Spotlight on Cryptoassets Working Group

Briefings



21 February 2024

The joint Cryptoassets Working Group is made up of members and representatives of both CIOT and ATT, as well as representatives from the CIOT's Low Incomes Tax Reform Group.

The group has been meeting since July 2022 and is chaired by Gary Ashford. The group was created to support the various bodies in making representations via the HMRC Cryptoasset Roundtable, which has been meeting since 2018.

Recently, the group has been looking at proposed changes to the rules surrounding lending and staking on Decentralised Finance (DeFi) platforms. DeFi transactions can be viewed as the cryptoasset version of traditional financing transactions, in which holders of cryptoassets or 'tokens' can lend or borrow tokens to earn rewards akin to interest.

Currently, such transactions are subject to capital gains tax, as HMRC regards most lending and staking as involving the transfer of beneficial ownership of tokens. HMRC's view is set out in guidance first published in February 2022.

However, those in the industry have argued that this does not reflect the substantive or economic reality in which owners retain effective ownership of the underlying token throughout the transactions. As well as potentially facing capital gains tax charges, owners engaged in DeFi transactions need to keep track of them, but the frequency can make compliance requirements very burdensome and costly. (HMRC treats cryptoassets akin to shares, so cost pools must be maintained.)

Proposals have therefore been put forward to keep DeFi transactions out of the scope of capital gains tax altogether (assuming the same quantity and type of tokens are eventually returned to owners). Capital gains tax will only be chargeable when tokens are economically disposed of (i.e. exchanged for fiat currencies or for goods and services). The Working Group had recommended this in the first consultation, released in July 2022, and supported the proposed change in the second consultation of April 2023.

Another issue which the Working Group highlighted within both consultations was the tax treatment of these rewards received by the tokens' owners. This has always been an area of uncertainty, with rewards potentially taxable as either income or capital. The Working Group proposed that they be subject to capital gains tax; however, the preference put forward by HMRC within the second consultation was for income tax treatment.

We expect draft legislation to be released imminently.

In both consultations, we had also recommended a wider-scale review of the law on cryptoassets, beyond DeFi, to give greater certainty for investors and their agents.

The CIOT/ATT Working Group continues to meet with HMRC regularly for roundtable discussions, alongside the Industry Working Group. Such topics for discussion have included: situs of tokens; interaction with VAT; application to employment remuneration; and general provision of HMRC guidance.

If members have any feedback or examples of issues, or have encountered areas of uncertainty surrounding the tax treatment of cryptoassets, please contact cthorpe@ciot.org.uk or hthornley@att.org.uk