

GST e-Alert

23 MARCH 2018

Cryptocurrency & GST

In 2017, Australia amended their A New Tax System (Good and Services Tax) Act 1999 (**GST Act 1999**) and A New Tax System (Goods and Services Tax) Regulations 1999 (**GST Regulations 1999**) to introduce specific GST provisions for cryptocurrency. This was to avoid “double taxation” for transactions which use cryptocurrencies as a form of payment.

What is Cryptocurrency?

Cryptocurrency, a form of digital currency, is said to be the new money of the millennium. It is cash which is intangible and generally operates independently of a central bank or government. Among all types of cryptocurrencies, Bitcoin is the most commonly known in the market. The GST treatment of cryptocurrency in Singapore is an illustration of how “double taxation” can arise in transactions using cryptocurrency.

GST Treatment of Cryptocurrency in Singapore

The Inland Revenue Authority of Singapore (**IRAS**) recognises cryptocurrency as a service. Bitcoin, for example, is subject to GST at the prevailing rate of 7%. Singapore does not consider cryptocurrency as a form of currency in the ordinary sense. Hence, the exemptions given to financial services do not apply for GST purposes. The IRAS on its official website commented:

“Virtual currencies (e.g. Bitcoins) are not considered as 'money', 'currency' or 'goods' for GST purposes. Instead, the supply of virtual currency is treated as a supply of services, which does not qualify for GST exemption.”

The IRAS also takes the view that any payment using cryptocurrency will be considered as a barter trade:

“When you use virtual currencies to pay for goods or services, the transaction will be considered as a barter trade.

Contact persons:

Datuk D. P. Naban
Senior Partner,
Tax, GST & Customs Practice
+603-6208 5858
dpn@lh-ag.com

S. Saravana Kumar
Partner,
Tax, GST & Customs Practice
+603-6208 5813
sks@lh-ag.com

**CHAMPIONING
TAXPAYERS**

We represent taxpayers. Be it tax litigation, advisory or structuring,
we focus on clarity, certainty and solutions.
Make us your confidante today.

There are two supplies made — one by the supplier who supplies the goods and services and the other by you who use virtual currencies to pay the supplier. GST would need to be charged on each supply if the respective supplier is GST registered.”

This would result in double taxation of GST as GST is accounted for twice in a single transaction from an economic point of view.

For example, a piece of commercial land is sold to a purchaser for \$1 million and the purchaser paid for the land using Bitcoin:



As Bitcoin does not fall within the conventional definition of “currency”, the trading of Bitcoin is taxable and charged with GST. Assuming both parties are GST registered, the above transaction would be treated as a “barter transaction” and thus, GST would be accounted for twice rather than once:

- The Vendor would be treated as supplying land worth \$1 million to the Purchaser;
- The Purchaser would be treated as supplying Bitcoin worth \$1 million to the Vendor;
- The Vendor needs to account for 7% out of \$1 million; and
- The Purchaser needs to account for 7% out of \$1 million.

GST Treatment of Cryptocurrency in Australia

Australia previously took the same position as Singapore. Recently, Australia has amended their GST Act 1999 and GST Regulations 1999 to introduce new GST treatments for cryptocurrency and transactions using these currencies. The amended legislation provides that supplies and acquisitions of

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitting

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas

Solaris Dutamas

No. 1, Jalan Dutamas 1

50480 Kuala Lumpur

Malaysia

Tel: +603 6208 5888

Fax: +603 6201 0122

Email: tax@lh-ag.com

cryptocurrencies are not subject to GST from 1.7.2017. This means a person is:

- (a) not required to pay GST on the supply of cryptocurrency; and
- (b) not allowed to claim GST credits for the GST incurred in making a supply of cryptocurrency (input taxed sales of financial supplies).

With this amendment, it ensures that supplies of digital currency receive the same GST treatment as supplies of money, particularly foreign currencies. The amendments successfully removed the double taxation of digital currencies such as Bitcoin.

Following the amendments, the ATO published the following on its website:

“Sales and purchases of digital currency are not subject to GST from 1 July 2017. This means that you do not charge GST on your sales of digital currency and similarly, you are not entitled to GST credits for purchases of digital currency.

“You do not have any GST consequences in relation to buying or selling digital currency, or using it as a payment, if you are not carrying on a business.

“If you are carrying on a business in relation to digital currency, or as part of your existing business, or if you are accepting digital currency as a payment in your business, you need to consider any GST consequences that may arise.

...

Using digital currency to pay for goods and services

“No GST consequences arise when business use digital currency to pay for goods and services. Digital currency is a method of payment and the

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitting

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas

Solaris Dutamas

No. 1, Jalan Dutamas 1

50480 Kuala Lumpur

Malaysia

Tel: +603 6208 5888

Fax: +603 6201 0122

Email: tax@lh-ag.com

consequences of using it as payment are the same as the consequences of using money as payment.

Receiving digital currency as payment

“If you receive digital currency as payment for your sales of goods and services normal GST rules apply. For example, if you make a taxable sale of goods for which you received digital currency as payment, you are required to remit 1/11th of the payment received for that taxable sale. The amount of GST your remit and report on your activity statement has to be an amount of money in Australian currency.”

GST Implications of Cryptocurrency in Malaysia

In Malaysia, only currency notes and coins issued by Bank Negara Malaysia (“**BNM**”) can be legal tender. BNM has recently reiterated its stand that Bitcoin and similar cryptocurrencies are not legal tender in Malaysia.

(See <https://www.thestar.com.my/business/business-news/2017/12/14/bank-negara-issues-draft-paper-on-bitcoin/>)

Section 2(1) of the Goods and Services Tax Act 2014 (**GST Act**) defines “goods” to mean any kind of movable and immovable property **but excludes money except —**

- (a) bank note or coin before it becomes legal tender in Malaysia or in any other country; or
- (b) a collector’s piece, investment article or item of numismatic interest.

Section 2(1) of the GST Act further defines “money” to include currencies whether those of Malaysia or any other country. Bitcoin or any form of cryptocurrency is essentially not a currency in any other country. Accordingly, Bitcoin cannot be considered as money under the GST Act.

This means any transaction using Bitcoin as a method of payment would be a “barter transaction” and GST would have to be paid twice.

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitting

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

Using the same example as above, a piece commercial land is sold to a purchaser for RM1 million and the purchaser paid for the land using Bitcoin:



Under Item 5 of the Goods and Services Tax (Exempt Supply) Order 2014, a supply of currency is exempt for GST purposes.

However, Bitcoin does not fall within the conventional definition of “currency” as recognised by BNM. Accordingly, the trading of Bitcoin is taxable. This will result in GST being charged on the trading of Bitcoin.

Under Section 15(2) of the GST Act, where the supply is for consideration not in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that consideration.

Similar to the position taken by Singapore, in Malaysia, the above transaction would be treated as a barter transaction, i.e. resulting in GST paid twice rather than once:

- (a) The Vendor would be treated as supplying land worth RM1 million to the Purchaser;
- (b) The Purchaser would be treated as supplying Bitcoin worth RM1 million to the Vendor;
- (c) The Vendor needs to account for 6% out of RM1 million; and
- (d) The Purchaser needs to account for 6% out of RM1 million.

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitting

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas

Solaris Dutamas

No. 1, Jalan Dutamas 1

50480 Kuala Lumpur

Malaysia

Tel: +603 6208 5888

Fax: +603 6201 0122

Email: tax@lh-ag.com

If both parties are wholly taxable suppliers, the above transaction would be tax neutral. However, if the parties are mixed suppliers, input tax credits may not be fully recoverable.

Currently, Malaysia is still racing to catch up with the new digital world while the current GST law is placing an unnecessary burden on taxpayers. In order to move towards a more business-friendly tax regime, the GST Act and Regulations need to be amended to eliminate the element of double taxation when cryptocurrencies are involved.

Please contact us at tax@lh-ag.com if you have any queries in respect of this topic or GST matters.

Contact persons:

Datuk D. P. Naban

Senior Partner,
Tax, GST & Customs Practice
+603-6208 5858
dpn@lh-ag.com

S. Saravana Kumar

Partner,
Tax, GST & Customs Practice
+603-6208 5813
sks@lh-ag.com

**Published by the Tax, GST & Customs Practice,
Lee Hishammuddin Allen & Gledhill**

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitizing

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

