

LT in Focus

Tales from the cryptocurrency

Last week, the Federal Tax Service issued Letter No. [OA-18-17/1027](#) dated 3 October 2016 (the Letter) "On measures to control circulation of cryptocurrencies." This is the first official document to comment on cryptocurrency. Previously, all comments on the legal status of cryptocurrencies and cryptocurrency transactions made by the Russian state agencies such as the Central Bank of Russia, the Federal Financial Monitoring Service and the Prosecutor General's Office, have been informal. This Letter is the first attempt to articulate the legal status of cryptocurrency transactions in Russia.

Why is it important?

What is the status of the FTS's Letter and is it legally binding?

What are the key points of the Letter?

What are the implications of treating cryptocurrency transactions as foreign currency transactions?

In light of the Letter, how can Russian citizens and entities use cryptocurrencies?

What is the outlook on further regulatory practice in Russia?

Why is it important?

Despite a great interest and attention from the state, the legal and the tax status of cryptocurrencies has not been defined so far.

The Letter marks a shift in approach, abandoning the prohibitive stance the authorities maintained for several years. Suffice it to say, when cryptocurrencies were first mentioned in the government's discourse, it was to the effect that all cryptocurrency operations must be banned in the country, becoming a criminal offence.

The Letter shows a more weighted and market-oriented approach. What the Federal Tax Service is primarily after is minimising the specific risks associated with cryptocurrencies (for example, the money-laundering risks – here the agency cites the [Federal Financial Monitoring Service's report](#) on cryptocurrencies as its source).

What is the status of the FTS's Letter and is it legally binding?

Such letters are issued by the Federal Tax Service for information purposes and therefore cannot be viewed as legally binding. This is true even when the letter is personally addressed, i.e. responds to a specific request. However, in practice, the Federal Tax Service circulates letters to all the lower-level fiscal authorities, which then align their practices with the FTS's position. Therefore, this Letter may have a direct impact on the transactions with cryptocurrencies in Russia.

What are the key points of the Letter?

The Federal Tax Service states that no currencies other than the Russian ruble may circulate in the country, and no monetary surrogates may be issued in Russia. At the same time, it notes that the effective Russian legislation does not define the term "monetary surrogate", let alone "cryptocurrency" or "virtual currency". The conclusion the FTS makes is that **there is no legal prohibition to use cryptocurrencies in Russia.**

The Federal Tax Service suggests that purchase and sale of cryptocurrencies in exchange for Russian roubles, foreign currencies or external securities be treated **as foreign currency exchange transactions**. Accordingly, we may draw two conclusions:

- The FTS does not view cryptocurrencies as a payment instrument, so in the context of foreign currency transactions cryptocurrency is an item that is bought or sold. The Federal Tax Service thus becomes the first public authority to recognise not only the existence of cryptocurrencies, but also the legality of their circulation. At the same time, the legal status of cryptocurrencies (whether that of a payment instrument, property rights, or other) remains undefined. This, however, does not prevent setting the basic regulatory framework – an approach used in other countries as well¹.

¹ (e.g., USA <https://www.irs.gov/uac/newsroom/irs-virtual-currency-guidance>)

- Transactions involving cryptocurrencies must fully comply with the currency control legislation. The Federal Tax Service notes that such transactions

must be performed through accounts of Russian residents with the banks authorised for these purposes.

What are the implications of treating cryptocurrency transactions as foreign currency transactions?

As we noted above, cryptocurrency transactions must only be performed using residents' accounts with Russian banks. This applies to both resident-to-resident and resident-to-non-resident transactions. For example, a resident wishing to sell cryptocurrency to a non-resident cannot receive the proceeds of such transaction to a foreign bank account. Currency-

denominated settlements between residents are prohibited, too. This means that residents are not allowed to sell cryptocurrency to one another, for example, for US dollars. This is nothing new, though, as the restriction to use foreign currencies as a payment instrument has always been in place.

In light of the Letter, how can Russian citizens and entities use cryptocurrencies?

Russian citizens and entities will be able to buy and sell cryptocurrencies subject to certain currency control-related restrictions. This being said, the

Federal Tax Service does not elaborate on whether Russian citizens and entities will be able to use cryptocurrencies as a payment instrument.

What is the outlook on further regulatory practice in Russia?

The FTS Letter is something of a breakthrough, even though the public became aware that the Russian Ministry of Finance was contemplating the foreign currency scenario for cryptocurrency regulation back in [July](#) 2016. Overall, we believe this Letter can be considered as the first step towards incorporating cryptocurrencies into the framework of the civil legislation. In our opinion, this approach is by far more efficient than the numerous prohibitive initiatives we have seen earlier.

The Federal Tax Service came really close to recognising cryptocurrencies as currencies – short of acknowledging them a payment instrument on top of being an object of purchase and sale transactions. Fundamental changes like that, though, must be formalised in the Federal Law *On Foreign Currency Regulation and Foreign Currency Control*, not in an information letter.

We hope you will find the above information timely and useful. Should you have any questions in this regard, Deloitte professionals will be glad to discuss them with you.

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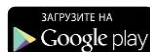


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