



Tax Newsletter

Timely news and information on national tax issues

The Bitcoin Law and its Transfer Pricing implications

Since the entering into effect of the Bitcoin Law (07 September 2021), this digital currency was given the status of legal tender. Thus, there are now various commercial transactions resulting from this law that are based on that cryptocurrency. Of course, transactions with related parties are not exempt from the above, and therefore, just as with independent parties, similar legal, accounting and tax considerations will apply.

This article emphasizes about the impact that bitcoin has on intercompany transactions, as well as the possible analyses of such transactions between related parties.

Transfer Pricing Documentation

For Transfer Pricing documentation purposes, the transactions must be consistent with the taxpayer's formal accounting. Therefore, the presentation currency for formal Transfer Pricing accounting purposes will continue being the US dollar.¹

The above is based on article 6 of the Bitcoin Law, which establishes that for accounting purposes, the US dollar will be used as the reference currency. For its part, article 436 of the Commercial Code indicates that the transactions will be entered in colones or dollars of the United States of America (USD). Finally, article 139 of the Tax Code refers to the fact that the

¹ In commercial transactions, the convertibility of bitcoin into US dollars can be automatic upon performing the transaction, or where appropriate, it is necessary to consider the current exchange rate as of the accounting close.

According to article 2 of the Bitcoin Law, the exchange rate shall be freely established by the market.

accounting entries should be made in chronological order, expressed in the currency of legal tender.

Possible new transactions with related parties

Bitcoin, being a completely decentralized digital currency and a new form of payment, could be considered by different businesses and/or companies as a new type of investment. In general terms, investing in bitcoin could be a novel investment alternative, but in dealing with it, companies should consider appropriate risk management.

Currently, bitcoin is the most widely accepted cryptocurrency in the world and its devaluation is considered unlikely. Another advantage for investors is that historically speaking, its value has been increasing and that trend is expected to continue.

Based on the above, various transactions between related parties may arise, which are briefly described below:

1. Bitcoin as an investment vehicle: As part of a business strategy, related companies could transfer funds to a related party to buy bitcoin, with the purpose of keeping or selling the cryptocurrency, and generating possible benefits.

These transfers of funds would be subject to normal Transfer Pricing regulations, and these transactions could be classified as financing or as an intercompany investment. In other cases, depending on the origin of the funds, the transactions could be classified as financial intermediation.

The specific considerations for this classification will depend to a great extent on the risks and functions associated with the transaction. Undoubtedly, it will be important to consider a thorough functional analysis for purposes of performing an adequate comparability analysis.

For these types of transactions, the Transfer Pricing method that could end up being the

most appropriate one is the Comparable Uncontrolled Price Method (hereinafter CUP), through which the possible rate of return in the financing, investment, or intermediation transaction can be analyzed.

2. Trading with cryptocurrency: similar to the above, an entity could pay an independent party or a related party for services for trading with bitcoin, which could include investment advisory services, transactions on platforms or short-term purchases-sales.

These types of transactions, when performed with a related party (trading), would be subject to Transfer Pricing analysis. In order to be evaluated, it would be necessary to obtain comparable information from contracts for similar services and/or comparable commissions. Therefore, CUP could be applicable in these circumstances.

3. Payments for technical services: since bitcoin is currency of legal tender, shops could gradually adopt it for selling their goods and services. This type of implementation could require the technical support of a related entity, seeking to ensure adequate implementation through technological risk management.

These types of technical services should be analyzed for Transfer Pricing purposes and comply with the other materialization requirements indicated in the local regulation. One possible methodology for these cases is the application of the Transactional Net Margin Method, analyzing the benefit of the related entity that is the provider of the technical service, considering the functions performed.

4. Insurance contracts: As part of the normal operations of the business, and in response to the possible technological risks generated by the investments, trading, or commercial implementation, companies could agree to new insurance contracts between related

parties that seek to indemnify the insured party against any risk, including cyber theft of bitcoin.

These types of insurance contracts should form part of the Transfer Pricing analysis, applying CUP, through the analysis of contracts or similar functions.

Along these lines, it will be important for related companies to identify any type of transaction that may result from the application of the Bitcoin Law and make sure that it is reported in the Transfer Pricing analysis, regardless of the amount of the transaction and/or its frequency. In addition, taxpayers should be on the lookout for any resulting accounting guidelines for the appropriate recognition and recording of these transactions within a given tax period.

Furthermore, according to that established in article 2 of the Bitcoin Law, the exchange rate between bitcoin and the US dollar shall be freely established by the market. Therefore, related parties that keep balances in bitcoin and offset intercompany transactions based on such cryptocurrency, should use as a reference the exchange rate set by the international market (for example, the closing rate on the day of the transaction). With such references, it will be possible to infer that these conversions (exchange rate) comply with the arm's length principle.

Finally, it is important to indicate that the risks related to the new investments, financing, services, and any transaction deriving from the Bitcoin Law that may be entered into by taxpayers with a related party, will be assumed by the contracting parties, and the benefits

or losses² must be recognized, just as in any other transaction of a similar nature.



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² For tax purposes, it is important to indicate that the losses from transactions with related parties will not be deductible in the

determination of the income tax (Art. 29-A, numeral 10 of the Income Tax Law).

Tax Calendar

October 2021

The updated 2021 tax calendar is now available on the Tax Administration's website, which includes public holidays and deadlines for all tax obligations.

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Download the 2021
Obligations Calendar



October 14

VAT

Declaration and payment of the Tax on the Transfer of Movable Goods and the Rendering of Services (F-07)

Financial Income and Transactions

Monthly declaration of Payment on Account, and Tax Withheld on Income, Financial Transactions, and the Special Contribution for Citizen Security and Coexistence (F-14)

Specific and Ad Valorem Taxes

Declaration and payment of Specific Taxes, Ad Valorem Taxes and Special Contribution (F-06)

Other Obligations

- Report on donations (F-960)
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Alcoholic Beverages, Potable Ethyl Alcohol and Beer, Carbonated Beverages, Isotonic Beverages, Fortified Beverages or Energy Drinks, Juices, Nectars, Soft Drinks and Concentrated or Powder Mixtures for the Preparation of Drinks (F-955)
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Firearms, Ammunitions, Explosives and Similar Items, Producers of Tobacco and Producers, Importers and Those That Clear Fuels Through Customs (F-988)
- Monthly Report of Sales to Producers, Distributors or Retailers of Tobacco and Tobacco Products (F-956)
- Report on Authorizations of Accounting Systems, Legal Accounting Books, VAT Books or Records, Certifications and Reports issued on Modifications to Legal Books, Subsidiary Books and Special Records (F-463)

October 21

VAT

Monthly Report on Withholdings, Collections, or Payments on Account of VAT (F-930)

Printing Presses

Monthly Report on Documents Printed for Taxpayers Registered under the VAT (F-945)

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