

Cryptoassets

Speed read

- The taxation of cryptoassets is a highly complex and technical area.
- Chargeable events can occur at many stages in the chain of ownership of cryptoassets, many of which do not coincide with a disposal of value.
- Complexities can arise from the situs of the cryptoasset, which may be essential to understand in order to reach the correct tax position.
- HMRC's view is that the situs of the asset for tax purposes is where the beneficial owner of the cryptoasset resides.
- There is a current focus from HMRC on this area of taxation, with 'nudge' letters being issued to taxpayers where HMRC have obtained information that suggests cryptoassets are held.

What are Cryptoassets?

Cryptoassets, including crypto currencies such as bitcoin (BTC) and etherium (ETH) have become increasingly popular amongst investors over the last couple of years. Some large corporates have begun accepting bitcoin as a payment option and so it is becoming a more widely accepted method of payment.

We are also seeing a rising popularity of other types of cryptoassets, one of which is Non-Fungible Tokens (NFT's). An NFT is a unique digital asset that provides ownership of items such as art, music and video clips and uses the same technology that powers crypto currencies.

The disposal of cryptoassets, and in particular cryptocurrency, has at least four different actions that would trigger a charge to tax. These are as follows:

The sale or disposal of the cryptocurrency

1

The mining, staking or airdrops of such assets

2

The swapping of the cryptocurrency i.e. swapping Bitcoin for Ethereum

3

The exchange of the cryptocurrency for goods/services

4

There are then various possible tax treatments for profits or gains realised on the disposal of cryptoassets. If a taxpayer is considered to be trading in cryptoassets, any profits on disposal are likely to be classed as trading income and subject to income tax. In the majority of other instances, the gains will be subject to Capital Gains Tax ('CGT').

HMRC consider cryptoassets to be fungible assets which therefore fall within the pooling rules for CGT purposes. These are complex rules which require the assets to be matched in a specific order when disposing of them (remember: a disposal is not just a pure sale of the cryptoasset).

Taxation of Cryptoassets



The taxation of cryptoassets is complex and fast moving. In particular, consideration needs to be taken as to the situs of the assets, which are intangible, for UK tax purposes. HMRC published their [Cryptoassets manual](#) on 30 March 2021 which gives their view on the situs of such assets for UK tax purposes. HMRC's view is that the residence of the beneficial owner of the cryptoasset is where that asset is situated for tax purposes. Residence in this context means tax residence and not residence for any other purpose. An individual is a UK resident for tax purposes if they are resident by virtue of the Statutory Residence Test ('SRT').

There are a number of key reasons as to why the situs of the cryptoasset is relevant to understand the UK tax consequences:

1. For UK resident and non-domiciled individuals, it is necessary to establish (where the remittance basis of taxation is claimed):
 - a. Whether the purchase of the asset itself would be considered a taxable remittance if offshore funds are used; and
 - b. Whether any gains are considered foreign gains and therefore potentially subject to the often more beneficial remittance basis of taxation;
2. For Inheritance Tax (IHT) purposes to establish whether the cryptoasset is excluded property; and
3. Whether the application of any penalties (if applicable) are subject to an increased rate applicable to offshore assets.

HMRC's view



HMRC's view in their published guidance is that the location of the cryptoasset for tax purposes is situated where the beneficial owner resides for tax purposes. Therefore, any disposals of cryptoassets by UK-resident taxpayers are chargeable to income tax or CGT at the date of disposal. However, it is important to note that this is purely guidance and has not yet been tested by the Courts.

The Society of Trust and Estate Practitioners ('STEP') issued a [guidance note](#) on 3 September 2021 which provides an alternative view on the location of crypto currencies, stating that 'HMRC's view does not appear to be based on any legal principle'. Broadly, this is that English law has principles to establish the location of intangible assets, of which cryptoassets are one, which do not consider the tax residence of the beneficial owner.

What does this mean for the taxpayer?



STEP and professional advisors are forming their own views as to the location of the cryptoasset for tax purposes. If an alternative view is taken to that in HMRC's published guidance, professional advice should be taken.

In particular, where a taxpayer is filing in a way that does not accord with HMRC's guidance i.e. an alternative view is taken, we strongly recommend that the appropriate disclosure is made as part of the submission of the relevant tax return. This is both to protect the relationship with HMRC and to minimise the risk of an accusation that behaviours are culpable. The obtaining of advice helps the taxpayer to protect their position if HMRC enquires into the tax return. If no advice is taken and the position as submitted is not agreed by HMRC, it could be deemed by HMRC that the taxpayer has behaved carelessly.

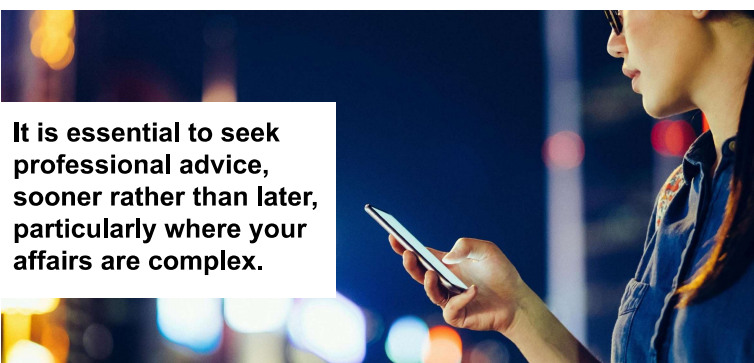
How can PwC help?



HMRC have begun gathering information from exchanges that are used to buy and sell cryptoassets, and are using this information to issue 'nudge' letters to taxpayers who hold cryptoassets. Taxpayers who hold or have previously held cryptoassets and have not yet disclosed this to HMRC should seek professional advice to:-

1. Establish whether a disclosure to HMRC is required to remediate any historic issues; and
2. To ascertain the correct position to take on taxing cryptoassets going forward, including any necessary filing requirements. In particular, this involves addressing the complexities of the timing and quantum of the taxation of cryptoassets.

It is important to point out that if HMRC issue a 'nudge' letter or open an enquiry into your tax return, any subsequent disclosure would be classified as prompted for penalty purposes unless there has already been a disclosure, or a formal intention to disclose to HMRC – that is, any penalties (if applicable) subsequently levied would not benefit from the increased reduction if you make an unprompted disclosure to HMRC of any additional tax due. If you are in receipt of a nudge letter, it is important to obtain timely advice to review your tax position and respond to HMRC.



It is essential to seek professional advice, sooner rather than later, particularly where your affairs are complex.



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