

Taxing Cryptocurrency: A Review and a Call for Consensus

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Reprinted from *Tax Notes International*, February 22, 2021, p. 981

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In this article, the author examines a recent OECD report on the taxation of cryptocurrency, provides a broad look at how different jurisdictions are addressing the issue, and calls for a

coordinated global approach.

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Cryptocurrency has experienced record-breaking growth in recent years, leaving many investors and their tax advisers grappling with uncertainty. Cryptocurrency taxation remains a contentious topic in several jurisdictions. There is no global standard on several fundamental questions — such as whether cryptocurrency is considered currency or property and what constitutes a taxable event. Large economies, including the United States and Japan, have already started applying existing tax laws to the nascent technology. Regulators across the world are struggling to develop an effective tax policy for virtual currency transactions. Amid this uncertainty, the OECD recently issued a report encouraging regulators to enact uniform and effective cryptocurrency tax regulations and offering guidance.¹

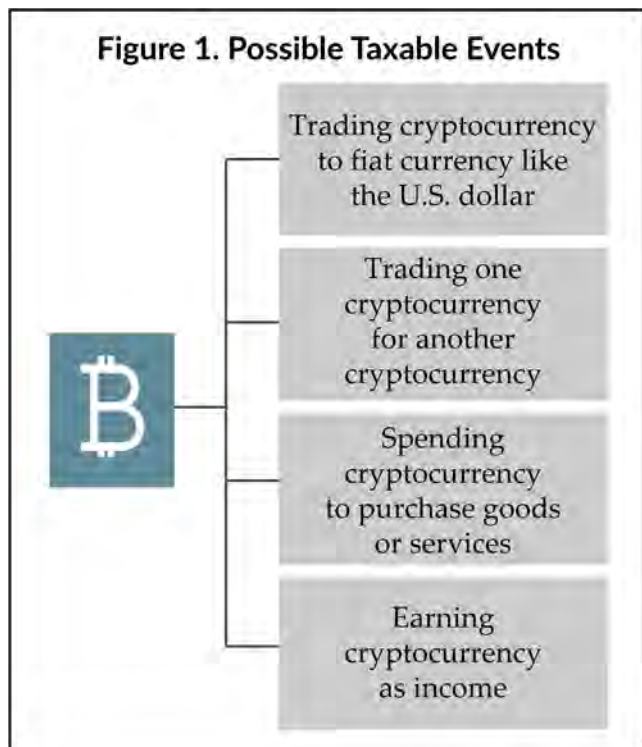
¹OECD, “Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues” (Oct. 12, 2020).

This article begins with a discussion of cryptocurrency basics and considers what constitutes key taxable events in the cryptocurrency context. It then looks at the OECD report and examines the existing tax laws and related rules in a few sample jurisdictions. With this background, it offers thoughts on the way forward.

I. Basics of Cryptocurrency

Cryptocurrency is digital or virtual money that uses encryption techniques to generate units of currency and verify the transfer of funds, independently of a central bank. The cryptocurrency network runs on blockchain technology. A fundamental part of the technology is that there is no concept of a single server; instead, the digital information is duplicated thousands of times across a network of computers. Another important aspect is the existence of public and private keys. The private key is like a password that gives the owner access to digital assets, such as bitcoins. If the private key is lost, there is no chance of retrieving the digital assets. All the information or data stored using blockchain technology is encrypted into a random string of numbers and can only be converted into a readable format using the private key owned by the user. Therefore, any information or data stored on the blockchain can only be viewed by the owner.

Cryptocurrencies are emerging as hotbeds of financial speculation. A classic example is the bubble that has been emerging with Bitcoin: In January the cryptocurrency reached a sky-high price of \$32,000 after starting at just \$1 in May 2011. Goldman Sachs believes that blockchain technology holds great potential, especially to optimize clearing and settlements, and could represent global savings of up to \$12 billion per year. Bitcoin is the first cryptocurrency, but there



are now approximately 5,000 cryptocurrencies, including popular ones like Litecoin, Ethereum, and Ripple.

Proponents of cryptocurrency tout the ability to decentralize economic power, offer greater financial access, and break down socioeconomic barriers. However, critics point to the use of cryptocurrencies for illicit activities such as money laundering, drug trafficking, and terror financing.

II. Key Taxable Events

Experts predict that the use of cryptocurrency will continue to rise, making it imperative for those involved to understand the tax implications of these virtual transactions. While details are discussed later, broadly (and using bitcoins as an example), the potential tax points arise when:

- Cryptocurrency is mined. Typically, no tax should arise at this stage because bitcoins created by mining are self-generated capital assets. However, if it is not treated as a capital asset, then the value of cryptocurrency received from mining may be taxable income.
- Cryptocurrency held as an investment is transferred in exchange for fiat currency. In this scenario, the appreciation in value

would give rise to a long- or short-term capital gain depending on how long the bitcoins are held.

- Cryptocurrency held as stock-in-trade is transferred in exchange for fiat currency. Income arising out of bitcoin trading activity should be taxed as income from business activities.
- Cryptocurrency is received as consideration in return for goods or services. This is treated on par with receipt of money for the same goods or services; hence, it is considered income.

Figure 1 is a simple illustration of possible taxable events.

No taxable event occurs as a result of simply buying and holding cryptocurrency or transferring cryptocurrency from one digital wallet to another owned by the same person.

III. The OECD on Taxing Virtual Currency

In October 2020 the OECD released a report on taxing cryptocurrency. The report provides a comprehensive analysis of the approaches and policy gaps involving the main types of taxes — that is, income, consumption, and property taxes. Regulators find it challenging to develop a robust tax policy for cryptocurrency because of the lack of centralized control, pseudo-anonymity, valuation difficulties, cryptocurrency's hybrid characteristics, and the rapid evolution of the technology. The OECD examined the topic because these challenges have led to different countries treating cryptocurrency-related transactions in different ways and because the lack of uniformity in applying these tax principles has led to low compliance rates and lost tax revenues.

The report addresses several issues across more than 50 jurisdictions based on responses to questionnaires supplemented with publicly available materials. Topics include:

- the characterization and legality of virtual currencies;
- domestic tax treatment throughout the various stages of a virtual currency's life cycle, from creation to disposal;
- common tax policy challenges and emerging issues; and
- considerations for policymakers.

A. Character and Legality

Broadly, cryptoassets can be classified into three main categories based on their economic functions:

- payment tokens (another name for virtual currencies) are assets that can be exchanged for goods and services;
- utility tokens are primarily used to access specific services or infrastructure systems in which the tokens represent prepayments, vouchers, or licenses to use specific rights; and
- security tokens are tradable assets that are often held for investment purposes.

There are varieties within these three categories, and some tokens may have hybrid features that encompass more than one category. Also, the categorization of particular tokens may change over time because of their multilayered nature, like multilayered derivative contracts.

The OECD's report focuses on virtual currencies, or payment tokens. Less guidance is provided regarding utility and security tokens, although they may follow the same treatment as payment tokens.

B. Tax Treatment of Virtual Currencies

This subsection presents key takeaways from the report about the domestic tax treatment of virtual currencies in terms of income tax, property tax, and VAT.

1. Income Tax

The report describes several approaches that have been taken to determine when the first taxable event for mined cryptocurrencies occurs for income tax purposes and which types of virtual exchanges of virtual currencies — for example, crypto-to-fiat, crypto-to-crypto, or crypto-to-goods-or-services exchanges — generate a taxable event.

In most countries, virtual currencies are considered a form of property, typically subclassified as intangible assets other than goodwill. Income tax is commonly imposed upon disposal or exchange, although some jurisdictions allow individuals to exchange virtual currencies for fiat currency without the transaction representing a taxable event. Further, the exchange of virtual currencies for services, goods,

or wages typically qualifies as a taxable event. There can be differences in the tax treatment of transactions in virtual currencies depending on the status of the parties involved. Some jurisdictions, including Australia, Canada, the Netherlands, Switzerland, and the United Kingdom, adopt different approaches for businesses versus regular traders and individuals versus investors.

2. Property Tax

Virtual currencies are treated as property in most jurisdictions and are likely to be subject to any gift, inheritance, or wealth taxes imposed in those jurisdictions. There can be different property taxation rules for resident and nonresident companies, which may affect the tax rate or method of calculation. In some countries, virtual currencies must be converted to fiat currency for tax assessments; for example, Switzerland's federal tax administration requires that cryptocurrencies be converted to Swiss francs for tax assessments and provides conversion rates for some virtual currencies. However, transfer taxes typically do not apply to virtual currencies because they do not fall within the scope of those taxes, which often apply only to specific assets, such as real estate or securities.

3. VAT

VAT treatment of virtual currencies is more uniform than the income tax treatment. The main reason for this seems to be the 2015 *Hedqvist*² ruling from the Court of Justice of the European Union, which held that virtual currency transactions (specifically, bitcoin transactions) — including the exchange of virtual currencies for fiat currencies and vice versa — are exempt from VAT. Hence, most EU countries agree that the transfer of virtual currencies to or from fiat currencies is not subject to VAT. The same applies to the use of virtual currencies to buy goods or services. Thus, no VAT should be charged to the user for the use of virtual currencies. However, the supply of taxable goods and services paid for with virtual currencies is subject to VAT. Many other jurisdictions have adopted the EU approach, although the report identifies New Zealand as a notable outlier.

² *Skatteverket (Sweden) v. David Hedqvist*, C-264/14 (CJEU 2015).

Further, not all types of virtual currency services are treated consistently across EU member states or other countries. For example, some differences remain in the treatment of mining income and related services as well as the treatment of other cryptoassets. Thus, depending on the location and details, the trading and handling of virtual currencies, including mining, may still have VAT consequences.

C. Considerations for Policymakers

Policymakers should ensure that they offer specific and clear guidance covering all life-cycle events of a cryptocurrency — events that include creation, exchange, storage, disposal, loss or theft, and related services (for example, exchange services and wallets). They should also consider emerging issues, such as hard forks, stablecoins, central bank digital currencies, and interest-bearing tokens. This guidance should indicate how other forms of cryptoassets (including security and utility tokens) are to be treated for tax purposes. The OECD also supports introducing a *de minimis* rule to keep small crypto-transactions immune from taxation.

To improve transparency, the OECD report encourages policymakers to state the rationale behind their decisions to adopt particular tax rules and how they fit cryptocurrencies into the existing framework. Further, regulators should provide more frequent guidance to keep up to date with this fast-moving space.

D. Common Challenges and Emerging Issues

Valuation is an important issue in the taxation of virtual currencies. The report identifies the practical challenges of determining the value and cost basis of virtual currencies. Guidance on valuation is limited. Jurisdictions have taken different approaches to determining basis, including the identification of specific units (used in, for example, the United States), deemed chronological order (the first-in, first-out approach used in, for example, Finland), or basis pooling (used in, for example, the United Kingdom).

The report considers, and offers recommendations regarding, several emerging issues in the virtual currency area. For example:

- The report recommends that regulators adopt a proper tax policy for taxing hard forks. A hard fork occurs when there is a split in a cryptocurrency's blockchain, and the taxpayer receives a new coin (for example, bitcoin cash) in addition to the original coin (for example, the original bitcoin). A handful of countries have issued limited guidance on these events. Guidance on this subject should clearly mention why and when hard fork income should be taxed — such as when the taxpayer gains dominion or control versus upon sale.
- Stablecoins and central bank digital currencies are new forms of virtual currencies that are often backed by other assets or fiat currencies. Their unique characteristics can be key for tax purposes, and policymakers need to consider whether existing rules are appropriate for these tokens.
- The report suggests regulators develop specific tax guidance for proof-of-stake consensus mechanisms, which have begun to overtake proof-of-work mechanisms. Both are consensus mechanisms used to validate transactions. Proof-of-work rewards the miner for solving complex equations; in proof-of-stake, which individual creates the next block is based on how much they have “staked.” With Ethereum moving from the proof-of-work to the proof-of-stake mechanism in the coming months, this is an important area that regulators need to address in official guidance.

IV. Cryptocurrencies Around the World

A. Similarities and Differences

There are both similarities and differences in terms of how jurisdictions around the world treat cryptocurrencies. A few examples:

- *Terminology:* While cryptocurrencies are typically based on the same type of decentralized technology — usually, blockchain — with the same inherent encryption, the terminology used to describe them varies from one jurisdiction to another. Terms used to refer to

cryptocurrency (and examples of the jurisdictions that use the terms) include digital currency (Argentina, Australia, and Thailand), virtual commodity (Canada, China, and Taiwan), crypto-token (Germany), payment token (Switzerland), cyber currency (Italy and Lebanon), electronic currency (Colombia and Lebanon), and virtual asset (Honduras and Mexico).

- *Warnings:* One of the most common actions that governments have taken in response to the growth in cryptocurrency is to issue notices, typically through central banks, educating citizens about the added risk resulting from the high volatility associated with cryptocurrencies and the fact that many of the organizations that facilitate related transactions are unregulated. Most of those notices warn people that they use virtual currency at their own personal risk and that there is no legal recourse if they suffer a loss. A few examples of jurisdictions that have issued those notices are Belgium, India, South Africa, and the United Kingdom. In the United States, the IRS has started a different kind of warning-letter initiative, which provides cryptocurrency investors with guidance about compliance with the Internal Revenue Code. These warning letters, also called education letters, aim to help taxpayers understand and meet their obligations.
- *Restrictions:* Australia, Canada, and the Isle of Man recently enacted laws to bring cryptocurrency transactions and institutions that facilitate them under the ambit of anti-money-laundering and counterterrorist financing laws. Algeria, Bolivia, Morocco, Nepal, Pakistan, and Vietnam ban all activities involving cryptocurrencies. Bahrain and Qatar bar their citizens from engaging in any kind of activities involving cryptocurrencies domestically but allow citizens to do so outside their borders. Bangladesh, China, Colombia, Iran, Lesotho, Lithuania, and Thailand bar financial institutions within their borders from facilitating transactions involving cryptocurrencies.

- *Initial coin offerings (ICOs):* While China, Macau, and Pakistan ban ICOs altogether, other jurisdictions regulate them depending on how they are categorized. For example, in New Zealand, particular obligations may apply depending on whether the token offered is categorized as a debt security, equity security, managed investment product, or derivative. Similarly, in the Netherlands, the rules applicable to an ICO depend on whether the token offered is considered a security or a unit in a collective investment, an assessment that is made case by case.
- *Threat vs. potential:* Not all jurisdictions view the advent of blockchain technology and cryptocurrencies as a threat. Belarus, the Cayman Islands, Luxembourg, and Spain are among the jurisdictions that see potential in the technology and are developing cryptocurrency-friendly regulatory regimes to attract investment in technology companies that excel in this sector. A few jurisdictions (including Lithuania, the Marshall Islands, and Venezuela, as well as the Eastern Caribbean Central Bank member states) are developing their own systems of cryptocurrencies.
- *Means of payment:* In a few jurisdictions, like the Swiss canton of Zug and a municipality within the canton of Ticino, cryptocurrencies are accepted as a means of payment, even by government agencies. The Isle of Man and Mexico also permit the use of cryptocurrencies as a means of payment in addition to their national currencies. Much like governments around the world that fund various projects by selling government bonds, the government of Antigua and Barbuda allows the funding of projects and charities using government-supported ICOs.

B. An Overview of Cryptocurrency Taxation

Several important conclusions can be gleaned from the comparative tables and figure below:

- Most of the jurisdictions studied consider virtual currencies to be a form of property. Most classify them as intangible assets other than goodwill, financial assets, or

Table 1. Examples of Definitions of Virtual Currencies for Tax Purposes

Intangible Assets Other Than Good Will	Financial Instrument or Asset	Commodity or Virtual Commodity	Currency	Legal Payment Method	Not Specified
Australia, France, Chile, Czech Republic, Luxembourg, Nigeria, Spain, Sweden, Switzerland, ^b and the United Kingdom	Argentina, ^a Brazil, Croatia, Denmark, Israel, Japan, Slovak Republic, and South Africa	Austria, Canada, China, and Indonesia	Belgium, Cote d'Ivoire, Italy, and Poland	Japan	United States

Source: OECD, "Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues," Table 2.1 (2020). Data taken from questionnaire responses and country guidance documents.

^aNote from Argentina: There is no clear definition. However, for income tax purposes, virtual currencies are mentioned along with some financial instruments or assets.

^bNote from Switzerland: With the exception of companies that trade in virtual currencies. Those companies account for virtual currencies under inventories.

commodities. Therefore, most jurisdictions treat cryptocurrencies as assets generating capital gain or, in rare cases, generating business or miscellaneous income.

- Only a few of the respondent countries consider virtual currencies to be similar to traditional currency for tax purposes: Belgium, Italy, the Ivory Coast, and Poland. Just a handful of jurisdictions subject cryptoasset holdings to property taxes, transfer taxes, wealth taxes, or estate taxes.
- Most countries consider exchanges between virtual and fiat currencies to be taxable events. Exchanges of virtual currency as payment for goods, services, or wages are also treated as taxable events in almost all countries, and the tax treatment of the underlying transaction remains unchanged.
- VAT treatment of virtual currencies is more consistent across countries than income taxes. Most countries mirror the approach adopted in the EU in which exchanges of virtual currencies for fiat currencies or other virtual currencies are not treated as VAT events. When a consumer pays for goods and services with virtual currencies, the underlying supply of goods or services is subject to the normal VAT rules — that is, EU states do not treat the purchase of goods and services with virtual currencies as a

barter event but as a taxable sale. The report also notes that while EU member states largely apply the same VAT rules, policies regarding the application of VAT to newly mined virtual currencies may differ.

V. Sampling of Cryptocurrency Tax Laws

A. United States

The IRS addressed the taxation of cryptocurrency transactions in Notice 2014-21, 2014-16 IRB 938, which states that taxpayers must recognize gain or loss on the exchange of cryptocurrency for cash or for other property. Gain or loss is recognized every time cryptocurrency is sold or used to purchase goods or services. The amount of gain or loss depends on the type of transaction conducted and the length of time the position was held.

Key elements of the guidance include:

- Cryptocurrency is treated as property for federal tax purposes — that is, it is treated much like stocks, bonds, or real estate. General tax principles that apply to property transactions also apply to exchanges of cryptocurrencies. Investment transactions (purchases and sales) involving bitcoins and other cryptocurrencies are taxable events, and cryptocurrency investors must pay ordinary income or

Table 2. First Taxable Event for Mined Virtual Currencies Under Income Taxes

First Event on Receipt of New Tokens From Mining	First Event on Disposal	Different Approaches for Businesses/Regular Traders and Individuals/Occasional Traders
Andorra	Croatia	Australia
Argentina ^a	Czech Republic	Canada
Austria ^b	Denmark	Germany
Cote d'Ivoire	Estonia	Hong Kong (China)
Colombia	France	Netherlands
Croatia	Latvia	Norway
Estonia	Lithuania	Singapore
Finland	Poland	Sweden
Japan	Slovak Republic	Switzerland
Luxembourg ^b		
New Zealand		
Slovenia		
South Africa		
United Kingdom		
United States		

Source: OECD, "Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues," Table 2.2 (2020). Data taken from delegates' responses to questionnaire; OECD research.

^aNote from Argentina: Tax treatment will depend on a case-to-case analysis.

^bMining is considered to be a commercial activity and therefore taxed on an ongoing basis.

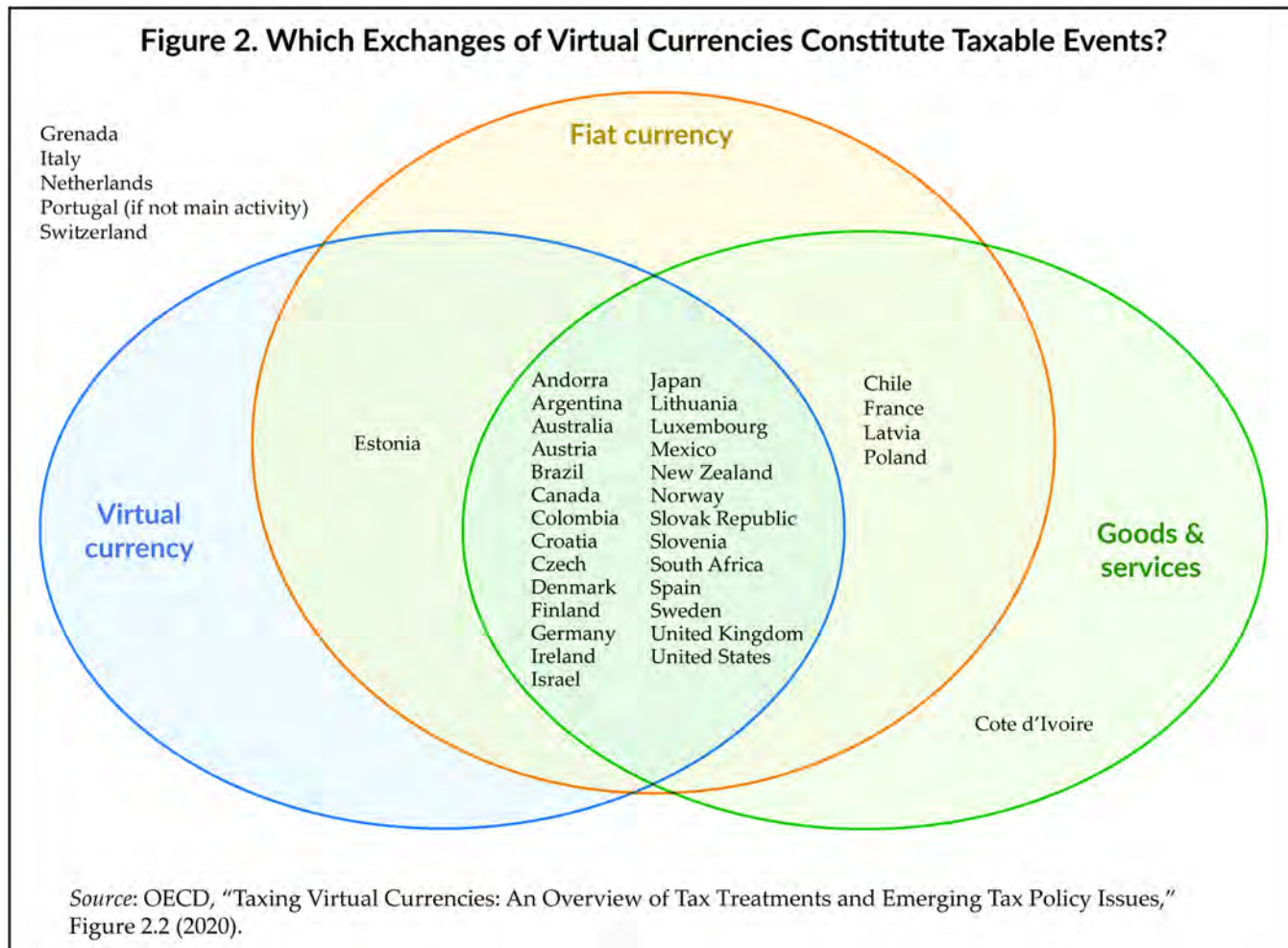
capital gains tax as required by the IRC. Investors who fail to report their holdings and transactions may face interest, financial penalties, and other consequences.

- If a taxpayer mines a cryptocurrency, the fair market value of the coins on the day they are awarded to the taxpayer on the blockchain is includable in gross income. This amount also becomes the miner's basis in the coins and will be used to calculate future gains and losses. Also, an individual whose mining operations constitute a trade or business is subject to self-employment tax on the income derived from those activities.
- Any taxpayer who receives cryptocurrency as payment for goods or services, whether as an employee or an independent contractor, must include the FMV of the cryptocurrency in reported taxable income.

The IRS's guidance in Notice 2014-21 clarifies some aspects of the tax treatment of cryptocurrency transactions, but there are several open issues — most of which are addressed in the OECD report — including:

- *International tax reporting:* It is unclear whether owners of virtual currencies must fulfill international reporting requirements, such as filing Financial Crimes Enforcement Network Form 114, "Report of Foreign Bank and Financial Accounts," and satisfying the reporting obligations of the Foreign Account Tax Compliance Act.
- *FMV:* More guidance is required for valuation issues, including how to ascertain the FMV at the time of transaction and how to track it.
- *Coin hard forks (chain splits):* The IRS has not addressed the tax treatment of a hard fork in the cryptocurrency context — namely,

Figure 2. Which Exchanges of Virtual Currencies Constitute Taxable Events?



whether it is treated as stock split or stock dividend.

- *Theft and loss:* The IRS has not provided guidance regarding whether taxpayers could deduct virtual currencies in cases of theft. As with the theft of other financial assets, if the virtual currency was acquired in a transaction entered into for profit, then a theft-related loss would be deductible if other requirements are met. There is a need for clarity regarding whether a taxpayer who misplaces a private key or loses a password can deduct the amount as a casualty loss.
- *ICOs:* Convertible virtual currency is treated as property and not as currency for tax purposes. The IRS has not provided any guidance regarding the tax treatment of a cryptocurrency issuer.

B. Japan

In Japan, cryptocurrency exchange businesses are regulated under the Payment Services Act. One of the most important issues involving the taxation of cryptocurrencies in Japan has been the application of consumption tax. Previously, the sale of cryptoassets was subject to consumption tax when the transferor’s office was in Japan. However, the relevant tax law was amended in 2017. Accordingly, if the cryptocurrency sold can be considered a cryptoasset — for example, bitcoin — under the Payment Services Act, the consumption tax will not be imposed. The National Tax Agency of Japan also announced that gains realized from the sale or use of cryptoassets will be treated as miscellaneous income if the taxpayer cannot use losses elsewhere to offset the gains. Also, inheritance tax will be imposed on the estate of a deceased person for cryptoassets that the decedent held.

In Japan, all cryptocurrency income — from lending, mining, and trading — is categorized as miscellaneous income for tax purposes and can be taxed up to 55 percent. Nonresidents pay a flat 20 percent tax rate on income, which they need to pay upon leaving Japan.

Before July 1, 2017, sales of virtual currencies were subject to Japanese VAT if the transferor was in Japan. Since July 1, 2017, Japanese VAT has not been charged on exchanges provided that the token used meets the definition of cryptoasset under the relevant laws. In effect, Japan treats virtual currencies and sovereign currencies the same in terms of VAT.

C. United Kingdom

Although there is no definitive policy for the taxation of cryptoassets (including cryptocurrency) in the United Kingdom, HM Revenue & Customs published relevant policy papers in 2018 and 2019 — one relating to the taxation of cryptoassets for individuals and the other relating to the taxation of cryptoassets for businesses.³ Key elements of the guidance include:

- Cryptocurrencies are not regarded as currency. Buying and selling of cryptocurrencies by individuals and corporate entities will amount to investment activity, subject to capital gains on any gains they realize upon disposal of the cryptocurrencies. Not only does this include selling the assets for fiat currency, but it also includes using them to pay for goods and services, giving them away to another person, or exchanging them for another kind of cryptoasset.
- If a person is resident of, but not domiciled in, the United Kingdom and claims the remittance basis of taxation, income that has a source outside the United Kingdom is usually taxed only if it is remitted to the United Kingdom. HMRC has taken the view that for a U.K. resident, any exchange tokens they hold as the beneficial owner are deemed to be located in the United

Kingdom. As a result, U.K. resident individuals — whether or not they are U.K. domiciled — will be subject to U.K. tax if they carry out a transaction with their tokens that is subject to U.K. tax.

- If the buying, selling, or mining of exchange tokens amounts to a trade, then receipts and expenses from that trade will form part of the business's trading profit for corporation tax purposes. VAT is payable as usual for any qualifying goods or services sold for exchange tokens. The value of the supply of goods or services on which VAT is owed will be the pound sterling value of the exchange tokens when the transaction occurs.
- Stamp duty and Stamp Duty Reserve Tax will usually not apply to the transfer of exchange tokens because they are unlikely to meet the required definition of stock, marketable securities, or chargeable securities.

D. China

China does not recognize cryptocurrencies as legal tender and has not passed any legislation regulating cryptocurrencies. In recent years, the government has taken a series of regulatory actions to crack down on activities involving cryptocurrencies, mainly because of concerns regarding the financial risks associated with those currencies.

The practice of raising funds through ICOs is also banned in China. The ICO rules prohibit converting legal tender into cryptocurrencies, purchasing or selling cryptocurrencies, setting prices for cryptocurrencies, or providing other related services. Despite cracking down on privately issued cryptocurrencies, China has announced plans to introduce a central bank digital currency that would be issued to commercial banks and financial institutions.

China has not issued any tax regulations or guidance related to cryptocurrencies. However, the State Taxation Administration⁴ has noted that the income individuals earn by purchasing virtual currency and selling it to others at a markup is

³HMRC, "Cryptoassets: Tax for Individuals," Policy Paper (Dec. 20, 2019) (first published in 2018); and HMRC, "Cryptoassets: Tax for Businesses," Policy Papers (Dec. 20, 2019).

⁴State Taxation Administration, "Official Reply of the State Administration of Taxation on Issues From Virtual Currency Trading Over the Internet" (Sept. 28, 2008).

subject to individual income tax, which will be computed and paid according to the rules for property transfer income.

E. Hong Kong

Hong Kong does not prohibit the possession or trading virtual assets that are not securities or futures, but it does supervise and regulate firms that invest and trade in such assets. Bitcoin and similar currencies are considered virtual commodities and not electronic money, provided the cryptocurrencies are possessed and traded in good faith. There are other regulatory considerations depending on the use of cryptocurrencies, such as the running of ICO campaigns or trading Bitcoin futures contracts.

In general, there is no capital gains tax payable from the sale of financial instruments in Hong Kong. That said, any Hong Kong-source income from frequent cryptocurrency trading in the ordinary course of business may be treated as income in case of individuals and profits in case of corporations, and it is subject to income tax or profits tax, respectively, regardless of whether the trading is made in exclusive cryptocurrency or fiat-to-cryptocurrency exchanges.

For income and profit tax purposes, the analysis focuses on broad guiding principles such as nature of transaction and the use and character of cryptocurrencies. If cryptocurrency is held as a long-term investment, any gains on its disposal will not be subject to profits tax. In contrast, Hong Kong-source profits from cryptocurrency business activities are subject to profits tax. In other words, if cryptocurrency is used for business transactions, they should be accrued based on the prevailing market value as of the date of transaction. If cryptocurrency has been received as employment income, the amount to be reported should be the market value of the cryptocurrency at the time of accrual.

F. India

India has instituted a blanket ban on cryptocurrencies and criminalizes activities associated with cryptocurrencies in India. The use of cryptocurrency as legal tender or currency is not permitted. The ban includes mining, buying, holding, selling, dealing in, issuing, disposing of, or using cryptocurrency. The Indian government

has not yet addressed the taxability of bitcoins in the statute books, but the levy of tax on bitcoins cannot be ruled out because Indian income tax laws have always sought to tax all income received regardless of the form in which it is received.

If bitcoins, which are capital assets, have been held as an investment and are transferred in exchange for fiat currency, then any appreciation in value would give rise to a long-term or short-term capital gain depending on the period of holding of the bitcoins. Active trading in bitcoins would be treated as a speculative business and attract normal tax rates. Bitcoins received as consideration for sale of goods or services are treated akin to the receipt of money. It would constitute income in the hands of the recipient.

VI. The Way Forward

Cryptocurrencies are here to stay. There is clearly a need for effective and coordinated regulations at both the domestic and international levels. Some jurisdictions treat cryptocurrencies as property; others treat them as a separate, unique asset; and many jurisdictions have no tax rules on them at all. There are numerous open tax issues, even in jurisdictions that have issued relevant tax regulations. The result is a confusing patchwork of rules and guidance. A clear standard for cryptocurrency tax and reporting is needed.

The OECD report is a first step toward providing clarity and guidance, and it lays the groundwork for policy developments and greater convergence at a regional or global level. Policymakers in several inclusive framework member countries are expected to follow the report's suggestion and provide more guidance on these issues, which will benefit all stakeholders involved in virtual currencies.

Internationally, additional guidance, rules, and regulations are needed to address the rapidly changing world of virtual currencies, especially because national central banks and the European Central Bank are considering developing their own virtual currencies. The OECD is expected to introduce a common reporting standard for crypto assets in 2021.

Domestically, the report should serve as a wake-up call regarding the need to develop rules

and systems for taxing cryptocurrencies. Given the growth and breadth of virtual currencies, governments also need to provide guidance, including supplementary guidance to address issues that may remain open even when initial guidance exists. Governments should also begin to recognize the need for a coordinated, international approach to the taxation of cryptocurrency and ICOs.

In the meantime, tax practitioners should become well versed in cryptocurrencies and the

blockchain technology that underlies these new assets so that they can offer better advice to taxpayers regarding its taxation, compliance, and reporting. It is clear cryptocurrency transactions will be subject to some forms of taxation in almost all countries irrespective of whether they release specific regulations. In this environment, cryptocurrency users should make every effort to remain in compliance and avoid trouble. ■