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HAVE YOU DECLARED GAINS MADE ON CRYPTOASSETS?

HM Revenue & Customs (HMRC) are continuing to send so-called "nudge letters" to those individuals whom they believe are invested, or have been invested, in any cryptoassets. If you think this may apply to you then it is important that you tell HMRC before they get to you (in other words, don't wait for the "nudge letter"!).

If you believe you might have undeclared income or gains in connection with cryptoassets and don't make a voluntary disclosure before HMRC write to you, you could suffer penalties of up to 100% of the unpaid tax or even face criminal prosecution. Even higher penalties potentially apply to matters involving offshore income or gains.

What are cryptoassets and when might a tax charge arise on them?

Cryptoassets (also referred to as 'tokens' or 'cryptocurrency') are cryptographically secured digital representations of value or contractual rights that can be transferred, stored and traded electronically.

If that still means nothing, then the Bank of England usefully breaks it down:-

Crypto - means hidden or secret, referring to the secure technology used to record who owns what, and for making payments between users.

Currency - tells us the reason cryptocurrencies were designed in the first place: a type of electronic cash.

Cryptoassets generally, including cryptocurrencies such as Bitcoin, are becoming more common and HMRC have established a Cryptoasset Manual which explains the tax consequences of different types of transactions involving cryptoassets.

HMRC generally seeks to treat cryptoassets as a non-trading activity giving rise to a chargeable gain, chargeable to capital gains tax on an individual. The gains are calculated in the same way as a gain on shares, with tokens of the same type being pooled into their own pool.

A taxable disposal of a cryptoasset generally takes place when it is:

- sold
- exchanged as a form of payment for good or services
- exchanged for tokens in a different type of cryptoasset
- gifted (subject to usual inter-spousal exemptions)
- donated to charity and the donation is tainted
- disposed of to charity resulting in a gain arising on the disponer

This means that taxable gains on cryptoassets can often arise without disposal proceeds being realised from which tax liabilities can be paid. Such so-called "dry" tax charges can cause financial difficulties so individuals should bear this in mind before undertaking any such transactions.

To date, HMRC generally expects that when an individual is holding cryptoassets, they are unlikely to be trading. They have also taken the view that most businesses (including most incorporated businesses) are unlikely to buy and sell cryptoassets with such frequency, level of organisation and sophistication that the activity amounts to a financial trade. However, as the trade in cryptoassets continues to increase, HMRC may well change their view and as ever, the tax position of the activities will depend on the facts in each particular case. If individuals or businesses purchase cryptoassets with the intention of generating profit and trading them regularly, there is bound to be an increased risk that HMRC would try to tax any profits to income tax (or corporation tax, as the case may be), rather than capital gains tax.

What should I do if I haven't declared income or gains on cryptoassets to HMRC?

If you need to report income or gains on cryptoassets that relate to the 2023/24 tax year then these should be included on your Tax Return for that year, which will usually be due for submission by 31 January 2025, which is also the date by which any tax in relation to such income or gains should be paid.

For any income or gains relating to the tax year ended 5 April 2023, there is still time to amend a previously submitted Tax Return for that year.

For any income or gains on cryptoassets relating to earlier tax years, a new voluntary disclosure facility has been created by HMRC to report such historical tax liabilities.

In accordance with existing information sharing between third parties (e.g. banks and financial institutions, Airbnb etc.) and HMRC, HMRC have a data-sharing program with all UK exchanges and can track cryptocurrency transactions going back as far as 2014. Going forward the UK is spearheading the Crypto-Asset Reporting Framework, where crypto platforms will share taxpayer information, with exchange of information between countries, and this is expected to take effect from the beginning of 2027. It is therefore increasingly important that you are confident that your tax reporting duties are fully complied with in connection with any cryptoassets. Please do not hesitate to contact us if you are concerned that you may have overlooked income or gains arising from these assets.

The above is for general guidance only and no action should be taken without obtaining specific advice.

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