



Taxation of cryptocurrency: reporting charitable contributions in the US and new developments in the UK

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In recent years, owners of appreciated cryptocurrency assets have donated cryptocurrency to the relatively small number of charities that currently accept such donations. Apart from convenience, a significant driver behind these donations is that donors of cryptocurrency do not have to pay US income tax on any appreciation in the donated cryptocurrency and generally can take a deduction equal to the full value of the donated cryptocurrency. Charities that accept (or want to accept) donations of cryptocurrency face a number of administrative challenges. This update addresses one such challenge – US income tax reporting – and outlines recent IRS guidance on the topic. Additionally, we review new taxation guidance issued in the United Kingdom.

In the October 2019 edition of this newsletter, we discussed the IRS's updated guidance on the tax treatment of cryptocurrency transactions generally. Most importantly, the IRS currently treats cryptocurrency as property, not actual currency.

US: donations of cryptocurrency generally

In addition to its published guidance, the IRS publishes on its website a list of Frequently Asked Questions on Virtual Currency Transactions, which applies the principles outlined in IRS guidance to a larger number of situations, including

donations of cryptocurrency to qualifying charitable organizations (referred to as charities). In December 2019, the IRS quietly added more guidance to its FAQ, specifically adding two new questions and answers related to how charities should deal with the receipt of donated cryptocurrency.

Prior to December 2019, two questions related to donors of cryptocurrency had been included in the FAQ. *First*, Q/A #33 confirmed that a donation of cryptocurrency to a charity will not result in income, gain, or loss to the donor, which is consistent with the IRS view that cryptocurrency is a capital asset in the hands of the taxpayer and that donation of the asset is not considered to be a sale or exchange. *Second*, Q/A #34 confirmed that the amount of a donor's deduction is generally equal to (i) the fair market value of the cryptocurrency at the time of the donation, if the donor held the virtual currency for more than one year, or (ii) if the cryptocurrency had been held for one year or less at the time of the donation, the lesser of the donor's tax basis in the cryptocurrency or the cryptocurrency's fair market value at the time of the contribution. Other parts of the FAQ discuss how to measure holding period and fair market value for this and other purposes.

US: tax reporting obligations of charities accepting donations of cryptocurrency

The two questions added to the FAQ in December 2019 address a charity's reporting obligations when receiving donations of cryptocurrency. For purposes of discussion, we assume that all donations of cryptocurrency are worth more than \$250.

Q/A #35 clarifies that a charity, upon receiving a donation of cryptocurrency, must (i) send a donor acknowledgement letter to the donor of such cryptocurrency and (ii) where applicable, sign the donor's IRS Form 8283. Form 8283 is a form completed by a donor when making charitable donations of non-cash items valued over \$500. However, the recipient charity is required to sign the donor's Form 8283 if the amount of the donation is more than \$5,000. Thus, if a charity receives a donation of cryptocurrency valued over \$5,000 (which generally would be the case, in our experience), the donor must have the charitable organization sign Part IV of its Form 8283 in order to claim the deduction on an income tax return. An exception exists for certain publicly traded securities that have market quotations readily available, but this exception does not currently apply to cryptocurrency (despite quotes being readily available on Coinbase and other similar exchanges). It is important to note that, by signing Form 8283, a charity would be simply acknowledging that the donation was received and would not be attesting to the value of the donation being claimed on the form. In fact, in connection with any contribution of cryptocurrency, we would expect a charity not to provide a specific value for the contribution (including on the donor acknowledgement letter).

Q/A #36 outlines the charity's own reporting responsibilities. When accepting a charitable donation of cryptocurrency, a charitable organization must (i) report it on a Form 990-series annual return and its associated Schedule M, if applicable (as is the case with any non-cash contributions) and (ii) file Form 8282 if the charity sells or exchanges the cryptocurrency within three years after the date they originally received the cryptocurrency and give the original donor a copy of the form. As we understand it, most charities immediately convert any cryptocurrency they receive into actual currency (presumably, US dollars), which therefore would trigger the requirement to file Form 8282, and this must be done within 125 days of the conversion. It is important to note that a charity will not be required to provide a valuation or appraisal in connection with filing Form 8282; presumably, the amount of US dollars a charity receives when converting the donated cryptocurrency would be the amount reported on its Form 8282.

We would expect that many charities already possess some reporting infrastructure relating to contributions of publicly traded securities, but since cryptocurrencies are not considered publicly traded securities but instead are treated as other property, charities will have to comply with the reporting requirements described above. If a charity fails to file the appropriate forms, while the IRS can assess penalties against the charity, such penalties may be abated if the charity can show that failing to file was due to reasonable cause and not due to willful neglect of the requirements. The more significant consequence of a charity failing to meet its reporting requirements is the potential disallowance of the charitable deduction to the donor, which could affect a charity's ability to garner donations of cryptocurrency in the future.

UK: HMRC issues cryptocurrency taxation guidance for businesses

On November 1, 2019, the United Kingdom's tax authority, Her Majesty's Revenue and Customs (HMRC) updated its cryptocurrency taxation guidelines for businesses. The guidelines set out HMRC's view on cryptocurrency transactions involving only exchange tokens (eg, Bitcoin), but not utility or security tokens, which guidance will be promulgated in the

future.

In general, HMRC continues to treat cryptocurrency as a commodity and not as money or currency. More specifically, corporations engaged in trading exchange tokens, including selling goods or services for cryptocurrency or mining, are liable for tax payments, and the guidance details how various UK tax regimes (eg, capital gains tax, corporate tax, national insurance contributions, income tax, and others) apply. HMRC made it clear that businesses should maintain records of their cryptocurrency transactions in pounds sterling and keep records of the valuation methodology for these transactions. Businesses are also expected to record the amount spent on each type of exchange token. Guidance for hard forks and airdrops was also provided.

Finally, under the new guidance, businesses may pay employees in cryptocurrency, regardless of HMRC's view that cryptocurrency does not constitute money, but they may not use cryptocurrency for pension fund contributions.

Learn more about these developments and issues around taxation of cryptocurrency by contacting the author.

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