



New Tax Landscapes: Cannabis and Cryptocurrency

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AGENDA

- Cannabis – Road to Legalization
 - Current status & impact of legalization
 - Income and sales tax
 - Cannabis duty
 - Industry challenges
- Cryptocurrencies – The way of the future?
 - What is a cryptocurrency?
 - CRA's position as a guideline
 - Barter transactions
 - Sales tax implications
 - Mining and donations
 - Foreign reporting

Cannabis – Current Status

- Grey market sales
- Some enforcement on brick and mortar shops
 - Many dispensaries in Vancouver operating without a license
 - BC Supreme Court currently hearing a case against 53 unlicensed dispensaries for bylaw violations
 - 3,600 tickets, \$2.5M in fines of which ~\$182k have been paid

Cannabis – Legalization

- Certain products become available to non-medicinal users
- Other products remain decriminalized / illegal
 - Edible products / concentrates legalization ETA is Oct. 17, 2019 (1 year later)
- Does operating in the unlicensed space after Oct. 17 become a larger risk than before Oct. 17?

Income tax

- “Business as usual” in most cases
 - Sale of a product – Proceeds taxable if determined that the seller is carrying on a business in Canada.
 - Allocations to permanent establishments in or outside of Canada



Income tax

- CRA audit risks
 - Documentation – inventory
 - Payroll – staff
 - GST/HST collection
- Director-based risks that persist beyond company's existence

Sales taxes

- GST/HST
 - CRA interpretation: “Is it possible for *any* type of consumer to purchase the drug without a prescription or exemption?”
 - Authority to Possess for medical marijuana not considered a prescription
 - All sales of cannabis GST/HST taxable
- PST – British Columbia
 - Few to no specific cannabis related guidance or exemption criteria, but for medicinal use
 - Non-medicinal use therefore subject to PST

Sales taxes – Future changes?

- GST/HST
 - Specific strains of cannabis for prescription use only? Possible to be GST zero-rated
- PST – British Columbia
 - Unlikely to change before a change in government or election year
- Generally can expect more specific legislation and guidance in coming years
- Social welfare related changes

Cannabis duty

- Flat rate duty or based on purchase price
- Up to \$1 per gram or 10% of purchase price, whatever is greater
- As a duty, GST/HST will generally apply on top of this amount
- 6 years documentation requirements with respect to this duty
- Combined federal / provincial maximums have been agreed upon by most provinces

Industry challenges

- Documentation
- Banking
- Licensing
- Pricing of legal cannabis vs. black market

Cryptocurrencies



Cryptocurrencies – What are they?

- Blockchain technology
 - Ongoing, permanent, unalterable ledger
 - Transactions are added into a new “block”
 - The block requires validation/confirmation (via the process of “mining”)
 - Once validated, the block with new transactions is added to the ever growing chain.

Cryptocurrencies – What are they?

- **Cryptocurrency**
 - Asset recorded on a particular blockchain
 - No intrinsic value (not redeemable for products, gold, etc)
 - No physical form
 - The supply of a cryptocurrency is decentralized
- Easy to start and low barriers to entry
 - Almost 2,000 cryptocurrencies in circulation
 - Difficulty is in getting buy-in for value

CRA's position - Commodity

- CRA's commentary on the matter dates back to 2013; no significant changes since then
- Not recognized as a currency, but rather as a commodity
- All exchanges between cryptocurrencies and non-currency assets are therefore barter transactions

Barter transactions

- What is the price that a taxpayer would charge an arm's-length person for that commodity?
- Price (for Canadian tax purposes) must be converted into Canadian dollars or functional currency
- May cause disparity in pricing and tax treatment
 - Seller could be deemed to receive higher proceeds than actually received.

GST/HST implications

- If the supply (disposition) of a cryptocurrency is a commodity, should GST/HST be charged to the person receiving the bitcoins?
 - No CRA position on the matter
 - GST/HST collectible on both directions of a transaction if commodity rules consistently applied

Mining Cryptocurrencies

- The granting of a unit of cryptocurrency upon successful validation for a block
- Treated as business or non-taxable (if as a hobby)
- Income is determined based on the value of the taxpayer's inventory at the end of the year

Donations

- Fair market value at the time of transfer
- If Bitcoin is used to obtain a property which is donated in-kind, use fair market value of the property donated rather than the Bitcoin value used to acquire it
 - Can cause discrepancies even with relatively quick turnaround

Specified Foreign Property

- CRA views cryptocurrencies as “funds or intangible property” which falls under T1135 reporting obligations
- Determining the cost of this property?
- Reminder—exemption for property used in an active business. If mining as an active business, should be free of T1135 filing obligations

Common problems

- Income vs. capital gains?
- Business vs. hobby?
- Non-reporting under SFP rules
- Valuation – See our fine valuation department!