

Short notes on:

## **CRYPTOCURRENCIES AND SARS – WHAT’S THE LATEST?**

### ***Introduction***

In South Africa, as with most other countries around the world, there is no specific guidance and regulation regarding cryptocurrencies.

In the recent budget review, South African Revenue Service (“SARS”) proposed that any amendments to the income tax and value-added tax (“VAT”) legislation to deal with cryptocurrencies, pose a risk to the South African tax system. This whilst some believe that, given the current Budget deficit, the imposition of taxes on cryptocurrencies could assist SARS in increasing its revenue collection.

With that being said, in a statement issued by SARS on 6 April 2018, the onus has firmly been placed on taxpayers to declare all cryptocurrency-related taxable income in the tax year in which it is received or accrued.

SARS will continue to apply normal income tax rules to cryptocurrencies and will expect affected taxpayers to declare cryptocurrency incomes, gains or losses as part of their taxable income. Failure to do so may result in interest and penalties. Based on this, SARS are of the opinion that a separate Interpretation Note unnecessary for now.

But is this clear enough?

### ***Legal position – is cryptocurrency money or legal tender?***

In South Africa, the word “currency” is not defined in the Income Tax Act No 58 of 1962, as amended (the “Act”).

What is more, cryptocurrencies are neither official South African tender, nor widely used and accepted in South Africa as a medium of payment or exchange. Both the Reserve Bank and SARS have confirmed this in the media.

Moreover “money”, as defined in the VAT Act No 89 of 1991, as amended (the “VAT Act”), includes South African coins and any paper currency that is legal tender under the South African Reserve Bank Act No 90 of 1989, as amended.

As such, cryptocurrencies are not regarded by SARS as a currency for income tax or Capital Gains Tax (“CGT”) purposes. Instead, it seems that cryptocurrencies are regarded by SARS as assets of an intangible nature. Furthermore, whilst not constituting cash, cryptocurrencies according to SARS can be valued to ascertain an amount received or accrued as envisaged in the definition of “gross income” in the Act. This means that following normal income tax rules, income received or accrued from cryptocurrency transactions can be taxed on revenue account under “gross income”. Alternatively, such gains may be regarded as capital in nature, as contained in the Eighth Schedule to the Act (in re CGT).

According to SARS, gains or losses in relation to cryptocurrencies can broadly be categorised with reference to three types of scenarios, each of which potentially gives rise to distinct tax consequences:

1. *“A cryptocurrency can be acquired through so called “mining”. Mining is conducted by the verification of transactions in a computer-generated public ledger, achieved through the solving of complex computer algorithms. By verifying these transactions the “miner” is rewarded with ownership of new coins which become part of the networked ledger.*
2. *This gives rise to an immediate accrual or receipt on successful mining of the cryptocurrency. This means that until the newly acquired cryptocurrency is sold or exchanged for cash, it is held as trading stock which can subsequently be realized through either a normal cash transaction (as described in (2) or a barter transaction as described in (3) below.*
3. *Investors can exchange local currency for a cryptocurrency (or vice versa) by using cryptocurrency exchanges, which are essentially markets for cryptocurrencies, or through private transactions. Goods or services can be exchanged for cryptocurrencies. This transaction is regarded as a barter transaction. Therefore, the normal barter transaction rules apply.”*

### **What about VAT?**

From a VAT perspective, in the 2018 annual budget review, SARS indicated that the VAT treatment of cryptocurrencies will be reviewed. As such, pending policy clarity in this regard, SARS will not require VAT registration as a vendor for purposes of the supply of cryptocurrencies. With that being said - the next question is whether trading in cryptocurrencies can be regarded as the supply of goods for VAT purposes?

Goods are defined in the VAT Act as corporeal movable things, fixed property and any real right in any such thing or fixed property. Given that cryptocurrencies are incorporeal, they would therefore

not constitute goods. However, if it constitutes services, as defined, in that they can be said to constitute a right, facility or advantage, to the extent that the trade supply in cryptocurrencies is considered to be a supply of services, it could trigger VAT consequences if it is bought or sold in the carrying on of a business.

## **Conclusion**

At most, and in my view, we have reached a starting point in terms of this debate in South Africa. In principle, I concur that we have some degree of regulatory framework in place, however, the practicality is what I as well as many role-players are perplexed as to how this will actually work.

Firstly, is value in monetary terms really so easy to establish? For example, when legal tender is used to acquire cryptocurrency but during the year of assessment no exchanges back to legal tender occurred the valuation would presumably be based on a valuation given by the platform used to acquire (if any), especially given that value is perception based and not based on traditional valuation methodologies applied in e.g. valuing equity instruments (also assets of incorporeal nature). What is more, is that some cryptocurrency coins do not even trade against the South African Rand. Another issue would be exchanges in cryptocurrency itself - how will valuation work especially when it comes to coins intended for a function such as rewards or incentives of a non-monetary nature?

What is more, at this point SARS are presumably unable to track trading value exchange activity once transactions are cryptocurrency. With that being said, by no means do I support not declaring this, in my view all cryptocurrencies cannot be treated with one single approach – given each unique application and nature. For now, we can just stay abreast of changes as they happen locally and abroad. Contact us at SchoemanLaw for guidance through the regulatory maze.