

MAY 27, 2019

Proposed Amendments to the GST/HST Treatment of Cryptocurrencies

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The Department of Finance (Canada) (Finance Canada) has released, for public comment, draft legislative proposals (Draft Proposals) to amend the *Excise Tax Act* (ETA) in order to address certain issues regarding the treatment of virtual currencies for the purposes of the goods and services tax/harmonized sales tax (GST/HST).

Draft Proposals on Virtual Currency

Finance Canada proposes to exempt most transactions involving cryptocurrencies from GST/HST by incorporating a new defined term, “virtual payment instrument,” in the definition of “financial instrument.” Most transactions involving financial instruments are classified as “financial services,” which are exempt from GST/HST.

More specifically, a “virtual payment instrument” is defined to mean “property that is a digital representation of value, that functions as a medium of exchange and that only exists at a digital address of a publicly distributed ledger.” The definition sets out two principal exclusions:

1. Property that “confers a right, whether immediate or future and whether absolute or contingent, to be exchanged or redeemed for money or specific property or services or to be converted into money or specific property or services” – for example, a gift card.
2. Property that is “primarily for use within, or as part of, a gaming platform, an affinity or rewards program or a similar platform or program” – for example, online gambling tokens.

Uncertainties Addressed by the Draft Proposals

The Canada Revenue Agency (CRA) has thus far refrained from commenting in any significant detail on the GST/HST implications of transacting in cryptocurrencies. From an income tax perspective, it has been the CRA’s long-standing position that virtual currencies, such as bitcoin, should be treated as commodities subject to barter rules, given that they are not currencies issued by a government of a country.¹ Nevertheless, the lack of guidance from a GST/HST perspective has given rise to uncertainties, including whether (i) cryptocurrencies can plausibly be characterized as “money” for GST/HST purposes; (ii) transactions involving cryptocurrencies are subject to GST/HST; and (iii) activities carried on by industry participants, such as mining, are subject to GST/HST.

The Draft Proposals, released on May 17, 2019, address the first two uncertainties.

With respect to the first uncertainty, by defining a “virtual payment instrument” as “property” within the definition of “financial instrument,” Finance Canada seems to have determined that cryptocurrencies are not “money” as defined in the ETA, since the definition of “property” excludes money. This does not preclude arguments that cryptocurrencies are money in relation to transactions completed before May 18, 2019.

With respect to the second uncertainty, the Draft Proposals primarily address two concerns regarding transacting in cryptocurrencies:

1. **Double tax.** It has been suggested that transacting in cryptocurrencies could be subject to double tax (once when issued and once again when used to purchase goods or services). The Draft Proposals ensure that the purchase of goods and services using cryptocurrencies will be exempt from tax.
2. **Place of supply rules.** Since GST/HST applies only to a supply made, or deemed to be made, in Canada, the anonymity of the recipient when transacting with cryptocurrencies could have complicated the determination of the place of supply and therefore whether GST/HST would apply. By exempting most transactions involving cryptocurrencies from GST/HST in the first instance, the Draft Proposals address this concern.

Remaining Uncertainties

Uncertainty still remains with respect to the status for GST/HST purposes of mining activities and the entitlement for miners to claim input tax credits in this respect. Similarly, due to the anonymity of purchasers of cryptocurrency, inherent uncertainty remains as to the practical application of zero-rating provisions related to the supply of cryptocurrency to non-residents.

Moreover, should these amendments be enacted as proposed, cryptocurrency players will be eager to know whether Québec's Ministry of Finance will amend the Québec *Sales Tax Act* accordingly, under the *Canada-Québec Comprehensive Integrated Tax Coordination Agreement*.

Finance Canada welcomes comments regarding these Draft Proposals until June 17, 2019. The final legislative amendments pertaining to virtual currencies may therefore differ from the Draft Proposals. Once enacted, these amendments will be deemed to come into force retroactively as of May 18, 2019.

¹CRA Views, 2013-051470117 – *Bitcoin* (December 23, 2013).

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