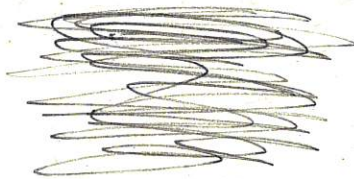




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Date 6 April 2018

Further to my letter of 8 February concerning your original enquiry dated 9 January 2018 regarding information about how cryptocurrency trading and other practices are dealt with from a taxation perspective. After careful consideration of your enquiry I would respond to the various points raised as follows:-

1. **In the brief you state that “a transaction may be so highly speculative that it is not taxable or any losses relievabale”. How do we determine if the activity is too speculative to be taxable? Is there a test for this?**

1.1. The basic position is that betting and gambling do not constitute trading, so any profits from those activities would not be subject to Income Tax. There is no single test whether an activity can be described as betting or gambling. In the tax case of *Graham v Green* (9 TC 309) the Judge characterised the nature of a bet where he said:

“A bet is merely an irrational agreement that one person should pay another person on the happening of an event.”

1.2. The High Court in the contract law case of *Carlill v Carbolic Smoke Ball Company* gave a more a detailed definition of a bet or wager. Hawkins J. said:

“...It is not easy to define with precision what amounts to a wagering contract, nor the narrow line of demarcation which separates a wagering contract from an ordinary contract; but, according to my view, a wagering contract is one by which two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent on the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties. It is essential to

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a wagering contract that each party may 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 that issue is known."

- 1.3. For information, Carbolic Smoke Ball Company appealed this decision and the case was heard by the Court of Appeal ([1892] EWCA Civ 1). Lindley LJ gave the first judgment and said:

"I will begin by referring to two points which were raised in the Court below. I refer to them simply for the purpose of dismissing them. First, it is said no action will lie upon this contract because it is a policy. You have only to look at the advertisement to dismiss that suggestion. Then it was said that it is a bet. Hawkins, J., came to the conclusion that nobody ever dreamt of a bet, and that the transaction had nothing whatever in common with a bet. I so entirely agree with him that I pass over this contention also as not worth serious attention"

- 1.4. This indicates that the description of a bet or wager given in the High Court decision was accepted by the Court of Appeal.
- 1.5. It will be down to a person to consider the particular facts of any transaction involving cryptocurrencies that they have entered into to conclude whether that transaction had the character of betting or gambling. Guidance on the Income Tax treatment of betting and gambling can be found in the Business Income Manual at <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim22015> onwards. Guidance on what is trading can be found in the Business Income Manual at <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim20000> onwards.
- 1.6. The position for Capital Gains Tax is that a specific exemption has been provided for gains arising from certain winnings. This exemption is section 51(1) Taxation of Chargeable Gains Act (TCGA) 1992. This exemption applies to *"winnings from betting, including pool betting, or lotteries or games with prizes"*. If a transaction can be characterised as betting or gambling for Income Tax purposes then any gain or loss arising the transaction will be exempt for Capital Gains Tax purposes.

2. At what point do you calculate capital gains?

- 2.1. There are no special tax rules for cryptocurrencies so the rules in the TCGA 1992 will apply. The basic position is that where a person makes a disposal (including a part disposal or deemed disposal) of an asset then that person will need to compute their gain or loss.
- 2.2. HMRC has already accepted that the cryptocurrency Bitcoin is an asset for Capital Gains Tax purposes. HMRC has not yet formed a view whether any other cryptocurrency is an asset. For cryptocurrencies other than Bitcoin, you will need to carefully consider whether the cryptocurrency held is an asset for Capital Gains Tax purposes. The courts have found that something intangible will be an asset where:
- it is capable of being owned, and
 - its value is capable of being realised.
- 2.3. Further guidance on these characteristics in the context of rights can be found in the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg12010>.
- 2.4. If the cryptocurrency is an asset then the beneficial owner of that cryptocurrency will need to compute their gain when they make a disposal (or deemed disposal) of any quantity of the cryptocurrency. Examples of circumstances that will be disposals include (but may not be limited to) exchange or sale of the cryptocurrency for sterling, exchange or sale of the cryptocurrency for a currency other than sterling,

exchange of the cryptocurrency for a different cryptocurrency, exchange of the cryptocurrency for goods or services (i.e. using the cryptocurrency to make a payment), gifting the cryptocurrency to another person.

- 2.5. HMRC's understanding is that each cryptocurrency is fungible (individual units are of such nature or kind so as to be interchangeable). This means that section 104 TCGA 1992 will require each type of cryptocurrency to be brought into a pool, with each pool being treated as a single asset for Capital Gains Tax purposes. A pool will grow as further units of the cryptocurrency are acquired and shrink as units of the cryptocurrency are disposed of.
- 2.6. One effect of this pooling rule is that any acquisition costs are attributable to the pool itself and not to the individual units of a cryptocurrency held in a pool. When some of the units of a cryptocurrency are sold or otherwise disposed of, that event is treated as a part disposal of the pool itself and an appropriate proportion of the allowable expenditure are included in the computation that part disposal. When all of the units of a cryptocurrency are disposed of, the person is treated as having made a disposal of the pool itself and all of the remaining allowable expenditure that was attributable to that pool can be included in the computation of the disposal.
- 2.7. Guidance on pooling of assets can be found in the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg51500c>.

3. If we need to calculate the gain when we trade one cryptocurrency for another how do you calculate the gain in sterling as there is no sterling price involved?

- 3.1. Where the cryptocurrency is disposed of for consideration other than sterling or gifted to another person then the market value rule at section 17 TCGA 1992 will apply. Market value means the sterling price the asset might reasonably be expected to fetch on a sale in the open market. A sterling value should be ascribed to the transaction even where the cryptocurrency being disposed of can't be directly exchanged into sterling or any other fiat currency. General guidance on the principles of valuation can be found in the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg16330p>.
- 3.2. You can use a form CG34 to ask HMRC to check the value you intend to use when you make your return of the disposal. Further guidance on this process and the form itself can be found at <https://www.gov.uk/government/publications/sav-post-transaction-valuation-checks-for-capital-gains-cg34>.

4. When calculating a capital gain do we have to include the exchange fee as part of the gain or is it the case that as we need to pay the fee to actualize the gain that we only calculate the gain from the value received at the end once fees are paid?

- 4.1. The costs that can be included as deductions in the Capital Gains Tax are limited to those allowed by section 38 TCGA 1992. The term 'exchange fee' is too broad for HMRC to be able to give a blanket answer whether such a cost will be allowable in all cases. It will be down to the person making the disposal to consider whether the exchange fee was capable of falling within one of the categories in section 38 TCGA 1992.
- 4.2. Certain incidental costs of acquisition and/or disposal can be included in the computation. The incidental costs that are allowed are listed at section 38(2) TCGA 1992 and include "*costs of transfer or conveyance*". If the facts showed that the exchange fee was a cost of transferring or conveying the cryptocurrency to the purchaser then the cost would be within section 38 TCGA 1992.

- 4.3. General guidance on what expenditure can be included in the Capital Gains Tax computation can be found at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg15150p>.
5. **Should cryptocurrency be sold for sterling below the Capital Gains Tax threshold and then purchased again at a later date, would that be deemed a separate transaction?**
- 5.1. Yes these would be separate transactions.
6. **Are multiple gains below the Capital Gains Tax threshold cumulative or do you need to pay tax only on gains that on their own are above the threshold?**
- 6.1. Capital Gains Tax is an annual tax paid on the total chargeable gains that accrue to an individual in a tax year. In order to calculate the amount of Capital Gains Tax due, the individual must first compute the gains or losses that arise from each disposal the individual made during the tax year. The individual needs to total their chargeable gains for the year and then reduce that amount by their allowable losses for the year.
- 6.2. If the overall result is a loss then that can be carried forward to set against chargeable gains arising in future years. If the overall result is still a chargeable gain then the individual can reduce that by the Annual Exempt Amount. Also if the individual has any allowable losses brought forward from earlier tax years then these can reduce the chargeable gain.
- 6.3. Please note that a loss is only an allowable loss if it is notified to HMRC. For further guidance see the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg15800>.
- 6.4. For further guidance on reducing chargeable gains by allowable losses and the Annual Exempt Amount see the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg21560> onwards.
7. **When cryptocurrencies are bought as an investment but then used to purchase items on the Internet how do we calculate capital gain as it has been traded for an asset?**
- 7.1. Where a cryptocurrency is given in exchange for goods or services then there is a disposal of the cryptocurrency for Capital Gains Tax purposes. The consideration for the disposal is the market value in sterling of the goods or services received. Market value means the sterling price the asset might reasonably be expected to fetch on a sale in the open market. General guidance on the principles of valuation can be found in the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg16330p>.
8. **What is the UK tax position for people who purchase cryptocurrency as an investment but then donate that cryptocurrency to a charity rather than sell it?**
- 8.1. Where a person transfers the beneficial ownership of an asset to another person there is a disposal of that asset for Capital Gains Tax purposes whether or not the transferor receives any consideration for the disposal. Where the disposal is a bargain made otherwise than at arm's length, such as a gift, then the market value rule at section 17 TCGA 1992 will apply. The transferor's consideration will be deemed to be the market value of the asset at the time of the transfer.
- 8.2. There is a different approach where the gift is made to a charity. A charity is defined as "*any body of persons or a trust which is established for charitable purposes only.*" 'Charitable purposes' covers:
- the relief of poverty

- the advancement of education
 - the advancement of religion
 - certain, but not all, purposes beneficial to the community.
- 8.3. Where the gift is to a charity then section 257 TCGA 1992 applies. The consideration will be the greater of:
- the amount allowable as a deduction under section 38 TCGA 1992, and
 - the actual amount of consideration given by the charity to the giftor acquire the asset.
- 8.4. There are two practical effects of section 257 TCGA 1992:
- the giftor will be unable to realise a loss on their disposal by way of a gift to a charity;
 - if the charity gives an amount of consideration that exceeds the giftor's acquisition cost to acquire the asset then the giftor will realise a gain.
- 8.5. Further guidance on gifts to charities can be found in the Capital Gains manual at <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg66620p>.

9. Can gains be shared between spouses thus granting twice the allowance?

- 9.1. Where the beneficial owner of an asset disposes of that asset then they will realise a gain. If an asset is beneficially owned by two or more people then each person will make a disposal of their share of that asset. Any consideration for the disposal and expenditure allowed by section 38 TCGA 1992 will need to be apportioned on a just and reasonable basis between all of the people. Each person will then produce their own computation of their disposal. Each individual would be entitled to the Annual Exempt Amount.

10. For people being paid in bitcoin and buying and selling everyday items with it, essentially using it as their de facto currency in place of sterling, do they need to calculate the value of every transaction they make if the value of their bitcoin wages continues to rise?

- 10.1. Where a cryptocurrency that is an asset Capital Gains Tax purposes is given to a person as payment, such as for services provided as an employee or contractor, then the person will be treated as having acquired the cryptocurrency at its market value as per section 17(1) TCGA 1992. The receipt of the cryptocurrency in such a situation may be subject to Income Tax in accordance with the rules of the relevant tax regime.
- 10.2. A subsequent disposal of that cryptocurrency to purchase goods or services will be a disposal of an asset for Capital Gains Tax purposes. The consideration for the disposal will be the market value of the goods or services received in exchange for the cryptocurrency. The acquisition cost to be included in the Capital Gains Tax computation will be the market value of that cryptocurrency when it was acquired. This means that only the gain realised by the holder of the cryptocurrency from acquisition to disposal should be subject to Capital Gains Tax.

Yours sincerely



Alan Slater
Technical Support Inspector

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