

BITCOIN (PART 2)

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Short introduction: In the first article of this two-part feature, we introduced cryptocurrency with a focus on some noteworthy recent developments concerning Bitcoin. The first article can be accessed [here](#). In this second article, we discuss the recent development of Bitcoin in Singapore highlighting some legal, regulatory and tax issues.

BITCOINS IN SINGAPORE

Virtual currencies such as Bitcoins have been experiencing a rapid burgeoning interest and acceptance globally, and Bitcoin has found its way to Singapore. The first Bitcoin ATM was introduced in Singapore in March 2014, and within a few weeks thereafter, a second Bitcoin ATM was opened. Some examples of Bitcoin ATMS include Robocoin ATMs, Tembusu Terminal and Numoni ATMs. Singapore also saw the introduction of Bitcoin exchanges such as FYB-SG and Coin Republic, to name but two. There are also a number of merchants that accept Bitcoins as a form of payment.

With the increased interest and activity in connection with Bitcoins in Singapore, the government's attention has also turned to virtual currencies. The Monetary Authority of Singapore ("**MAS**") has taken cognizance of Bitcoin's potential money laundering and terrorist financing risks and will be one of the first central banks in the world to grapple with regulating intermediaries dealing with virtual currencies. We will see in due course, regulations and notices passed by MAS to address this growing concern. The Inland Revenue Authority of Singapore ("**IRAS**") has also stated its position on the treatment of Goods and Services Tax ("**GST**") for the sale of virtual currency and transactions involving Bitcoins.

LEGAL ISSUES ARISING FROM USE OF BITCOINS

The MAS, through its national financial education programme MoneySENSE, has cautioned consumers on the risks involved in using virtual currencies. Regardless of the type of virtual currency scheme (for example, Bitcoins, Liberty Reserve, WebMoney or Perfect Money), consumers need to be aware of the risks in participating in such schemes. MoneySENSE cited the instance of customers of the Liberty Reserve scheme suffering monetary losses when the Liberty Reserve scheme was shut down by authorities in the USA due to its use in alleged money laundering activities. Users of virtual currencies in Singapore are equally susceptible to such a risk. Should the virtual currency services or exchanges be found to be involved in illicit activities by the MAS and consequently shut down, consumers may not be able to obtain a refund of their monies.

MoneySENSE also highlighted that the value of virtual currencies of the likes of Bitcoin could fluctuate unpredictably within a short period of time, and pointed out that the value of Bitcoin reportedly fell more than 50% in a matter of hours in early April 2013. As mentioned in our previous article on this topic,

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Bitcoins (Part 1), Bitcoins have proven to be highly volatile, more so since Bitcoins are not backed by any central bank or pegged to any national currency or to any gold standard. The sudden and unpredictable increase or decrease in the value of Bitcoins potentially exposes Bitcoin users to unpredictable gains and losses. Therefore it bears repeating that when purchasing Bitcoins, consumers should be aware of the risks of devaluation, and to be cognizant of safeguards to ensure that contracts involving Bitcoins do not unexpectedly expose parties to currency risks which were not intended.

On a prima facie legal analysis, and subject always to the factual and legal matrix, consumers who withdraw Bitcoins from a Bitcoin ATM or who trade on a Bitcoin exchange are unlikely to have legal recourse for any losses suffered if the Bitcoin ATM or Bitcoin exchange do not make any representations and warranties that, nor undertake to ensure that, the value of Bitcoins would not fluctuate. It may be the case that the Bitcoin ATM and Bitcoin exchange are merely providing the service of facilitating the trading in and exchange of Bitcoins, without undertaking any further burden of responsibility of ensuring the integrity and stability of Bitcoins.

MoneySENSE emphasised that consumers should be cautious when dealing with virtual currencies given the abovementioned risks. As explained below, MAS's targeted regulatory approach is to specifically address the money laundering and terrorist financing risks posed by virtual currencies, and thus the onus is on consumers and businesses to take note of the broader risks in dealing with virtual currencies.

REGULATORY ASPECTS

Ministry of Home Affairs, Ministry of Finance and the MAS. The Singapore government conducted the National Risk Assessment ("NRA") in 2013 (report issued on 10 January 2014) to enhance and deepen the government's collective understanding of money laundering and terrorist financing ("ML/TF") in Singapore. In conducting the NRA, the Steering committee comprising the Ministry of Home Affairs, the Ministry of Finance and the MAS took reference from the Guidance on National Money Laundering and Terrorist Financing Risk Assessment published by the Financial Action Task Force (of which Singapore is a member) in February 2013 as well as other international best practices standards.

The Steering Committee recognised virtual currencies as a risk to study further. Virtual currencies (including Bitcoins and precious metal-backed digital currencies) are gaining popularity amongst online users worldwide and inherit some of the risks due to their anonymity, cross-border nature and low transaction costs. Virtual currencies and virtual currency exchanges may be utilized for illegal activities, including ML/TF.

Pursuant thereto, the MAS on 13 March 2014, said that it will regulate virtual currency intermediaries in Singapore to address potential ML/TF risks. The MAS recognises that virtual currency transactions, given their anonymous nature, are particularly vulnerable to ML/TF risks. This will make Singapore one of the first countries in the world to regulate virtual currency intermediaries for ML/FT risks.

In order to address this, the MAS will introduce regulations to require virtual currency intermediaries (including Bitcoin vending machines and Bitcoin exchanges) that buy, sell or facilitate the exchange of

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virtual currencies for real currencies to verify the identities of their customers and report suspicious transactions to the Suspicious Transaction Reporting Office (the “STRO”, which is Singapore’s financial intelligence unit in the Commercial Affairs Department for receiving, analysing and disseminating reports of suspicious transactions). The requirements will be similar to those imposed on money changers and remittance businesses who undertake cash transactions.

Like most jurisdictions, Singapore does not regulate virtual currencies per se. In Singapore, virtual currencies are not regarded as securities or legal tender so that regulations do not extend to the safety and soundness of virtual currency intermediaries nor the proper functioning of virtual currency transactions. Instead, the MAS regulates virtual currency intermediaries pertaining specifically to the ML/TF risks they pose. Investors in virtual currencies will not have the safeguard that investors in securities enjoy under the Securities and Futures Act (Cap. 289) and the Financial Advisers Act (Cap. 110).

IRAS. GST treatment of Bitcoins by the IRAS would be relevant for GST-registered businesses that deal with Bitcoins. Virtual currencies are not considered as ‘money’, ‘currency’ or ‘goods’ for GST purposes, but are treated as a supply of services, which does not qualify for GST exemption.

Businesses that buy goods or services using virtual currencies should note that payment for goods and services using Bitcoins will be considered as a barter trade. IRAS analyses this scenario as being two supplies made – one by the supplier who supplies the goods and services, and another by the purchaser who uses virtual currencies to pay the supplier. GST will need to be charged on each supply if the respective supplier is GST-registered.

Businesses that sell virtual currencies as a principal will have to charge GST on the sale of the virtual currencies, unless the sale is made to a person belonging outside Singapore and qualifies for zero-rating by satisfying all the conditions for zero rating. These businesses will also be liable to income tax on the profit derived from trading in the virtual currency. This includes profits derived by businesses which mine and trade virtual currencies in exchange for money.

Businesses that import goods paid using virtual currencies should note that goods imported and paid for using virtual currencies are subject to the same import GST rules and reliefs as those paid for using real currencies.

CONCLUSION

Deputy Managing Director of MAS, Mr Ong Chong Tee said, “MAS is taking a targeted regulatory approach to virtual currencies to specifically address money laundering and terrorist financing risks. Consumers and businesses should take note of the broader risks that dealing in virtual currencies entails and should exercise the necessary caution.” MAS will continue to observe the developments and implications of virtual currencies in other jurisdictions, and will consider additional measures to address the risks posed by virtual currencies and their intermediaries.

Bitcoin has been lauded by certain members of the community as offering a huge potential in commerce.

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Concurrently, one must recognise the attendant legal issues arising from the use of Bitcoins, the ML/TF risks and tax treatment in connection thereto. It would be prudent for regulators to keep abreast with legislative developments and tax treatments in other jurisdictions, and for users to understand the legal issues arising from the use of Bitcoin.

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