, a research consultant made a loss on the Stock Exchange after trying to forecast the market. The loss was made after several years and over 200 transactions. This was not seen as trade and capital in nature. It was concluded that share trading by a private individual can never have the badges of trade pinned to them. These transactions are subject to capital gains tax. The same conclusion was met in a more recent case *A Ali v HMRC* (2016) UKFTT 8 (TC) also established that profits arising to individuals from share dealing are not trading profits even if badges of trade are present.

This distinction could have a material difference on the IOM, where capital transactions are not usually subject to tax.

Chargeable Gains

If the cryptocurrency activity is not within trading profits or loan relationship rules, then the activity would normally be taxable as a chargeable gain or allowable loss (for an individual or CT on chargeable gains if they accrue to a company).

An example of this would be where a UK resident individual sells some of his or her privately owned cryptocurrency. This would likely result in either a capital gain or an allowable loss, subject to the annual allowance.

What about Manx Residents?

The tax position in the IOM differs to that of the UK in that the IOM does not have CGT.

What this means for the average person owning and hobby trading in cryptocurrencies is that, if following the UK guidance and the transactions are classified as capital, there will be no tax due on the buying and selling of cryptocurrencies.

Administration

Although it may be a heavy burden to administer; due to the lack in clarity of treatment for taxation purposes, it is important that you maintain detailed records of all cryptocurrency transactions and gains/losses. This is not only

important for tax purposes but to enter the banking system requires detailed source of funds which would often necessitate auditing all transactions.

VAT

In all instances, goods and services paid for in cryptocurrency are subject to VAT in the usual way. The value of the supply of goods or services on which VAT is due will be the sterling value of the cryptocurrency at the point the transaction takes place.

The IOM is in a customs union with the UK and therefore the UK rules apply in respect of VAT. The UK has ruled that in line with Article 135(1)(d) of the EU VAT Directive, the activities of mining a digital currency, exchanging it or charging for related transactions will not be subject to VAT because insufficient link between services provided and any consideration received. This was the European Court of Justice's view in Case C-264/14 that transactions in cryptocurrencies are exempt for VAT purposes under article 135(1)(e) of the Principle VAT Directive. This exempts transactions concerning currency, bank notes and coins used as legal tender from VAT. However, uncertainty exists as to whether or not cryptocurrencies can be considered as a currency as they do not meet the definition of legal tender. The Court of Justice of the European Union concluded that cryptocurrency is a contractual means of payment and therefore within the scope of this exemption. This is in contrast to the view taken by the United States, who view cryptocurrencies as property.

IHT

For persons resident and domiciled in the UK, the ownership or transfer of cryptocurrency will follow the usual rules. For individuals who are domiciled and resident in the IOM and not the UK, there is unlikely to be a charge to IHT. It is important to note that IHT is a complex tax and will depend upon an individual's circumstances.

How can we help?

This article is intended as an introduction and a brief overview of the regulatory and tax treatment of cryptocurrencies in the IOM and to an extent, in the UK and cannot be relied upon as tax advice. If you have any queries regarding this article or require specific tax advice, please visit <http://www.hotchkiss.im>



If following the UK guidance and transactions are classified as capital, there will be no tax due on the buying and selling of cryptocurrencies in the Isle of Man.

