



CRYPTO CURRENCY - TAX FOR BUSINESSES

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HMRC has published guidance on the taxes that a company or other business entity may have to consider if they are undertaking transactions in crypto currencies such as Bitcoin.

This briefing note sets out some of the key points, the full guidance can be viewed here <https://www.gov.uk/government/publications/tax-on-cryptoassets/cryptoassets-tax-for-businesses>.

If you wish to speak to a member of our team regarding the accounting for and taxation of crypto currency transactions please contact us on 020 7330 0012.

WHICH TAXES APPLY?

If a company or business is carrying out activities which involve exchange tokens, they are liable to pay tax.

These activities will include:

- * buying and selling exchange tokens
- * exchanging tokens for other assets (including other types of cryptoassets)
- * 'mining'
- * providing goods or services in return for exchange tokens

The type of tax will depend on who is involved in the business and the activities it carries out (including whether these count as a trade). It is, however, likely that they will be liable to pay one or more of the following:

Capital Gains Tax
Corporation Tax
Income Tax
National Insurance contributions
Stamp Taxes
VAT

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The level at which a business pays tax depends upon its income, expenditure, profits and gains. These must be declared annually to HMRC on either:

Self Assessment tax return (for sole traders and partnerships)

Company Tax Return (for companies)

HMRC will consider each case on the basis of its own facts and circumstances. It will apply the relevant legislation and case law to determine the correct tax treatment (including where relevant, the contractual terms regulating the exchange tokens).

COMPLETING TAX RETURNS

Calculating an individual's or a company's taxable profits is undertaken in pounds sterling. However, exchange tokens (including bitcoin) can be traded on exchanges which may not use pounds sterling. If the transaction does not have a pound sterling value (e.g. the bitcoin is exchanged for ether), in this circumstance an appropriate exchange rate must be established in order to convert the transaction to pounds sterling.

The value of any gain (or loss) must be calculated by converting to pounds sterling using the appropriate rate at the time of each transaction. Care needs to be taken to arrive at a valuation for the transaction using a consistent methodology. Records of the valuation methodology must be kept.

A company may elect to designate a non-sterling currency as its functional currency. In such circumstances the transactions need to be converted to the functional currency using an appropriate rate at the time of each transaction. At the end of the accounting period necessary steps will need to be taken to complete the tax return in pounds sterling.

TRADING IN EXCHANGE TOKENS

Whether the buying and selling of exchange tokens amounts to a trade depends on a range of factors including:

- * degree and frequency of activity
- * level of organisation
- * intention (including risk and commerciality)

If a person or business's activities amount to a trade, the receipts and expenses will form part of the calculation of the trading profit. If the exchange tokens are held as part of an existing trade, profits of a revenue nature will need to be included in the trading profits. If the activities do not amount to a trade, businesses must still consider if other legislation applies.

MINING

Cryptoassets can be awarded to 'miners' in return for verifying additions to the distributed ledger. Whether such activity amounts to a taxable trade (with the cryptoassets as trade receipts) will depend on the particular facts and the following needs taking into account:

- * degree and frequency of activity
- * level of organisation
- * risk
- * commerciality

If the mining activity does not amount to a trade, the value (at the time of receipt) of any cryptoassets awarded for successful mining will generally be taxable as miscellaneous income, with any appropriate expenses reducing the amount chargeable. If the activity does amount to a trade, any profits must be calculated according to the relevant tax rules.

CORPORATION TAX

When calculating Corporation Tax, companies must take into account all of the exchange token transactions they have carried out (as they would with any other type of asset). It is important to note that HMRC does not consider any of the current types of cryptoassets to be money or currency.

This means that any Corporation Tax legislation which relates solely to money or currency does not apply to exchange tokens or other types of cryptoasset.

If the activity concerning the exchange token is not a trading activity, and is not charged to Corporation Tax in another way (such as the non-trading loan relationship or intangible fixed asset rules) then the activity will be the disposal of a capital asset and any gain that arises from the disposal would typically be charged to Corporation Tax as a chargeable gain.

INVESTMENTS (CHARGEABLE GAINS)

All exchange tokens are digital and therefore intangible. However, they count as a 'chargeable asset' for Capital Gains Tax and Corporation Tax on if they are both:

- * capable of being owned
- * have a value that can be realised

If a company holds exchange tokens as an investment, they are liable to pay Corporation Tax on any gains they realise when they dispose of it.

What constitutes a disposal?

A 'disposal' is a broad concept and includes:

- * selling exchange tokens for money
- * exchanging exchange tokens for a different type of cryptoasset
- * using exchange tokens to pay for goods or services
- * giving away exchange tokens to another person

BLOCKCHAIN FORKS

Some cryptoassets are not controlled by a central body or person, but operate by consensus amongst that cryptoasset community. When a significant minority of the community want to do something different they may create a 'fork' in the blockchain.

There are 2 types of forks:

- * a soft fork
- * a hard fork

A soft fork updates the protocol and is intended to be adopted by all. No new types of token or blockchain are expected to be created. A hard fork is different and can result in new types of token coming into existence.

AIRDROPS

An 'airdrop' is when someone receives an allocation of tokens or other cryptoassets, for example, when tokens are given as part of a marketing or advertising campaign. The airdropped cryptoasset, typically, has its own infrastructure (which may include a smart contract, blockchain or other form of distributed ledger technology that operates independently of the infrastructure for an existing cryptoasset).

VAT

VAT is due in the normal way on any goods or services sold in exchange for cryptoasset exchange tokens. The value of the supply of goods or services on which VAT is due will be the pound sterling value of the exchange tokens at the point the transaction takes place. For VAT purposes, bitcoin and similar cryptoassets are to be treated as follows:

exchange tokens received by miners for their exchange token mining activities will generally be outside the scope of VAT on the basis that:

- * the activity does not constitute an economic activity for VAT purposes because there is an insufficient link between any services provided and any consideration; and
- * there is no customer for the mining service

when exchange tokens are exchanged for goods and services, no VAT will be due on the supply of the token itself

charges (in whatever form) made over and above the value of the exchange tokens for arranging any transactions in exchange tokens that meet the conditions outlined in VAT Finance manual (VATFIN7200), will be exempt from VAT under Item 5, Schedule 9, Group 5 of the Value Added Tax Act 1994.

The VAT treatments outlined above are provisional pending further developments; in particular, in respect of the regulatory and EU VAT positions.

PAYING EMPLOYEES IN CRYPTOASSETS

If an employer 'pays' exchange tokens as earnings to an employee, those exchange tokens count as 'money's worth' and are subject to Income Tax and National Insurance contributions on the value of the asset.

How to account for the income tax and National Insurance contributions depends on whether the exchange tokens are readily convertible assets. In particular, exchange tokens are readily convertible assets if trading arrangements exist, or are likely to come into existence, the effect of which is to enable the tokens to be converted into their monetary value. HMRC considers that exchange tokens generally will be readily convertible assets.



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