

Israeli Court Rejects Claim Bitcoin Is a Nontaxable Currency

by William Hoke

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ISRAEL**Israeli Court Rejects Claim Bitcoin Is a Nontaxable Currency****by William Hoke**

An Israeli Court ruled that bitcoin is not a foreign currency for tax purposes and that any increase in the coin's value when it is used in a transaction is subject to capital gains tax.

In 2013 plaintiff Noam Copel realized a profit of ILS 8.27 million (around \$2.3 million) on the sale of bitcoins that he purchased in 2011. Copel didn't declare a taxable gain on the transaction, claiming that bitcoins should be treated like a foreign currency. Under section 9(13) of Israel's Income Tax Ordinance (ITO), foreign currency gains realized by an individual who is not engaged in business activity are not subject to capital gains tax.

In a February 2018 circular, the Israel Tax Authority (ITA) said virtual currencies such as bitcoin are assets and not currency, which makes them subject to income tax, capital gains tax, and VAT. The ITA said a taxpayer who is not engaged in business activity is subject to capital gains tax on payment transactions that involve virtual currencies.

After the ITA rejected Copel's position, he challenged the determination in Central District Court. On May 19 Judge Shmuel Bornstein agreed with the ITA. Because the ITO doesn't define the word "currency," Bornstein turned to section 1 of the Bank of Israel Law, which defines foreign currency as "banknotes or coins that are legal tender in a foreign country and are not legal tender in Israel."

Bornstein said that while bitcoin is not a currency under Israeli law, that situation could change. "It is . . . not inconceivable that one day, economic and/or legal [developments] will result in bitcoin becoming a currency," he said. "To the extent that this situation occurs, it will be necessary to reconsider the argument that it is appropriate to grant bitcoin the same exemption granted to profits deriving from changes in the exchange rate of a foreign currency."

Bornstein also rejected Copel's argument that the ITA circular retroactively denied his right to rely on section 9 of the ITO.

Anna Tsabari, a lawyer with the Ampeli Tax Law Offices, said it was unlikely the court would have agreed that bitcoin is a foreign currency under existing law. She said that because the court concluded that a cryptocurrency is an asset for tax purposes, any time one cryptocurrency such as bitcoin is converted into another, such as Ethereum, Litecoin, or Dash, a taxable event occurs for purposes of determining whether capital gains tax is due.

"We do not agree with this sweeping position," Tsabari said. If the taxpayer receives one cryptocurrency in exchange for another, no taxable event occurs, she said, adding that tax should only be payable if virtual coins are traded for either fiat currency, such as the U.S. dollar or the euro, or "stablecoins," such as Tether. A stablecoin is a virtual currency that is collateralized by a fiat currency, another cryptocurrency, physical assets, or any combination of currencies and physical assets.

Gidi Bar-Zakay, a CPA and founder of Gidi Bar-Zakay Consultants, agreed with the court's decision, saying that under the existing legal framework it is not possible to conclude that bitcoin is a currency. "Moreover, in my opinion, the issue should be examined not only within the legal framework, and as the law is careful to do, to explore the essence behind the act," said Bar-Zakay, who is also CEO of G.B. Bittax Ltd., which provides cryptocurrency return filing services. "At present, it is challenging to view bitcoin as a currency in terms of substance. Most of us do not pay for coffee in bitcoin every day. There are not many businesses that receive bitcoin, and there are not many services provided in bitcoin, and the use of bitcoin as a currency for retail purposes is not daily. There is a lack of infrastructure and proper regulation."

Tsabari said the likelihood of the Supreme Court accepting an appeal of the District Court's decision is low. Bar-Zakay said he would recommend against an appeal. "It is hard for me to see the Supreme Court going against the tax authority and the existing legal framework," he said. "There is no doubt that the right move at the moment is to create a new legal framework, which we are trying to promote." ■