CIOT’s Autumn Statement representation: cryptoassets and their treatment for tax purposes

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The CIOT submitted a representation prior to the Autumn Statement calling for greater recognition for cryptoassets within tax legislation.

The CIOT took the November Autumn Statement as a further opportunity to call for greater recognition within tax legislation for cryptoassets. We are concerned that the legislation currently being applied to cryptoassets does not acknowledge their unique nature, as it was written with more conventional assets in mind. For example, cryptoassets are treated akin to company shares when pooling the base costs for capital gains tax purposes, despite the potentially huge number of crypto transactions which can take place in a short space of time; nor is there even a uniform definition of cryptoassets within tax legislation.

Whether returns on cryptoassets are taxed as income or capital gains is another grey area, which could be addressed by legislation. The recent proposed changes to decentralised finance (DeFi) transactions will have them taxed as income (although the CIOT had recommended capital treatment), but it is still often unclear whether returns from holdings outside DeFi are regarded as a trade or investment. HMRC and the courts use the long-established 'badges of trade' cases as a gauge, but many of those cases are over a hundred years old and concern traditional (often tangible) investments. There needs to be legislative change which recognises cryptoassets for the unique assets they are, rather than applying existing legislation which simply does not cater for them.

As well as income tax and capital gains tax, elements of the inheritance tax legislation should recognise the unique nature of cryptoassets. For example, when claiming post-death loss relief, the legislation currently only applies to sales of land and quoted shares. However, cryptoassets are notoriously volatile, with potentially huge losses possible over a short period of time. We therefore recommended that cryptoassets be included within the definition of 'qualifying investments' within the loss relief rules, allowing them to be treated akin to shares. The VAT Act 1994, likewise, has no tailored rules for supplies involving cryptoassets.

The Law Commission recently recommended that cryptoassets be recognised as a 'third form' of personal property in law (in addition to things 'in action' and 'in possession'). Our recommendations for legislative recognition of cryptoassets mirrors that of the Law Commission, but with respect to taxation.

The full CIOT representation can be found here: www.tax.org.uk/ref1228

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