How Sars may treat cryptocurrencies

By Tertius Troost

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The draft Taxation Laws Amendment Bill (TLAB) contains proposals made by Treasury on the tax treatment of cryptocurrencies.

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The amendments are in three areas, namely in the definition of financial instrument of the Income Tax Act, in the definition of financial services in the VAT Act and under the ring-fencing of assessed loss provisions of the Income Tax Act.

VAT exemption

The clarification on VAT treatment will be well received, especially on the basis that the "the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency" will be included under the definition of financial services in terms of section 2 of the VAT Act.

If accepted, all dealings in cryptocurrencies will be exempt from VAT in terms of section 12 of the VAT Act. This means that there will be no VAT input claims on the acquisition of cryptocurrencies, and no VAT output being levied on the disposal of cryptocurrencies.

In addition, since the dealings in cryptocurrencies is an exempt supply, the VAT on the costs involved in the acquisition of the cryptocurrency, either through mining or purchase, may not be claimed as a VAT input. The dealing in cryptocurrencies will be treated similar to the dealing in shares.

Suspect trades

However, the good news seems to end there. Treasury has proposed to include the "acquisition or disposal of any cryptocurrency" under the ring-fencing of assessed loss provisions (colloquially referred to as suspect trades).

This will result in cryptocurrency dealers not being able to offset the losses incurred from the dealing in cryptocurrencies from any other trade. In other words, these losses are ring-fenced to be used only against future profits earned from cryptocurrencies. In the highly volatile cryptocurrency market, losses are often expected and this proposal seeks to limit the effect of these losses on Sars' revenue targets.

It should be noted that the proposal will not affect taxpayers who hold cryptocurrencies on capital account. Losses made on disposal of cryptocurrencies held as capital assets will result in a capital loss which may be offset against other capital gains.

This clarification is a step in the right direction as cryptocurrencies become more prevalent in the daily lives of South Africans and as Treasury seeks to legislate dealings in cryptocurrencies.

ABOUT THE AUTHOR

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