Cryptoassets: HMRC Roundtable Discussion Group

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Representatives from the CIOT and ATT attended a meeting of HMRC's Cryptoasset Roundtable in February. HMRC's guidance in this area is generally welcomed, but discussions continue around the difficult question of situs, which is of particular importance for non-domiciled individuals.

The meeting began with a general discussion around the market activity in relation to cryptoassets, noting that the trend in relation to offerings was moving towards security token offerings, rather than utility tokens. It was also reported that there was an increasing level of interest in blockchain technology generally; the OECD Blockchain Policy Forum in September 2019 had attracted over 2,000 delegates. There is a Forum scheduled for October 2020 (https://tinyurl.com/wratnsp).

The output from HMRC over the recent months was welcomed, notably the guidance for businesses, which had been broadly well received. This guidance can be found on the cryptoassets 'landing page' at: https://tinyurl.com/y8rq89kv.

HMRC have also published their view on the situs of exchange tokens. This is included within the 'Cryptoassets for Individuals' paper (also found on the landing page), which has an updated section entitled 'The location of exchange tokens'.

Representatives at the meeting said that while they appreciated that HMRC had offered a clear view, they would have preferred to have seen more detail on the reasoning behind HMRC's view.

The statement from HMRC does not acknowledge the varying views as to how to determine situs of cryptoassets and it would have been more helpful to have had some discussion (or at least an acknowledgement) of the various other factors, besides beneficial ownership, which may be relevant when considering the situs of a cryptoasset.

It was noted that, while appreciating that HMRC intended to offer certainty for taxpayers, with no acknowledgement of the alternative views commonly held by advisers around the question of situs, the current position was not without difficulty for taxpayers and advisers arriving at a filing position.

The meeting discussed again whether, due to the innovative nature of cryptoassets, which makes determining situs by reference to the rules which apply to other assets very difficult, legislation on this point was the only way to provide clarity, at least for the future. However, it was also recognised that legislation which would provide clarity in all cases would be difficult to draft, particularly with regard to how to define and encompass the full range of cryptoassets. Future proofing any definitions and terminology used in legislation in this fast moving and continually evolving space will be a challenge.

HMRC will consider this point and what further guidance can be given to taxpayers. In the meantime, we suggest that taxpayers, and advisers without specific knowledge in this area, seek specialist advice and consider carefully their filing position, and related disclosures, in circumstances where the question of situs of cryptoassets is relevant to the tax position.

More generally, HMRC are intending to publish a Cryptoassets Manual. This will build on the guidance published so far and may be able to provide a further level of detail on some of the points of difficulty.