Tax Considerations of Blockchain and Cryptocurrency

Rob Massey – Partner, Deloitte Tax LLP
Brian Rowbotham – Partner, Crowe LLP
David Forst – Partner, Fenwick & West LLP
Dawn Rhea – National Tax Director, Moss Adams

Evolution in commerce

Cavepeople
Barter exchange – clubs trading for meat
No technology

Internet
Virtual storefronts
Download software

Blockchain
Distributed ledger
Smart contracts
Use of Tokens

Mail, common courier, live services
Where were services performed?
Where was title of property transferred?

SaaS/Cloud
Sale?
Service?
License?

Technology Taxability Regulation
A World of Barter Transactions

- Fair Market Value
- Volatility
- Basis Tracking
- No conversion back to fiat
- Unnatural accounting cycles
- Impacts every accounting cycle
- Cannot tie to cash flow
- No bank reconciliations

Enabling Innovation

- Tokens - payment and enabling technology
  - Transparency
  - Revenue splits
  - Locking rights
  - Platform access
  - Validation
  - Identity
Where is the **business**?

Role and Location of the **humans**
Role and location of the **machines**

What’s the **thing**?

- **Property**
- **Commodity**
- **Cash Equivalent**
- **Security**
- **Deposit**
- **Deferred Revenue**
BLOCKCHAIN IS IMPACTING EVERY INDUSTRY

- Digitizing warranties for improved management
- Preventing trade of stolen goods
- Distributing and trading in digital assets
- Integrating cryptocurrencies into existing gas station infrastructure
- Enabling oil commodities investment trading in carbon emissions
- Supporting seamless cross currency transactions
- Facilitating direct peer-to-peer payments
- Preventing medical data forgery
- Tracing and preventing counterfeit pharmaceuticals
- Creating and recording a person’s genetic map
- Managing devices such as sensors
- Enabling machinery to autonomously manage service times and supply schedules
- Creating transparency and secure traceability of materials
- Managing registered IDs
- Creating secure voting platforms
- Time stamping of certifications
- Transferring existing land deeds
- Migrating the land registry onto a transparent, immutable ledger
- Creating a decentralized, shared economy
- Transforming phones to portable blockchain wallets
- Creating a decentralized, shared economy
- Tokenized Business Models
- Crypto as a means of Payment
- Investing
- Dealing
- Trading
- Blockchain Enabled Technology Strategy

PAUSE!
Check the Audience

Industry

Manufacturing
Telecom
Advertising
Real Estate
Healthcare
Entertainment
Technology
Retail
Services

Use Case
### IRS Notice 2014-21: “Virtual Currency”

<table>
<thead>
<tr>
<th>Property</th>
<th>• Not a currency</th>
<th>• No other clarifications made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipt in exchange for goods / services</td>
<td>• Taxable at FMV at time of receipt</td>
<td></td>
</tr>
<tr>
<td>Exchange of virtual currency</td>
<td>• Taxable barter exchange</td>
<td></td>
</tr>
<tr>
<td>Mining</td>
<td>• Taxable</td>
<td></td>
</tr>
<tr>
<td>Character</td>
<td>• Determined based upon how used by taxpayer (capital vs. ordinary)</td>
<td></td>
</tr>
<tr>
<td>Used to pay employees</td>
<td>• Compensatory – withholding and reporting</td>
<td></td>
</tr>
</tbody>
</table>

### Classification

- **Investment**
  - Intended Use
  - Value
  - Fluctuations

- **Trade or business property**
  - Held for Sale
  - Facilitates transactions in an Ecosystem
  - Utility

- **Commodity**
  - CFTC
  - Utility
  - Value fluctuations
  - Exchanges

- **Security**
  - Derivatives
  - Financial instruments
  - Equity
  - Investors

- **Cash equivalent**
  - Utility
  - Intended Use
**Domestic tax considerations**

How is it used in the Enterprise?

**Investment**  
Intended Use  
Value Fluctuations

**Trade or business property**  
Held for Sale  
Facilitates transactions in an Ecosystem  
Utility

**Commodity**  
CFTC  
Utility  
Value fluctuations  
Exchanges

**Cash equivalent**  
Utility  
Intended Use

**Security**  
Derivatives  
Exotic financial instruments  
Investors

**Revenue recognition**

- Barter transactions
- Service contract
- Market makers
- Mark to market
- Pre-sales

**Compensation**

- IRC Section 83
- Options and salaries payable in cryptocurrency
- Withholding and reporting requirements
- Lockups, vesting, etc.
- Valuation

**Other**

- Character
- Tax accounting methods (basis tracking)
- Hedging
- Contributions to / Distributions from partnership or corporation
- Loans

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**International tax considerations**

How is it used in the Enterprise?

**Investment**  
Intended Use  
Value Fluctuations

**Trade or business property**  
Held for Sale  
Facilitates transactions in an Ecosystem  
Utility

**Commodity**  
CFTC  
Utility  
Value fluctuations  
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**Cash equivalent**  
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Intended Use

**Security**  
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Exotic financial instruments  
Investors

**VAT considerations**

- IP migration
- ECI
- Subpart F
- GILTI
- FDII

**Cross-border considerations – Withholding**

- Permanent Establishment
- FBAR and other reporting
Multistate tax considerations
How is it used in the Enterprise?

- **Investment**
  - Intended Use
  - Value
  - Fluctuations

- **Commodity**
  - CFTC
  - Utility
  - Value fluctuations
  - Exchanges

- **Trade or business property**
  - Held for Sale
  - Facilitates transactions in an Ecosystem
  - Utility

- **Cryptocurrency as “Property”**

- **Cash equivalent**
  - Utility
  - Intended Use

- **Security**
  - Derivatives
  - Exotic financial instruments
  - Investors

- **Blockchain-enabled transactions**
  - Revenue sourcing – National, State, Local / Provincial level
  - Substance – smart contract, servers, decisions, actions
  - Permanent establishment / ECI
  - Applicability of withholding tax
  - Applicability of transaction taxes (GST, VAT, JCT, Sales Tax, etc.)

Tax Considerations of Blockchain
(non-crypto transactions)
Tax considerations of a Token Launch

• Structuring the launch – token creation and sale
• Trade or business property – utility considerations, transaction flows, etc.
• Subpart F (non-US)
• Subsequent conversions of Cryptocurrency earned on the crowdsale
• Permanent establishment / ECI
• Applicability of withholding tax
• Transaction taxes (GST, VAT, JCT, Sales Tax, etc.)
• Compensation considerations
• Post launch operational considerations

Q&A