



# DAVEY'S Locker



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## Bitcoin

### What about the tax consequences?

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Bitcoin is not a recognized 'financial product' for purposes of the FAIS Act, regulated by the Financial Services Board (FSB), nor currency or legal tender for South African Reserve Bank (SARB) purposes of oversight.

As an aside, in correspondence with SARB, I was advised as follows:

Currently, the only permissible avenue for purchasing cryptocurrencies from abroad is through the utilization of an individual's Single Discretionary Allowance and/or individual foreign investment allowance as outlined in the abovementioned manuals, which a local Authorized Dealer in foreign exchange (local banker) will be able to assist individuals with.

#### Tax treatment

Notwithstanding the lack of regulatory recognition, bitcoin is an asset from an economic perspective, in that it has an exchange value. In being disposed of, it will attract tax consequences, since it is in my view, an 'asset', as broadly defined in the Eighth Schedule to the Income Tax Act, in the following terms:

(a) property of whatever nature, whether movable or

immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and

(b) a right or interest of whatever nature to or in such property.

The general test is whether a receipt or accrual arising from an exchange of bitcoin is of an income or capital nature. (The mere gratuitous award of bitcoin as a donation to a person for no *quid pro quo* would be a tax-free receipt.)

The difference between income and capital is important, since it determines the applicable tax rate, being a maximum of 45% on revenue account and an effective maximum of 18% on capital account.

#### Income or capital?

If the bitcoin award is a fee or commission for services rendered (for example, as recorded on the Blockchain public ledger), it would be classified as revenue (income) for services rendered. Also, if a taxpayer is speculating in bitcoin, in the sense of trading through frequent buying and selling, proceeds of a revenue nature would arise.

If a taxpayer buys bitcoin as

a savings vehicle, in the sense that it is a medium- to long-term holding, the asset is of a capital nature, and the CGT will be levied upon its subsequent disposal on a capital gain (if any), being the proceeds less the cost of acquisition cost.

#### Valuation

Herein lies the complexity, given the fact that bitcoin suffers frequent fluctuations in price, although there is a daily objective value, as indicated on the Coinbase website (Coinbase.com), which I understand is the largest USA-based bitcoin exchange. At the time of writing the value is US\$5 720,14. The ZAR price is R85 294, as indicated on the largest SA-based exchange, Luno.com.

The taxpayer bears the onus of proving the market value of bitcoin, as with any other award or asset, under s 102(1)(e) of the Tax Administration Act.

#### Certainty needed?

Maybe it's time for regulatory recognition by the authorities, so as to create certainty.

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