

# BECOMING EVER MORE CRYPTIC



## Introduction

The UK tax rules are complex enough but when combined with the mysteries of cryptocurrency a whole new dimension of complexity emerges. It is helpful therefore that HMRC have in December 2019 published a revised note (Cryptoassets : tax for individuals) (“the HMRC Guidance”) in which they set out their analysis of the tax treatment of such assets.

The updated HMRC analysis does however raise particular concerns for non-domiciled individuals as explained below.

## Cryptocurrency As An Asset

It is clear from the HMRC Guidance that HMRC have tried to squeeze, so far as possible, the new world of cryptocurrency into the restrictive framework of the existing tax legislation.

Thus, HMRC state that cryptocurrency will be an “asset” for CGT purposes (since it is capable of being owned and has a value that can be realised). This allows HMRC to apply the normal CGT rules – e.g. the meaning of disposal, the pooling of cryptoassets and negligible value claims – to this new type of asset.

HMRC envisage that in most cases a disposal of cryptocurrency will fall within the CGT regime, but the HMRC Guidance provides helpful commentary on such matters as trading in cryptocurrency and the position where payments to employees take the form of cryptocurrency.

## Non-Doms And Cryptocurrency

The situs of cryptocurrency will be critical when assessing the tax position of individuals who are resident but not domiciled in the UK (“non-doms”) and who acquire or dispose of cryptocurrency. The HMRC Guidance focuses on exchange tokens (such as bitcoins) and HMRC acknowledge there may be a different tax treatment for utility and security tokens.

Establishing the situs of such a unique asset has obviously been a challenge for HMRC and it is not clear that they have arrived at the correct solution.

HMRC are of the opinion that “at this stage in the development” of cryptocurrency “a residence basis most accurately fits the majority of transactions”. HMRCs view is “that throughout the time an individual is UK resident, the exchange tokens they hold as beneficial owner will be located in the UK”.

PRIVATE CLIENT  
ALERT

January 2020

Eighth Floor  
6 New Street Square  
New Fetter Lane  
London EC4A 3AQ

And at

Q3, The Square  
Randalls Way  
Leatherhead  
Surrey KT22 7TW

T +44 (0)20 7842 2000  
F +44 (0)20 7842 2080

hello@rawlinson-hunter.com  
www.rawlinson-hunter.com

### Partners

Chris Bliss FCA  
Mark Harris FCA  
David Barker CTA  
Kulwam Nagra FCA  
Paul Baker ACA  
Andrew Shilling FCA  
Craig Davies FCA  
Graeme Privett CTA  
Chris Hawley ACA  
Phil Collington CTA  
Toby Crooks ACA  
Michael Foster CTA  
Paul Huggins ACA  
Trevor Warmington CTA  
James Randall FCA

### Directors

Lynette Bober FCA  
Karen Doe  
Lynne Hunt FCA  
Gillian Lawrence CTA  
Nigel Medhurst AIT  
Al Nawrocki CTA  
Mark Shaw  
Catherine Thompson FCA  
Tracy Underwood CTA  
Alan Ive CTA  
Yueling Wei FCCA  
Sarah Fernando CTA

### Consultants

Philip Prettejohn FCA

### Senior Adviser

David Kilshaw

 RAWLINSON  
& HUNTER

The HMRC view (if correct) means that the remittance basis will not be available on the disposal of cryptocurrency, and that there is likely to be a tax charge if funds taxable on the remittance basis are used to acquire cryptocurrency. Another consequence of HMRC's view is that a non dom who dies while UK resident would be subject to inheritance tax at 40% on his/her holding of cryptocurrency (subject to the usual reliefs and exemptions).

The law in this area is complex and difficult and it is apparent that HMRC have taken a practical approach to the problem ("using the residency of the beneficial owner...gives a clear, logical, predictable and objective rule which can be easily applied"). It is possible (some may say probable) that a court would take a different view on the situs question.

While this uncertainty remains, non-doms who hold or are thinking of acquiring cryptocurrency should seek appropriate tax advice. They should also explore the normal planning opportunities (such as the possibility of holding the cryptocurrency through a non-UK company).

Further guidance is available from your usual Rawlinson & Hunter adviser.

**David Barker**

**Partner**

Direct Dial: +44 (0) 20 7842 2128

Email: David.Barker@rawlinson-hunter.com

**David Kilshaw**

**Senior Adviser**

Direct Dial: +44 (0) 20 7842 2129

Email: David.Kilshaw@rawlinson-hunter.com

**Stephen Yates**

**Senior Manager**

Direct Dial: +44 (0) 20 7842 2205

Email: Stephen.Yates@rawlinson-hunter.com