The Concept of Tax Residency

Bitcoin 2013: The Future of Payments
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What Drives Corporate Structure?

- Limitation of liability
- Location of workforce & markets
- Transportation & communication links
- Choice of law
- Expectation of profitability or initial losses
- Tax—Basic regime, incentive payments, etc.

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Residency

- Sometimes referred to as:
  - Domicile
  - Nexus
  - Situs
  - Permanent establishment

What is Residency?

- One's residence is "chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question."

Thomson v. MNR, [1946] S.C.R. 209 at 225, Rand J.

Why is it Important?

- In Canada, residents are taxable on worldwide income from source—s. 2(1), ITA
- Non-residents taxable on income from: employment in Canada; carrying on a business in Canada; and, disposing of taxable Canadian property—s. 2(3), ITA

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Specifics & Implications

- Individuals & corporations
- Compare United States & Canada
- Response of some to US approach:
  Renunciation or relinquishment
  (but: ‘exit tax’ under HEART Act of 2008)

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Other Jurisdictions

- Certain Caribbean nations: low (or no) tax
- European nations: generally higher tax rates
- Broadly consistent in taxing based on residency
- How does each jurisdiction comport with other factors determining corporate structure?

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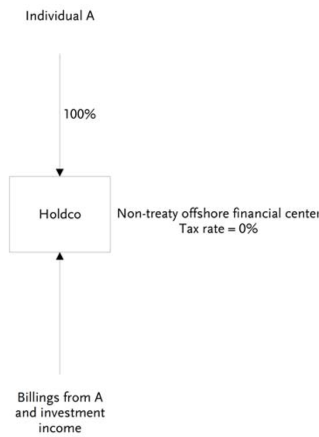
Example #1 = Bad



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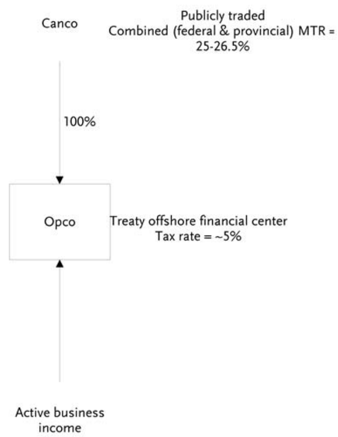
Example #2 = Better



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FinTRAC

- Canada's FIU under the FATF
- Functions are similar to FinCEN's
- Requirements re: MSB's (for example)
- Main legislation: Proceeds of Crime (Money Laundering) and Terrorist Financing Act & Regulations
- Applicable provincial laws
- No pronouncements on bitcoin (yet)

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CRA Position on Bitcoin

- On April 26th, CBC published a story stating CRA's position that two tax rules apply to bitcoin transactions:
  1. Barter rules
  2. Commodities rules
- Comments provided by e-mail; no presser or amendments to tax bulletins or information circulars

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These Rules Seem Strange

- Barter transactions must be from source to be taxable
- Why barter in the first place?
- Commodities engages the securities rules; depends on whether bought or sold on account of income or capital

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A Better Approach?

- Income in bitcoin from source to be translated into C$ and taxed in the normal course (similar to other currencies)
- F/X gains & losses taxable or deductible with reference to income and capital rules (or not taxable if not from source)

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Canadian Banks & Bitcoin

- Anecdotal news reports that RBC & ScotiaBank will not do business with VirtEx
- Problems particular to any particular exchange or more general banking aversion?

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Questions & Wrap-Up

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