

**Expanding the Investment Transactions List for the
Investment Management Exemption and other fund tax regimes
Response by the Chartered Institute of Taxation**

1 Executive summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

We have confined our response to a single, discrete issue: the definition of cryptoassets for tax purposes, as this is of wider importance for the treatment of cryptoassets within the wider UK tax system. We would like to see one interpretation adopted by HMRC, entered into statute and applied universally for the purposes of all taxes.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most

effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

2.5 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

3 Definitions and their importance

3.1 Currently, there is no statutory definition of cryptoassets for tax (or any other) purposes. HMRC have made clear their view that cryptoassets in the form of crypto ‘currency’ or exchange tokens, are not actual currency¹, and that transactions as investments are thus subject to capital gains tax (CGT). Likewise, tokens earned through employment/self-employment makes them subject to income tax and national insurance like any other remuneration.

There may be occasions when slightly different definitions are required for different areas of taxes and different purposes. However, those various definitions should be clearly explained at the time they were introduced to avoid potential confusion. We are at the stage in the development of cryptoassets where any such confusion could be particularly damaging in the absence of a clear definition.

The government’s public-facing guidance, to enable individuals comply with their tax compliance obligations surrounding cryptoassets, has to rely on existing (and increasingly out of date) rules and legislation which simply are not appropriate. For example, HMRC requires s.104 pooling and 30-day bed and breakfasting rules, as is used for shares for calculating the base cost for shares; yet over a given tax year it is possible for an individual to carry out thousands, hundreds of thousands or potentially even millions of micro transactions of tokens via automated trading routines, resulting in small portfolios with vast numbers of transactions unlike most ‘standard’ investment portfolios. Likewise, cryptoassets are capable of being created and used as both means of currency/revenue and investment vehicles so questions are being asked about whether these assets are subject to income tax, or CGT. Once that is decided, further questions are asked about how, precisely, the resulting tax is supposed to be calculated using laws which were drafted long before these assets were even envisaged.

¹ HMRC manual CRYPTO10100

Even from a non-tax perspective, there has long been concern about the lack of a single definition of cryptoassets. The Financial Action Task Force (FATF) stated²:

‘As regulators and law enforcement officials around the world begin to grapple with the challenges presented by virtual currencies, it has become apparent that we lack a common vocabulary that accurately reflects the different forms virtual currency may take’

This consultation is seeking, amongst other things, to define cryptoassets specifically for the purposes of the Investment Transactional List (ITL) and for those assets being used as investments.

We are not in a position to directly respond to the questions posed in this consultation. However, we would like to adopt the spirit of questions 2 (*Are there any particular definitions, in regulatory or other contexts, that investment managers find useful in defining cryptoassets?*) and 7 (*Please identify any differences in the definition of cryptoassets that would be needed for UK funds compared to that required for the IME*) and take the opportunity to call for a generally-accepted and universally-applied definition of cryptoassets for UK tax purposes generally.

- 3.2 According to the consultation, the definition which HMRC is considering to adopt for ITL purposes is similar to that proposed by the OECD’s Crypto-Asset Reporting Framework (CARF), which currently reads:

‘The term ‘Cryptoasset’ refers to a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.’

However, the present consultation points out that this is too broad for ITL purposes and that exclusions would need to be put in place surrounding: transactions in land, ‘closed-loop’ assets, and those not already included within ITL.

- 2.3 The 5th Money Laundering Directive currently defines cryptoassets as:

‘cryptographically secured digital representations of value or contractual rights (that uses a form of distributed ledger technology) that can be transferred, stored or traded electronically’

In their manuals³, HMRC adopt this definition for tax purposes, except for those words within the brackets. After giving the HMRC definition, the manual states that:

‘While all cryptoassets use some form of Distributed Ledger Technology (DLT) not all applications of DLT involve cryptoassets’⁴.

- 2.4 We express no preference as to whether or not the CARF (or any other) definition be adopted for ITL purposes; our concern is simply that one interpretation should be adopted by HMRC and applied universally for the purposes of all relevant taxes – not just for ITL purposes.

- 2.5 In order for the tax system to evolve and be able to recognise the status of cryptoassets, a clear, universal definition needs to be established as a fundamental first step. We are at something of an impasse with cryptoassets, they are becoming more widely-used and accepted and more ‘mainstream’, yet all this is

² In their 2014 joint publication ‘Virtual currencies – key definitions and potential AML/CFT risks’ at page 4

³ CRYPTO10100

⁴ Ibid

happening within a tax system which is simply not able to recognise, interpret and apply itself to this type of asset.

It is our contention that once an interpretation (whatever it may be) is decided upon and formalised, it is put on a statutory footing and applied universally to provide an element of clarity. The precise wording of the statutory definition could be then subject to a separate consultation.

4 Acknowledgement of submission

- 4.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

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