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WILL INCOME FROM CRYPTOCURRENCY BE TAXED IN VIETNAM?

Cryptocurrency trading is not new and attracts a lot of participants. However, there is currently lacking of a full legal framework to recognize the cryptocurrency whether as an asset or goods and thus can be traded under Vietnam regulations. According to the Article 105 of the 2015 Civil Code:

"1. Property is objects, money, valuable papers and property rights. 2. Property includes real estate and movable property. Real estate and movables may be present and property formed in the future".

Whilst the Article 3 of the Commercial Law 2005 indicates:

"Goods include all types of movable property, including movable property formed in the future; things attached to the land".

Based on the above general descriptions, it appears the cryptocurrency would

qualify as an asset or goods and should be able to trade. Once the cryptocurrency is traded, the question will the income receiver be subject to tax in Vietnam and which kinds of tax category will apply, is currently unclear and controversial. Certain practical cases happened in past and alerted to tax authorities for tax challenge, especially for personal income tax of individual who participates in trading cryptocurrency and receive substantial gain.

From investment or business perspective, the current regulations are not so clear when the Investment Law 2020 does not include virtual currency investment in list of industries where business investment is prohibited, nor there is a specific directive that prohibits individual from investing in virtual currency. It



is noted, for securities activities, as per the Official Letter 4486/UBCK-GSDC dated 20 July 2018 by the State Securities Commission and in line with the Prime Minister Directive, public companies, securities companies, fund management companies, securities investment funds are not allowed to carry out illegal issuance, trading and brokerage activities related to virtual currencies.

In considering cryptocurrency as a means of payment, the State Bank of Vietnam still does not accept it as a legal means of payment according to Article 1 of Decree 80/2016/ND-CP on non-cash payment and instructions in the Document No. 5747/NHNN-PC dated 21 July 2017).

From tax perspective, it came to a controversial case when a local tax authority has sought opinion from the Ministry of Finance in imposing tax on income from cryptocurrency. The Ministry of Finance has issued Official Letter No. 4356/BTC-TCT dated April 1, 2016 in responding to a request for guidance from local Tax Department of Ben Tre province for a specific case with the view that the act of buying and selling digital currency is not a prohibited act. Digital currency is a “property” and a movable “commodity”. Therefore, the purchase and sale of digital currency is considered as the

purchase and sale of goods and is classified as a taxable commercial business activity which would be taxed under VAT, CIT (for corporate) and PIT (for individual).

Disputes have risen when the local tax authorities imposed tax and penalty as per the MOF guidance. The case has been later brought to the court with final conclusion that cryptocurrency is not yet defined elsewhere to be an asset or goods hence tax cannot be imposed. Specifically, the People’s Court has determined that this MOF’s official letter had been issued beyond the promulgation authority under the provisions of the Law on Promulgation of Legal Documents; as of the date of the court case, there had not been any legal document defining digital currency (virtual currency) as goods and services used for production, business and consumption in Vietnam. Meanwhile, the State Bank of Vietnam does not accept virtual currencies as legal currencies and means of payment, and Decree No. 96/2014/ND-CP dated October 17 of the Government stipulating sanctioning administrative violations for illegal issuance, supply and use of means of payment such as Bitcoin and similar virtual currencies.

Since then, there has been no further progress on tax implications on income from cryptocurrency investment.

Due to lacking of a full legal framework for cryptocurrency whilst in fact the cryptocurrency industry still exists and develops strongly by that time, some directions have been issued such as:

- Decision No. 1255/QD-TTg dated 21 August 2017 by the Prime Minister approved the legal framework project for management and handling of virtual currencies, electronic money, virtual assets, and assigned to the Ministry of Finance to develop documents, tax legislation related to virtual currency and submit it to competent authorities for consideration and promulgation.
- Official Directive No. 10/CT-Ttg on April 11, 2018 by the prime Minister stating the roles and responsibilities of State agencies in managing activities related to cryptocurrency.

Recently, the Prime Minister signed Decision 942/QD-TTg approving the e-Government development strategy towards the digital government in the 2021-2025 period, with a vision to 2030. The Prime Minister has assigned the State Bank to assume the prime responsibility for researching, building and piloting the use of virtual money based on blockchain technology. The time for the State Bank to implement is from 2021-2023.



The Ministry of Finance also has established a Study Group on virtual assets and virtual currencies under Decision No. 664/QĐ-BTC dated April 24, 2020 to conduct research and propose policy contents and management mechanisms managed according to the functions and tasks of the Ministry of Finance related to virtual assets and virtual money.

Thus, if the legal framework on virtual currency is completed, it is likely that virtual currency trading and trading activities will be surely subject to tax.

It is noted, in 2019, the Law on Tax Administration No. 38/2019/QH14 was promulgated with a new remarkable principle that was added compared to the old law, which is *"Principle of the nature of operations, transactions that determine tax obligations are principles applied in tax administration in order to analyze tax-paying transactions and production and business activities to determine tax obligations corresponding to the value created from the nature of that transactions, production and business activities."*

For corporate income tax, the income from cryptocurrency investment activities can just be an "other income" category in a company's tax return. However, for individual, it may need guidance from the Ministry of Finance to have guidance on the income tax category, tax base and applicable tax rate. Currently, under PIT regulations, there are below income category which is subject to PIT at respective rate:

1. Income from business activities
2. Income from salary and wages
3. Income from capital investment
4. Income from capital transfer
5. Income from real estate transfer
6. Income from winning bonus
7. Copyright income
8. Franchise income
9. Incomes from inheritance are securities, capital in economic organizations, business establishments, real estate and other assets subject to registration of ownership or registration of use, and
10. Income from receiving gifts as securities, capital in economic organizations, business establishments, real estate and other assets subject to registration of ownership or registration of use.

Given the above, the income from cryptocurrency investment/trading activities will likely fall in income category of (i) business activities or (ii) capital transfer. Further guidance from the MOF might be needed to determine tax payable including tax base, tax rate or even just a deemed rate on gross income.

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