

CRYPTOCURRENCY IN ST MAARTEN

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Much is written about bitcoin, bitcoin cash, ethereum and various other currencies, or better known as: cryptocurrencies. Cryptocurrency also seems to be on the rise on Sint Maarten. Cryptocurrency is increasingly used as a means of payment -among others in various businesses (bars, restaurants)- on Sint Maarten and as an investment. The value of the various cryptocurrencies has fallen sharply in recent weeks, but public interest in crypto does not seem to be waning.

The tax aspects of holding and investing in cryptocurrencies often remain underexposed, especially in the Caribbean. In this article I will therefore discuss the tax aspects without wishing to be exhaustive. In principle, the following applies to the other islands within the kingdom as well.

CURRENCIES

Cryptocurrencies are digital means of exchange that do not involve an (official) central counterparty such as a bank. Most transactions in cryptocurrencies take place via so-called exchange platforms. Cryptocurrency can be purchased there against payment of regular money or exchanged for other cryptocurrencies. Cryptocurrencies can also be acquired through mining. Mining is the method by which cryptocurrencies are generated and the transactions involving new coins are verified is known as mining. Mining is not profitable due to the high energy rates on Sint Maarten. The tax treatment of mining differs and will therefore not be discussed further due to its limited importance. Cryptocurrencies are in principle no different from other currencies. Most cryptocurrencies generally do not

generate returns in the form of dividends or interest (also known as a split-off). A feature of currencies – including most cryptocurrencies – is that there is no split-off. Currency only knows value decreases and increases in value.

INDIVIDUALS

In most countries, crypto is viewed as an asset for tax purposes. In many countries, capital gains on disposal of assets are explicitly included in the taxation base. This is the case, for example, in the United States. In some countries, including the Netherlands, capital gains are taxed annually, even if they have not been realized (Box 3). This levy has been criticized for years and was recently the subject of a judgment by the Supreme Court in the Netherlands.

In Sint Maarten, cryptocurrencies held by private individuals are actually completely untaxed. As noted earlier, cryptocurrency does not yield revenue that splits-off, but only changes in value. According to Sint Maarten tax law, only income that is split off from an asset can be taxed. Movements in value cannot be taxed. Sint Maarten also has no wealth tax, so that the value itself remains untaxed. In other words: the taxation in Sint Maarten on cryptocurrencies held by private individuals is nil.

DATA EXCHANGE

In contrast to Europe, there is no legislation in Sint Maarten yet regulating that digital platforms are obliged to provide taxation-relevant information about their users to the tax authorities (and that this information is exchanged with other countries).

COMPANIES

What if a company such as a B.V. or N.V. buys or receives cryptocurrency from a customer to pay his bill?

PROFIT TAX

Pursuant to the National Ordinance on Profit Tax 1940, a legal person (B.V. / N.V.) runs a company with its entire assets. Unlike a personal Income tax entrepreneur, a B.V. / N.V. does not need to label its assets 'private' or 'business'. This means that the purchase (whether or not followed by the sale) of cryptocurrencies takes place within the business and will be taxed. The results of a sale must be taken into account in accordance with good commercial practice (in Dutch: Goed koopmansgebruik). Taxation must take place when a profit has been made, i.e. in the event of an actual sale. A loss may be taken if the cryptocurrency would fall in value (below its cost). If a company owns crypto on the balance sheet date, this is valued at cost price or lower market value. If a company is paid for its services or deliveries in cryptocurrencies, the cryptocurrencies must be converted into a regular currency to calculate the value. The converted amount is part of the business revenue. The foregoing is based on the fact that the annual accounts are prepared in accordance with standards that are generally considered acceptable. This means that it provides such insight that a responsible opinion can be formed about the equity and the result of the business.

TAX ON BUSINESS TURNOVER

If the company receives cryptocurrency for its supplies or services, this is taxed. Under the National Ordinance Tax on Business Turnover (TOT), the compensation consists of everything that the entrepreneur receives with regard to the supply of a good or the provision of a service. Even if the point of view would be

that it does not concern regular currency, there is a (partial) compensation in kind. In this case, the compensation is set at the total amount (economic market value) of the consideration. In addition, the fees charged by a crypto exchange platform to the entrepreneur, may not be deducted from the taxable business turnover.



PAYROLL TAX

It is also not relevant for payroll tax how cryptocurrencies are classified. Article 6 of the National Ordinance on Wage Tax shows that wages comprises everything received because of past or current employment under whatsoever name and in whatsoever form. Salary/wages paid by a company via cryptocurrencies can be seen as wages in kind. This salary / wages must be converted to regular currency (money value) at the time the cryptocurrency is received.

FUTURE

Cryptocurrency does not seem to be leaving the Sint Maarten market anymore. The legislator might therefore in the future choose to amend the legislation so that value increases of (crypto) currencies can be taxed when held by private individuals. Looking at the current cryptocurrency market conditions, it should be noted however, that value decreases should then also be deductible. Whether this change in legislation is feasible in the near future is the question. Legislation comes with supervision. As mentioned before, at the moment it does not matter whether or not the Tax Authorities of Sint Maarten are aware of the possession of cryptocurrencies in private.

If Sint Maarten chooses to profile itself as 'the crypto-friendly island', that could mean that institutions that manage cryptocurrencies want to establish themselves on Sint Maarten. If the government then chooses to take a piece of the pie, legislation must also be developed which will oblige these institutions – just like banks – to inform the tax authorities of Sint Maarten about their cryptocurrency-assets. Perhaps it is time for a task force composed of representatives from the private sector, central bank and the government? However, the question is whether the already understaffed government of Sint Maarten currently has the personnel capacity for this.



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