



## HMRC FOCUS ON CRYPTO-ASSETS: ARE YOU REQUIRED TO TAKE ACTION?

**HMRC will shortly be issuing 'nudge letters' to individuals they have identified as holding crypto-assets, asking them to check if they have any unreported tax liabilities.**

The most well-known crypto-asset is Bitcoin, but there are many others. Profits on disposal of crypto-assets will usually be taxed as a capital gain. There may be a taxable gain if the holding is sold, but also when a crypto-asset is used to make a payment for goods or services. There may also be a taxable event where one type of crypto-asset is exchanged for another, for example, if Bitcoin is converted to Ethereum.

It is known that HMRC have been using information gathering powers given by Parliament and international tax treaties to obtain customer details from crypto platforms of UK resident holders of crypto-assets. FCA registration by the crypto-asset business may also give HMRC another route to obtain the information. We understand that HMRC already hold data relating to the 2019/20 tax year, and will likely obtain details directly from third party crypto platforms for later tax years.

One important issue for tax purposes is the location of crypto-assets. The technical analysis is complex, and there is currently no settled view. Foreign domiciled individuals may be able to use the remittance basis to shelter unremitted gains on crypto-assets, if the correct analysis is that they are non-UK assets. However, the recently published Crypto-assets HMRC Manual makes it clear that, in HMRC's view, in certain circumstances the location will be the UK if the beneficial owner is UK resident.

An alternative view has been set out in a guidance note issued by one of the leading professional bodies. Importantly it notes that, if taxpayers conclude that crypto-assets owned by a UK resident are not located here, they will need to make a clear disclosure of that conclusion on their tax return, given the contrary HMRC view.

Everyone who owns or who has owned crypto-assets should now check if they have any tax to pay and retain records of crypto-asset transactions. There is still time to report crypto-asset transactions in 2021 tax returns and, if necessary, amendments can be made to 2020 tax returns up to 31 January 2022; liabilities for earlier years can be dealt with by making a voluntary disclosure to HMRC. Doing so promptly can achieve a significant mitigation of penalties, including the higher penalties potentially applying to offshore tax matters. Professional advice will be particularly important for recipients of the HMRC nudge letters.

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