

Short notes on:

CRYPTOCURRENCY – WHERE ARE WE IN REGARDS TO REGULATION AND WHAT TO DO IN THE INTERIM

Introduction

Globally, although enjoying more mainstream publicity, cryptocurrencies or digital currencies are still very much unregulated. In South Africa, the South African Reserve Bank is conducting regulatory experiment; it is no longer a question of whether such currencies, including Bitcoin, should be regulated or not, but rather who will be doing the regulating.

Decentralisation is paramount in the ecosystem of cryptocurrencies and its strengths – the core principle is that no one institution or authority is responsible for the operation, function, or governance. This is in sharp contrast with any traditional banking system or currency.

Furthermore, Bitcoin has in May 2017 entered into a Bitcoin Scaling Agreement. This agreement set in motion the Bitcoin “fork” of 1 August 2017. According to Govender¹ – “simply put, this was an agreement that the Bitcoin community would move to a separate, parallel currency to increase efficiency such as transaction times.” Furthermore, according to Govender, the scaling agreement has two very important lessons for the currency in South Africa – (i) how the decentralised network makes decisions, and (ii) where the decision-making power lies.²

Likely regulation

It would seem that a self-regulatory organisation model is one of the most likely ways forward for Bitcoin and probably other cryptocurrencies in South Africa. This is familiar concept if we look at the JSE Limited and the central securities depository (Strate).

However, in August 2017, the Financial Sector Regulation Bill (FSR Bill) was signed by the president. Many believe that the implementation of the “Twin Peaks” (being the Prudential and Conduct regulators) regulatory system in the FSR Bill could mean a centralised authority will regulate cryptocurrency.

¹ <https://businesstech.co.za/news/finance/193632/how-bitcoin-could-be-regulated-in-south-africa/>: accessed 22/11/20017

² <https://businesstech.co.za/news/finance/193632/how-bitcoin-could-be-regulated-in-south-africa/>: accessed 22/11/20017

The new regulatory and supervisory framework will promote, among other things, financial stability, the fair treatment and protection of financial customers, the efficiency and integrity of the financial system, the prevention of financial crime and transformation in the financial sector.

The legislation puts the entire financial sector under one roof from a regulatory perspective. The Prudential and Conduct regulators will be responsible for regulating the entire financial sector. Although, the National Credit Regulator remains under Department of Trade and Industry and is outside of “Twin Peaks”. The legislation also provides for cooperation and collaboration among the National Credit Regulator, the SARB and the Financial Intelligence Centre.

What to do in the interim

Until there is clear regulatory framework, trading any cryptocurrency is at own risk.

As such consumers are advised to seek professional advice on the taxable responsibilities, implications, and obligations before transacting.

Let's take an example – a sale agreement. First establish whether it is a capital transaction or put differently whether it is capital in nature or not. For example, the sale of equity or even a motor vehicle is generally of a capital nature whilst the sale of goods in the normal course of business is not. Either way - once established, the onus rests on the buyer to pay the agreed amount as you would in any other local or foreign currency free from any set-off including exchange and administrative costs. Once done, the seller should establish his/her taxable liability and declare it accordingly. In the case of a capital transaction this would mean capital gains tax and in the case of any other as you would any other income. If the value of the currency would increase, to declare the “interest earned” or profit generated as you would any other investment income. If there is a decline, then to treat it the same as an investment loss.

At the moment, South African tax returns do not make specific provision for declaring cryptocurrencies or related investments. Accordingly, it is advisable to seek professional advice and to declare it appropriately.