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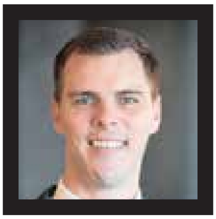
WADE OGILVIE

CRYPTOCURRENCY NEEDS LOOKING AT

CRYPTOCURRENCY has gained significant traction in the past few years and has become a risky, but potentially lucrative, investment or trading option.

South Africa has been a bit slow on the uptake in regulating the use of cryptocur rencies and, for the most part, their use has been unregulated.

The SA Reserve Bank issued a statement on April 6 that cryptocurrency is not considered to be "legal tender", i.e. real currency, in South Africa. Taxpayers are merely required to declare their gains and losses with respect to their transactions involving cryptocurrency as part of their income. The SA Revenue Service looks at the intention of the taxpayer when determining whether the income is capital or revenue in nature.

The National Treasury published the draft Taxation Laws Amendment Bill (the Bill) for public comment on July 16. The Bill is Treasury's first attempt to regulate the use of cryptocurrency in South Africa and proposes changes to both the Income Tax Act and the VAT Act. The amendments, if promulgated in their current form, will significantly deter the use of cryptocurrency in South Africa for both trading and investment purposes.

One proposed change is the inclusion of cryptocurrency in the definition of "financial instrument" in the Income Tax Act.

Other financial instruments include loans, debts and shares. A simple change to the definition of financial instruments has a ripple effect throughout the Income Tax Act. Section 22 provides for the determination of the value of undisposed trading stock to be included in taxable income. Financial instruments are specifically excluded by section 22(1)(a) of the Income Tax Act which means that those who trade in cryptocurrency may not benefit from valuing their undisposed cryptocurrency using the valuation method contemplated in section 22.

The above amendment may also stifle investment in fintech companies in South Africa as section 11D of the Income Tax Act, which provides an allowance for companies that invest in research and development in South Africa, specifically excludes the creation or development of financial instruments. This would include companies who mine or develop cryptocurrencies.

A further proposal is the addition of "the acquisition or disposal of any cryptocurrency" to section 20A of the Income Tax Act, which deals with the ring-fencing of assessed losses of certain trades. Although taxpayers who trade in cryptocurrency may set-off their assessed losses from income derived from that trade, they may not set-off their assessed losses against income derived from other trades.

South Africa has great potential as an emerging market to attract investments in the fintech sector. The use of cryptocurrencies is on the rise and it may be that Treasury, and the Reserve Bank, are forced to address the insurgence sooner than expected.

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