The Chief Electoral Officer issues guidelines and interpretation notes on the application of the *Canada Elections Act* to registered parties, registered associations, nomination contestants, candidates and leadership contestants, in accordance with section 16.1 of the Act. Before the issuance of any guideline or interpretation note, registered federal political parties and the Commissioner of Canada Elections are consulted and invited to provide comments on a draft version. Guidelines and interpretation notes provide guidance and promote consistency in the interpretation and application of the Act. However, they are for information only and do not displace the provisions of the Act.

Interpretation Note: 2018-10 – Draft (December 2018)

Cryptocurrencies

Issue

With interest in cryptocurrencies on the rise, political entities have requested guidance on accepting contributions and conducting other transactions in bitcoin or altcoins. This interpretation note seeks to answer the following questions: Are cryptocurrencies monetary or non-monetary for the purpose of the *Canada Elections Act* ("CEA")? How do the contribution rules apply? Can political entities buy property or services directly with cryptocurrencies? The note also clarifies reporting requirements for buying, selling, transferring and holding cryptocurrencies.

Interpretation

Accepting contributions of cryptocurrency

(1)   A contribution of cryptocurrency is non-monetary and not eligible for a tax receipt.

(2)   The contribution amount is the commercial value of the cryptocurrency at the time that it was received, based on the actual exchange rate or the rate on a major exchange platform.

(3)   Political entities should set up a two-step process to identify contributors of more than $20 and to record transaction information from the blockchain so that contributions can be audited.

(4)   For contributions over $200, the political entity must report the contributor's name and address in its financial return.

(5)   For contributions up to $200, if the contributor is a Canadian citizen or permanent resident of Canada who is not in the business of selling cryptocurrencies, the contribution amount is deemed nil. However, the political entity must still keep a record of the contributor's name.

(6)   For contributions of $20 or less, the contribution can be anonymous. If an anonymous contribution over $20 is received, its commercial value must be remitted to Elections Canada without delay.

(7)   When accepting anonymous contributions or those deemed nil, a political entity should be mindful of the anti-avoidance rules in the CEA and watch for unusual amounts or patterns in anonymous contributions they receive.

Buying property or services with cryptocurrencies

(8) To meet the CEA's objective of transparency, candidates, nomination contestants and leadership contestants cannot buy property or services directly with cryptocurrencies. This is also the case for registered parties in terms of their election expenses. Cryptocurrencies must be liquidated and the funds deposited into the political entity's bank account before being used to make purchases.

(9) Registered associations may buy property or services directly with cryptocurrencies. Registered parties may do the same other than in relation to election expenses. These are considered barter transactions. Any resulting changes to the association's or party's assets, liabilities, revenues and expenses must be accounted for in their financial returns.

Reporting other transactions involving cryptocurrencies

(10) When a political entity buys cryptocurrencies, the transaction results in a contribution from the seller only if the purchase price is below commercial value. The contributor must be eligible under the contribution rules and stay within their limit.

(11) When a political entity sells cryptocurrencies, the transaction results in a contribution from the buyer only if the purchase price is above fair market value. The contributor must be eligible under the contribution rules and stay within their limit.

(12) As part of surplus disposal after an election, candidates must transfer their cryptocurrencies to an eligible political entity or liquidate them at fair market value and transfer the proceeds to an eligible political entity. Nomination contestants and leadership contestants should also liquidate their cryptocurrencies after a contest and transfer the proceeds to an eligible political entity. They cannot transfer non-liquidated cryptocurrencies.

(13) Registered parties and associations can hold cryptocurrencies for an indefinite period. Holdings are reported as assets at the fiscal year-end.

Legal Framework

The most directly relevant provisions of the CEA in the context of this interpretation note are as follows:

- A monetary contribution is an amount of money provided that is not repayable. (s. 2(1))

- A non-monetary contribution is the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value. (s. 2(1))

- Commercial value, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by

    (a) the person who provided it, if the person is in the business of providing that property or service; or

    (b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business. (s. 2(1))

- The commercial value of property or a service is deemed to be nil if

    (a) the property or service is provided by a Canadian citizen or permanent resident who is not in the business of providing that property or service; and

    (b) the commercial value of the property or service is $200 or less. (s. 2(2))

- Only individuals who are Canadian citizens or permanent residents can make political contributions. (s. 363(1))

- Contributions are subject to contribution limits. (s. 367(1))

- If a contributor's name is not known for a contribution of more than $20, or if the name or address is not known for contributions totalling more than $200, the authorized agent must, without delay, pay an amount of money equal to the value of the contribution to the Chief Electoral Officer, who will forward it to the Receiver General. (ss. 434, 475.5, 476.76, 477.61, 478.82)

- No person or entity shall circumvent or attempt to circumvent the contribution limits or eligibility rules, or act in collusion with another person or entity for that purpose. (s. 368(1))

- No person or entity shall conceal or attempt to conceal the identity of the source of a contribution, or act in collusion with another person or entity for that purpose. (s. 368(2))

- After an election, candidates' campaigns must either transfer their capital assets to specified political entities or sell them at fair market value as part of the surplus disposal. A capital asset is any property with a commercial value of more than $200 that is normally used outside an election period other than for the purposes of an election. (ss. 2, 477.8(2))

- A candidate's surplus of electoral funds is the amount by which the campaign's revenues exceed its electoral campaign expenses and outgoing transfers. Campaigns must dispose of their surplus only to specified political entities. (ss. 477.8, 477.82)

Analysis and Discussion

Are contributions of cryptocurrency monetary or non-monetary?

Whether a contribution of cryptocurrency is monetary or non-monetary is an important question in terms of reporting contributions and issuing receipts. Under the CEA, a monetary contribution is "an amount of money provided that is not repayable." The ordinary meaning of "money" includes items such as bills and coins. Elections Canada has also considered cheques, bank drafts and credit card donations to be monetary because they can be placed directly into a bank account.

Cryptocurrencies have traits of both money and property. A cryptocurrency is "[a] digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank."[1] Like money, they can be used to make purchases from businesses that choose to accept them. But unlike money, they cannot be placed directly into a bank account. Instead cryptocurrencies can be sold for traditional currencies that can be placed into a bank account. In this sense, they are more like stocks or bonds, which are a form of "property" and fall under the definition of a non-monetary contribution.

Most Canadian government and auditing bodies that have taken a position on the issue agree that a cryptocurrency is non-monetary. The Canada Revenue Agency considers it to be a commodity, subject to barter transaction rules when used to buy goods or services.[2] Chartered Professional Accountants of Canada posits that a cryptocurrency is an intangible asset, "an identifiable non-monetary asset without physical substance."[3] According to the Bank of Canada, cryptocurrencies are more correctly called "crypto assets" because "they do not perform the key functions of money: they are currently quite poor media of exchange, stores of value and units of account."[4]

---

[1] *Oxford English Dictionary*, accessed June 2018.
[2] Canada Revenue Agency, "Fact Sheet: What You Should Know About Digital Currency" (March 2015).
[3] Chartered Professional Accountants of Canada, *An Introduction to Accounting for Cryptocurrencies* (Toronto: CPA Canada, 2018).
[4] Bank of Canada, *Financial System Review* (Ottawa: Bank of Canada, 2018).

Of the two Canadian provincial election agencies to have taken a position on the issue to date, one considers a contribution in cryptocurrency to be monetary while the other considers it to be non-monetary. In the United States, the Federal Election Commission treats cryptocurrencies as "in-kind" (that is, non-monetary) contributions.[5]

In view of the properties of cryptocurrencies and their most common regulatory treatment, Elections Canada considers a contribution in cryptocurrency to be non-monetary for the purposes of the CEA.

How do the contribution rules apply?

Contribution amount and source – implications for cryptocurrencies being non-monetary

There are several implications under the federal contributions regime for categorizing a cryptocurrency as non-monetary. An important point is that non-monetary contributions are not eligible for tax receipts. To receive a tax receipt, a contributor would have to liquidate the cryptocurrency and send the proceeds to the political entity as a monetary contribution. Contributions of cryptocurrency must be valued at their commercial value at the time the contribution is made. There are two ways to determine the commercial value:

- If the transfer passed through a payment processor (such as BitPay) that provided an exchange rate, use that rate.

- If the transfer did not go through a payment processor or no exchange rate was provided, use a reasonable rate on a major exchange platform (such as Coinbase) at the time closest to when the transfer was sent. The valuation must be readily ascertainable and verifiable.

A transaction in cryptocurrency will almost always involve a processing fee. The full amount sent by the individual is a contribution to the political entity, and the processing fee is an expense.

All contributions, whether monetary or non-monetary, are subject to limits that must be respected. If the political entity determines that the commercial value of the cryptocurrency it receives results in an over-contribution, it must return the ineligible amount to the contributor within 30 days of becoming aware that the contribution is ineligible. For example, if the commercial value places the contributor over their limit by $500, the political entity must return $500 in Canadian dollars or in cryptocurrency valued at $500 (at the time it is returned) to the contributor.

It is also important to note that most cryptocurrencies are received passively; a political entity cannot stop someone from transferring coins to their wallet. Anonymous contributions of cryptocurrency over $20 have to be remitted to Elections Canada without delay, by sending a cheque payable to the Receiver General for Canada for the commercial value of the contribution at the time it was received. This is in accordance with the CEA, which allows only anonymous contributions of $20 or less.

Contributions must be made by Canadian citizens or permanent residents of Canada. As well, non-monetary contributions with a commercial value of $200 or less can be deemed nil, but only if the contributor is not in the business of providing the contributed property or service. It is therefore critical for the political entity to know who is making contributions. In the absence of documentation, a contribution could be considered anonymous for the purposes of the CEA, which would require the political entity to pay an amount equal to its commercial value to the Receiver General, or a contribution deemed nil could have its full value reinstated.

---

[5] Contribution is monetary: Elections Ontario, *CFO Handbook for Political Parties* (Toronto: Elections Ontario, 2018). Contribution is non-monetary: Elections BC, information posted on the Canadian Elections Resource Library website, June 28, 2018; Federal Election Commission, "How to Report Bitcoin Contributions," accessed July 2018.

Guidelines for establishing a contributor's identity and reporting contributions

A salient feature of cryptocurrency transactions is their anonymity. Cryptocurrencies are generally sent and received between digital wallets using public keys, which are translated ("hashed") into addresses and appear on the blockchain ledger as a string of letters and numbers. These addresses are the only data available to the public about who the sender and receiver might be.

A user can keep the same address for practical purposes—for example, they could publish their address on a website so people know where to send payments—but for security reasons many users change their address with every transaction. This is important because, while all transactions are recorded publicly, there would be no way to tell if the same person was contributing multiple times to the same or affiliated entities, since the addresses could change every time.

To protect the integrity of the contributions regime and ultimately make it easier for political entities to validate and report their contributions as required by the CEA, political entities should follow specific procedures to accept contributions in cryptocurrency:

- Open a digital wallet to be used exclusively for the political entity's cryptocurrency transactions.

- Follow a two-step process to accept a contribution over $20. These steps can be done directly by the political entity or through a service provider:
    - Request the individual's name, address and email address.
    - Provide the individual with the public address associated with the political entity's digital wallet, to which the individual will send the contribution.

- Once the contribution is received, keep a record of the following: the contributor's name and address, transaction number on the blockchain or other public ledger, public addresses used in the transaction, contribution date, amount and type of cryptocurrency sent, commercial value in Canadian dollars at the time received, and any transaction fees deducted.

- Report the individual's name, address and contribution amount in the financial return, if required, in accordance with the rules for non-monetary contributions.

- For accounting purposes, when reporting a contribution over $200 to a candidate, nomination contestant or leadership contestant, balance the accounts by also reporting an "other" expense of the same amount, categorized as the receipt of cryptocurrency.

Failure to follow these procedures could result in the contribution being considered anonymous for the purposes of the CEA, which would require the political entity to pay an amount equal to its commercial value to the Receiver General for Canada.

If a contribution is valued at $20 or less, there is no requirement to keep a record of the contributor's identity. However, when accepting anonymous contributions or those deemed nil, a political entity should be mindful of the anti-avoidance rules in the CEA: no person or entity may circumvent the contribution limits or eligibility rules, conceal a contributor's identity, or collude with a person or entity for those purposes. Political entities should watch for unusual amounts or patterns in anonymous contributions they receive.

Elections Canada may ask a political entity to submit the transaction history of its digital wallet as a supporting document, in the same way that it might request a bank statement.

Some cryptocurrencies use additional privacy features to mask public addresses and amounts being transferred. Political entities must only accept contributions in cryptocurrencies whose blockchain or other public ledger enables Elections Canada to verify the public addresses and amounts involved in a transaction.

Can political entities buy property or services directly with cryptocurrencies?

Some commercial retailers accept payment in cryptocurrencies, and political entities may wish to use this method of obtaining property or services. For candidates, nomination contestants and leadership contestants, the CEA requires transactions that involve the payment or receipt of money to go through the campaign bank account. On its face this might not apply to purchases with cryptocurrencies, which are not "money." However, the objectives of the CEA must also be considered in interpreting the provisions.

The relatively new ability to make purchases with cryptocurrencies has not yet been addressed in the CEA, nor has the conduct of any other barter transactions. The rules for candidates, nomination contestants and leadership contestants require that property or services for a campaign enter the political system transparently, either with their purchase from the bank account or with the acceptance of a non-monetary contribution or transfer. This is also the case for registered parties in terms of their election expenses. Allowing purchases directly with cryptocurrencies would defeat the transparency requirements. As a result, Elections Canada requires that cryptocurrencies be liquidated before a candidate or contestant can buy property or services for a campaign, or before a registered party can make purchases that result in election expenses.

Registered associations, by contrast, are able to make purchases directly with cryptocurrencies, and registered parties may do the same other than in relation to election expenses. Their financial returns simply require them to account for their assets, liabilities, revenues and expenses in broad categories. If purchases are made directly with cryptocurrency, the party or association must be sure to adjust its financial statements to reflect these barter transactions.

Other reporting requirements

Purchase or sale of cryptocurrencies

When a political entity buys cryptocurrencies at or above commercial value, or sells them at or below fair market value, it is a pure commercial transaction. The entity has to report the transaction in its financial return, including any gain or loss on a sale. For example, a candidate, nomination contestant or leadership contestant would report a gain as proceeds from the sale of assets on their statement of other cash inflows.

When a political entity buys cryptocurrencies below commercial value, it results in a contribution from the seller. Likewise, when a political entity sells cryptocurrencies above fair market value, it results in a contribution from the buyer. The contribution is the difference between the amount paid and the value of the cryptocurrency. The contributor must be eligible under the contribution rules and stay within their limit.

Disposal of surplus

As part of surplus disposal after an election, candidates must transfer any cryptocurrencies they hold directly to an eligible political entity or liquidate them at fair market value so the proceeds can be transferred to an eligible political entity. Nomination contestants and leadership contestants should also liquidate their cryptocurrencies after a contest and transfer the proceeds, if there is a surplus after paying campaign expenses, to an eligible political entity.[6] They cannot transfer non-liquidated cryptocurrencies.

For a summary of transfer types and rules, please refer to Chapter 1 of the political financing handbooks on the Elections Canada website.

---

[6] If clause 2(2) of Bill C-76 comes into force as passed by the House of Commons on October 30, 2018, with respect to capital assets of nomination and leadership contestants, then liquidating cryptocurrencies with a per-unit value of more than $200 will be a requirement rather than a best practice.

Cryptocurrencies held by a registered party or association

Registered parties and associations that receive cryptocurrencies as non-monetary contributions or transfers, or that purchase cryptocurrencies as an investment, can hold them for an indefinite period. Cryptocurrency holdings are reported as assets at the fiscal year-end. They can be categorized as current or long-term assets, depending on how the party or association uses them. If categorized as current assets, any appreciation in the value of the holdings at year-end would be recorded as other revenue.

Conclusion

Political entities that wish to conduct transactions using cryptocurrencies must ensure that they follow the CEA's requirements for contributions and reporting, keeping in mind the rules on non-monetary contributions. Most importantly, this means knowing who is making contributions and using a two-step process for identification and acceptance of contributions over $20 so that ineligible contributions do not enter the political system. As well, different political entities must be aware of how the rules apply to them when they wish to buy, sell, transfer and hold cryptocurrencies.