

Cryptocurrency: the UK tax implications

HMRC is taking a greater interest in the tax affairs of crypto investors, so make sure clients know the rules, writes David Conway

From talk of plummeting prices and collapsing exchanges not so long ago to now all-time price highs, cryptocurrency arouses excitement and suspicion in equal measure.

Activity in this space continues to be high among amateur and professional investors alike. For example, many top-class footballers and other professional sports people have been heavily investing in crypto as an outside interest, but with little understanding of the potential UK tax exposure they are opening themselves up to.

It is vital that any individual who is resident in the UK considers their tax reporting obligations. Any exchange of tokens is considered a disposal for UK tax purposes, regardless of whether it is converted back to fiat currency or into another token.

This is an area of increasing interest to HMRC, whose stance on the tax implications is well laid out in their extensive crypto assets manual. HMRC has also announced that changes will be made to self-assessment tax returns from the 2024/25 tax year to give crypto its own section in the Capital Gains Tax pages. The aim of the changes is to make it harder for investors to overlook their reporting requirements. HMRC have also been sending so-called 'nudge letters' to individuals who they believe have been involved in crypto and not reported their activity. Individuals should not therefore wait, they must ensure they are tax compliant now.

There are many different types of crypto assets, the main types are as follows:

- Exchange tokens: by far the most common category and what most people would consider 'cryptocurrency'. The two most common examples are Bitcoin and Ethereum. They also include Stable coins which (in theory) are pegged to another asset class.
- Utility tokens: tokens that provide the holder with access to goods or services.
- Security tokens: as the name suggests, these act as a security in a business, similar to a shareholding.

Capital Gains Tax

Crypto assets are chargeable to Capital Gains Tax (CGT) in the same way as any other investment asset. Individuals are liable to pay CGT on any gains when crypto assets are:

- sold for cash.
- exchanged or 'swapped' for a different type of crypto asset.
- used to pay for goods or services.
- given away to another person (other than a spouse).

Crypto assets are effectively treated in the same way as shares in order to calculate the gain or loss. This means that acquisition values are kept in a 'pool', with special rules applying in respect of same day and 30-days disposals.

Most exchanges provide investors with a transaction report in an Excel CSV format through their online portal, providing an historic record of all transactions. Special online CGT software can assist with calculating the gains and losses arising each tax year based on the rules mentioned above, using those reports or connecting directly into exchanges.

Capital losses

Disposals of crypto assets for less than their original cost result in a capital loss. This is particularly useful at times when the volatility of the crypto market, leads to large drops in crypto values. These losses are invaluable as they can be set against any capital gains (crypto or otherwise), either in the year of the loss or in future years. However, they need to be claimed in order to be used.

Negligible value claims

If a crypto asset becomes worthless with no chance of recovering value then, provided the individual still owns it, a 'negligible value' claim can be made to HMRC in order to generate a loss. Evidence, however, needs to be provided to prove that the crypto asset is now worthless with no realistic chance of it recovering in value.

In HMRC's eyes, this is different to cases where crypto assets have been stolen or private keys misplaced. As the asset (and private key) still exist, and when the individual has a right to recover them, HMRC would not consider this to be an automatic disposal.

If it can be proven that there is no realistic possibility to recover ownership of the crypto asset, HMRC may in some circumstances accept a negligible value claim and losses crystallised.

If the key is subsequently recovered by the owner and disposed of, the base cost will likely be zero and the capital gain equate to the total amount received.

Those investors unlucky enough to have been affected by various exchanges going bankrupt (most notably FTX) may have found their assets inaccessible and tied up in ongoing bankruptcy proceedings. Unfortunately it is unlikely negligible value claims will be successful whilst proceedings are ongoing: there is, after all, a small potential you may recover some of your funds. We advise individuals in such circumstances to sit tight and wait for proceedings to finish. Afterwards a claim may be more successful in respect of funds that are not returned.

Income tax

In certain circumstances income tax may be payable.

Similar to shares, where trades are conducted with a very high frequency and a sophisticated level of organisation, HMRC may consider that the individual concerned is trading in crypto assets. In such cases, profits are subject to the income tax and National Insurance regimes, as opposed to CGT.

HMRC have in the past been generally reluctant to allow such treatment in respect of crypto assets unless there are exceptional circumstances, no doubt put off by the likelihood of losses being claimed against other income. However, their stance may be changing with record gains being made recently.

To determine whether a trade is being conducted, the same 'badges of trade' need to be considered as they do for any self-employment activity.

Certain other crypto activities do generate income, where they do not involve the straight buying, selling and exchanging of crypto assets. These include coin mining, staking, airdrops and transaction confirmations.

The Remittance Basis and location of crypto assets

Where HMRC judges crypto assets to be located is important in certain situations. In the past, this has revolved around non-domiciled individuals claiming the remittance of taxation or subject to Inheritance Tax (IHT) on their UK assets only. Going forward, the new residence-based rules coming into effect from 6 April 2025 will make this an important point for those in their first four tax years of UK residence or those who are not deemed long-term UK resident for IHT purposes.

HMRC's current position is that the location of crypto assets should follow the residence of the individual. This has made using the remittance basis in cases where the private key or exchange is held overseas difficult. Many in the tax profession have disputed this view, but with the lack of any First Tier Tribunal cases supporting the position one way or the other, HMRC's view does appear to be increasingly established as the norm. This remains an interesting issue though, and those affected should seek professional advice.

Further information

Crypto is an area of increasing interest to HMRC and care needs to be taken to ensure that you report your activity correctly, and certainly don't fail to report it at all. It is always best to check your position before HMRC reach out to you.

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