UK likely to follow Biden's proposed cryptocurrency reporting requirement, say lawyers

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Alex Davidson, Regulatory Intelligence

The Biden administration's proposal to require businesses to report cryptocurrency transactions over $10,000 will lead the UK and other jurisdictions into following suit, lawyers said. In the UK, this could deter perpetrators of financial crime in the sector beyond just tax evasion, one said. Cryptocurrency "already poses a significant detection problem by facilitating illegal activity broadly", according to the U.S. Department of the Treasury in its recent report on the president's proposed tax compliance regime.

"President Biden seems to be first off the block with these proposals but other jurisdictions will almost certainly follow suit and it can only be a matter of time before a similar regime is introduced in the UK and EU," said Adam Craggs, partner at RPC in London. The U.S. Treasury last week issued the proposal, which intended to crack down on tax evasion and help fund President Joe Biden's legislative social investment initiative. It would required digital-asset holders to report transactions of over $10,000 to the Internal Revenue Service.

The UK could impose similar tax reporting requirements, said Arvin Abraham, counsel at McDermott, Will & Emery in London.

"This is a logical step, and it is an easy way of screening high value cryptocurrency transactions," he said.

"The requirement of such reporting to a regulator in the UK could also have a negative deterrent effect on financial crime, in addition to combating tax evasion," he said.

"The tax authorities could share data with other regulators. Even without this, such reporting makes it less likely that these cryptocurrency transactions will be used to facilitate crime," Abraham said.

HM Revenue & Customs has re-written its internal manual on its approach to the taxation of cryptocurrency this year, Craggs said.

"There is no clear sign yet that the UK will impose any specialist reporting requirements, but it has indicated that it will ask for a declaration of any cryptocurrency to be included in any statement of assets and liabilities forms signed by taxpayers. Unfortunately, HMRC's manual on compliance in this area has largely been redacted, under [Freedom of Information Act] exemptions," he said.

Concealing gains

"As crypto is decentralised, it is much easier to hide gains or income from state regulators. There is presently no means by which HMRC can directly assess information to ascertain which crypto trades have taken place," Craggs said.

HMRC will continue to keep its crypto-asset manual updated, an HMRC spokeswoman said.

"We will take action, including using powers provided by parliament to gather data from a range of information sources, to identify those that have failed to declare their gains," she said.

The U.S. cryptocurrencies reporting requirement specified in the U.S. proposals will likely, however, be restricted in its applicability to U.S. parties, lawyers said.

"The Biden administration's proposal to require businesses to report cryptocurrency transactions over $10,000 would expand on the cash reporting requirements in current code section 6050I. While the proposal does not provide detail, if it moves forward I expect that Congress and the administration will want to narrow this to U.S. businesses dealing with their U.S. customers and will be receptive to comments and suggestions on how best to do that," said Michael Desmond, partner at Gibson Dunn, Los Angeles and Washington, D.C., and former chief counsel of the U.S. Internal Revenue Service.

Criminal incentives

There is a risk money launderers may move further into cryptocurrencies if, as expected, the European Commission introduces a 10,000 euros upper limit on cash payments EU-wide as part of the anti-money laundering legislative package it plans to announce on July 6. The 10,000 euros limit is low enough to make it harder for criminals to launder large sums of cash, said Mairead McGuinness, EU Commissioner for financial stability, financial markets and capital market union, in a speech on May 17.

This development could possibly drive money launderers further into cryptocurrencies, said Claire Lipworth, partner at Hogan Lovells in London. "But this will depend on the volatility of cryptos, the increasing regulation of crypto businesses and whether dealers in high-value luxury items are prepared to accept cryptocurrencies in payment."

The European Commission's likely 10,000 euros limit across the EU creates a risk the money launderers could look at jurisdictions that lack such a limit, such as the UK, said Matthew Russell, partner at PwC in London.

"Criminals will look for the weak point and they are very agile," he said.

Illegitimate cash

As many EU member states already have limits on cash transactions, the proposal for the 10,000 euros limit appears to be more about harmonisation, which would prevent forum shopping by criminals operating across the EU, said Michael Lyons, partner at Clifford Chance in London.

"The rules will only be as effective if the implementation and enforcement is robust, ensuring merchants abide by rules not to allow multiple transactions that seek to bypass the rules," he said.

"The effect of the rules might be that we see a shift to the UK unless the UK enacts similar legislation in due course. But that would require illegitimate cash to be brought into the UK, which is fraught with risk," Lyons said.

The risk of launderers shifting their activity to the UK is minimal, said Christopher Ives, senior manager, business intelligence and investigations at Kroll in London. Launderers would need to physically transport the cash which increases the risk to them of detection, particularly with a fresh customs border between the UK and EU post-Brexit, he said.

If more launderers go to use the UK, the question arises how the money launderers repatriate those funds to where the organised criminals want them, Russell said.

"For banks this makes it important to ensure that their controls of cross-border transactions are suitably robust."

There is little rationale for the use of cash to purchase high value goods in the UK, Ives said.

"The UK should consider implementing similar cash limits for alignment with any EU law changes, and this would be an effective tool to combat the shadow economy, particularly in regards to tax evasion," he said.

A spokesman for HM Treasury did not return repeated calls.

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