GUIDELINES ON TAX TREATMENT OF DIGITAL CURRENCY TRANSACTIONS

1. INTRODUCTION

1.1. Inland Revenue Board of Malaysia (IRBM) has issued the updated Guidelines on Taxation of E-commerce Transactions (e-CT) published on 13 May 2019.

1.2. The above Guidelines provide guidance on income tax treatment in respect of e-CT which includes general tax treatment of digital currencies or digital tokens.

1.3. IRBM acknowledges the need to address the tax treatment of digital currencies or digital tokens in further details. Therefore, this Guidelines provide further guidance on the tax treatment under the Income Tax Act 1967 (ITA 1967) for transactions involving the above.

1.4. The tax treatments explained in this Guidelines are based on the existing income tax provisions and in cases where Malaysia has a Double Taxation Agreement (DTA) with a partner country, the DTA will apply.

1.5. This Guidelines applies to any person that acquire or dispose digital currencies as well as involve in business of digital currencies such as trading, mining and exchanges of digital currencies.

1.6. For the purpose of this Guidelines, digital currencies and digital token refers to digital financial assets that are based on distributed ledger technology (DLT) and cryptographically secured digital representations of value or contractual rights that can be electronically transferred, stored or traded.

1.7. The use of term digital currencies and digital tokens also refers to digital currencies such as Bitcoin, Ethereum (Ether) or any other digital currencies that have similar characteristics as the above. The term digital currencies and digital tokens are used interchangeably in this Guidelines.

1.8. As for the list of approved digital currencies exchanges, IRBM refers to the most current List of Registered Digital Asset Exchanges published by the Securities Commission Malaysia.

2. INTERPRETATION

For the purpose of the Guidelines, IRBM refers to the definitions by the Securities Commission Malaysia –

"**Digital currency**" means a representation of value which is recorded on a distributed ledger whether cryptographically-secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including the crediting or debiting of an account.

"**Digital token**" means a representation which is recorded on a distributed ledger whether cryptographcally-secured or otherwise.

3. INCOME TAX TREATMENTS

3.1 General tax treatment of acquisitions and disposals of digital currencies

In general, the taxability of digital currency transactions in Malaysia is based on Section 3 of the ITA 1967 where income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is taxable.

IRBM regards the transactions involving digital currency to be subjected to Malaysian tax if the key activities and business operations are performed in Malaysia or if the business has a presence in Malaysia. Nevertheless, all the facts and circumstances would have to be considered in determining whether the source of the income is taxable in Malaysia.

As Malaysia does not tax capital gain, only revenue gains arising from the disposal of digital currency is taxable.

A person who trade digital currencies actively may be viewed as generating revenue from the activity thus gains from this digital currencies trading is taxable. On the other hand, gains derived by individual who trade occasionally may be viewed as capital gains and not taxable in Malaysia.

The gains / losses from the disposal of digital currencies or digital token assessed to be trading in nature would be taxable / deductible. On the other hand, the disposal gains / losses of the digital currencies or digital token that are capital in nature are not taxable / deductible.

A description of how IRBM determines digital currencies' gain is a capital or revenue gain is per **Appendix A.**

3.2 The followings are the tax treatments with regards to certain specific transactions involving digital currencies:

3.2.1 Carrying out a business of digital currencies or using digital currencies in business

3.2.1.1 Trading of digital currencies

Businesses that buy and sell digital currencies in the ordinary course of their business will be taxed on the profit derived from trading in the digital currencies similar to the trading of stock. Any expenses incurred in the production of the taxable income or losses incurred from the digital currencies trading activity would be tax deductible.

Example 1

Esbisee Sdn Bhd is in the business of buying and selling digital currencies. On 12 January 2021 the company purchases 100 units of Coin Y for RM1,000,000 and sell 50 units of Coin Z for RM1,700,000. Since Esbisee Sdn Bhd is carrying a business of trading digital currencies, the selling of Coin Z of RM1,700,000 should be reported as sales and the cost of purchasing Coin Y is deductible. If the company makes a loss, such loss is tax deductible.

3.2.1.2 Mining of digital currencies

Any person carrying out a business of mining or carrying out mining activities with a profit-seeking motive is subjected to tax according to the existing income tax provisions. Expenses relating to the business will be tax deductible and losses inccurred will be allowed.

The taxability of a miner's profit from the disposal of payment tokens would depend on whether or not the gain is capital or revenue in nature and is based on badges of trade. The factors to consider in determining whether the gain is capital or revenue is described in **Appendix A.**

A miner may also be hired to mine for payment token on behalf of another person (a customer). Instead of keeping the payment token received from the system for the successful mining, the miner gives it to the customer. The miner will receive a fee for the mining service. The fees received by the miner for providing the service is taxable.

3.2.1.3 Receiving and paying for business transactions in digital currencies

If a taxpayer is carrying on a business activity and uses digital currencies in his business as a mode of payment, the transactions involving digital currencies should be accounted similar to normal business such as recording digital currencies received for payment for goods or services provided as sales to the business.

Generally, businesses that accept digital currencies as payment for goods or services should record the sale based on the open market value of the goods or services in Ringgit Malaysia (RM). The same applies to payment of expenses and purchases of assets by the business.

Example 2

Event League Company Sdn Bhd is an organizer of an international football match at the Bukit Jalil Stadium. Tickets sold can be paid using digital currencies. The digital currencies received for the ticket price (in RM) is recognized as sales of Event League Company Sdn Bhd.

In situations where the transactions are agreed based on number of digital currencies, the value of the goods sold or purchased, or the contract of services are determined based on the value of the digital currencies at the point of transactions.

Example 3

Ain Enterprise bought a used equipment from Cafe Alif Sdn Bhd for 1 unit of digital currencies B. At the point of transaction, 1 unit of digital currencies B is equivalent to RM15,000.

The value of the digital currencies received for the equipment (RM15,000) is recognized as sales of equipment by Cafe Alif Sdn Bhd. Ain Enterprise shall recognize the used equipment as an asset for the business at the value of RM15,000.

Example 4

Mr. Rajesh provides IT consultation services to Envisage Sdn Bhd and receives 10 Ether as payment for his services. The value of 1 Ether at the time it is paid is RM18,970. The equivalent amount of RM189,700 for 10 Ether is an income of Mr. Rajesh at the time it is derived.

The deductibility of any expenses incurred using digital currencies in the production of the taxable income would be allowed as a tax deduction, subject to subsection 33(1) of the ITA 1967.

3.2.1.4 Paying of salaries and wages to employees in digital currencies

When salary and wages are paid using digital currencies, the payments are deductible to the business as an expenses. In the hands of the employees, the salary and wages received are taxable. The value of the salary and wages would be based on the employment contract and value of the employment services performed.

Example 5

Patrick Wong works at Capital Blockchain Sdn Bhd. The employment contract that he has signed requires his salary to be paid in digital currency equivalent to RM10,000 a month.

Patrick Wong’s employment income is taxable and Capital Blockchain Sdn Bhd is entitled to claim tax deduction on salary payments of RM10,000 per month respectively.

Note: The existing employer's responsibilities under the Monthly Tax Deductions (MTD) Rules are applicable.

3.2.2 Investment in digital currencies and other transactions involving digital currencies

3.2.2.1 Investment

A person’s investments in digital currencies and digital tokens are considered to constitute a business activity of that person, if the investments activities are continuous, systematic, active, carry a financial risk and are aimed at making a profit.

Businesses that buy digital currencies for long-term investment purposes may enjoy a capital gain from the disposal of these digital currencies. However, as there are no capital gains taxes in Malaysia, such gains are not subject to tax.

The taxability of a profit from the investment would depend on whether or not the gain is capital or revenue in nature and is based on badges of trade. The factors to consider in determining whether the gain is capital or revenue is described in **Appendix A.**

The gain or loss is the difference between the amount received in exchange of the digital currency and the adjusted basis in the digital currency.

Adjusted basis is the amount spent to acquire the digital currency, including fees, commissions and other acquisition costs.

Example 6

Referring to Example 3, after 3 years the value of the digital currencies B increases from RM15,000 to RM30,000. The digital currencies B has been disposed by Cafe Alif Sdn Bhd and the gain on disposal of digital currencies B amounted to RM15,000.

If Cafe Alif's holding of the digital currencies B satifies the criterias of capital gains, the disposal is not subject to ITA 1967.

Example 7

Mr Effendi has bought 2 digital currency units worth RM64,000 on 30 June 2019 for investment purposes. On 31 December 2019, he has disposed 2 units of the digital currency at a price of RM80,000. This is the only transaction made by Mr. Effendi in the past 3 years. The profit of RM16,000 is not taxed as it is capital in nature.

Mere disposal of digital currency which is held as an investment is treated as realisation of investment, therefore the income received is not taxable. Any expenditures in relation to that income would not be allowed as a deduction.

3.2.2.2 Mere acquisition and disposal of digital currencies

When a person buys digital currencies such as Bitcoin and Ether merely as part or full payment of any goods and services, the situation does not give rise to taxation.

Example 8

Fakhri wants to attend a show at Istana Budaya. The organizer offers discount of 20% of the ticket price if payment is made using digital currencies. Fakhri buys digital currencies A equivalent to the discounted ticket price of RM250 and paid the organizer.

However, any disposal of payment token may still be subject to taxation if IRBM finds that the intention of the purchase is related to trading or any other revenue making purpose.

3.2.2.3 Receiving digital currencies as a result of free distribution or splitting

A person may receive digital currency for free as a promotion or marketing tools or splitting of existing digital currency such as airdrop and hardfork.

These tokens are not income to the recipient, thus not taxable at the time of receipt. However, the above may subject to income tax if the tokens are given in exchange of certain goods or services.

Gains from disposal of these tokens in the future will be taxable if the gains are revenue in nature.

3.2.2.4 Exchanges of digital currencies

The taxability of the gain or loss from conversion of one digital currencies to another digital currencies will depend on whether the digital currencies is a capital or revenue asset, and consequently whether the gain or loss arising from the conversion is capital or revenue in nature.

4. Acquisition cost of digital currency

For taxation purposes, the acquisition cost of digital currencies must be determined in Ringgit Malaysia (RM). As digital currencies are treated as intangible assets for taxation purposes, any digital currency in a company's possession therefore needs to be valued in Ringgit Malaysia (RM).

The acquisition cost of digital currency is determined on the basis of the First In, First Out (FIFO) principle, unless the taxpayer is able to prove otherwise. If the acquisition cost of current asset cannot be determined, the digital currency will be valued using fair value, i.e. at the rate in force on the day of the transaction and based on the acceptable and verifiable digital currency exchanges.

Example 9

A company that buys and sells digital currency as part of its business buys digital currency A in 2020 as follows:

Date purchased	Number of units purchased	RM per unit	Total (RM)
1 Sept 2020	500 units	10,000	5,000,000
1 Oct 2020	300 units	15,000	4,500,000
1 Nov 2020	700 units	5,000	3,500,000
Total	**1,500 units**		**13,000,000**

The company then converts 600 units of digital currency to Ringgit Malaysia (RM) when the digital currency is valued at RM20,000 per unit in January 2021. In the absence of other evidence, the acquistion cost is determined on the basis of the FIFO principle. The company therefore makes a profit of RM5,500,000 [600 x RM20,000 – (500 x RM10,000 + 100 x RM15,000)]. If the company is able to prove that the sold units were among those purchased on 1 November 2020, the acquisition cost of the units is RM5,000 each and the company is deemed to have made a profit of RM9,000,000 [600 x RM20,000 – (600 x RM5,000)].

5. Digital currency with no published value

If digital currency is received in exchange for property or services and that digital currency is not traded on any digital currency exchange and does not have a published value, then the fair value of the digital currency received is equal to the fair value of the property or services exchanged for the digital currency when the transaction occurs.

6. Record Keeping

Records that need to be kept in relation to digital currency include:

- records to determine the nature of transaction – including whitepaper
- records to determine the value of digital currency based on online exchange
- date of transaction
- name of the other party i.e. digital currency address
- receipts of purchase/ transfer of digital currency
- exchange records
- other records such as records of agents, wallet keys, software
- bank statements
- receipts/invoices of business expenses

7. Enquiries

All enquires with regards to this guideline can be forwarded to:

Tax Policy Department

Inland Revenue Board of Malaysia

Level 17, Menara Hasil

Persiaran Rimba Permai

Cyber 8, Cyberjaya

63000 Selangor, Malaysia

Tel. No. 03-83138888

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APPENDIX A

Determining the existence of trade

The general tax treatment for transaction gain / loss from the disposal of digital currencies is based on whether it is capital or revenue in nature. The badges of trade such as profit seeking motive, nature of asset and changes to the asset are considered when determining if such gains are taxable.

The followings are considerations in deciding whether elements of trade exist for transactions involving digital currencies:

BADGES OF TRADE	**EXPLANATION**
1. Nature of subject matter	This refers to the nature of the digital currencies that is being bought and sold. The digital currencies could be regarded as the subject of trading when they are bought in large quantities.
2. Length of ownership	This refers to the holding period of the digital currencies. The shorter the holding period, the more likely it would be regarded as held for trading.
3. Frequency of transactions	High frequency of similar transactions of digital currencies is more indicative of trading than an isolated transaction.
4. Supplementary work	This refers to additional work done on digital currencies to make it more marketable or extra effort made to find or attract purchasers. If this is done, it is more likely that the subsequent disposal would be regarded as trading.
5. Circumstances of the realization	Some circumstances are less likely to indicate trading (e.g. company is forced to sell the digital currencies due to

	compulsory acquisition, sudden urgent need of cash or threat of foreclosure by creditors).
6. Motive	This refers to whether there was an intention to trade at the time of the acquisition of the digital currencies. If a person undertake the activities in a business-lime manners such as developing a business plan, preparing accounting records and advertising the digital currencies business, the intention is definitely to do a business of digital currencies.
7. Mode of financing	This refers to how the purchase of the digital currencies is being financed. Short term financing is more indicative of trading than long term financing. The company's financial position and ability to hold on to the digital currencies will also be taken into consideration.
8. Other factors	Other factors include whether there were any feasibility studies conducted, the availability of documentation or other evidence maintained by the company to indicate its intention regarding to digital currencies.

No single badge is a decisive pointer to the existence of a trade. It should be weighed up with all the relevant factors.