Taxing Unrealized Crypto Gains: Canada’s Tax Court Guidance to Global Policymakers on Crypto Volatility

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The intersection of digital currency and the tax collector has always been a point of friction, but a recent judgment from the Tax Court of Canada has provided a clarifying jolt to the system. In *Amicarelli v. The King*, 2025 TCC 185, delivered in December 2025, Justice John A. Sorensen stripped away the technological hype of cryptocurrency to reveal its bare economic bones. While the case adjudicated the specific misfortune of a taxpayer caught in the notorious collapse of the QuadrigaCX exchange, the principles articulated in the decision offer a profound warning to global policymakers currently flirting with the taxation of unrealized gains. As nations from the United States to Australia consider expanding their tax nets to capture the paper wealth of the digital age, the *Amicarelli* decision stands as a testament to the dangers of taxing value that can vanish in a heartbeat.

To understand the legal and economic implications, one must start with the asset itself. The court provided a definition of Bitcoin that is remarkable for its clarity and its exclusion of traditional financial attributes. The judgment accepted that Bitcoin “subsists on a blockchain, which is a decentralized and encrypted ledger of information.” It noted that while the asset “exists in a virtual, digital domain,” it lacks the fundamental characteristics of income-generating property. Unlike a bond that pays interest or a stock that yields dividends, the court stated explicitly: “Bitcoin does not generate interest or dividends. It is a medium of exchange and temporary store of value.”

This definition is crucial. It establishes that the only way to make money with Bitcoin, barring some exotic derivative structure, is through the mechanism of price appreciation. You buy it, you hold it, and you hope it goes up. In the case of Jeanette Amicarelli, she did more than just hope. She engaged in what the court described as “optimistic behaviours” to fund her acquisition of Bitcoin in 2017. She took out a second mortgage at an interest rate of nearly 12 percent, cleared out her retirement savings, and used high-interest credit cards. The court observed that “only a person with a bona fide belief that they were going to enjoy positive financial outcomes would engage in such costly financing.”

Because of this aggressive pursuit of profit, the court ruled that her trading activities constituted an “adventure or concern in the nature of trade.” This legal determination meant that her subsequent loss, nearly half a million dollars that evaporated when QuadrigaCX failed, was a business loss, not a capital loss. The distinction allowed her to deduct the full amount against her other income, a victory for the taxpayer that hinged on the court’s recognition of her intent and the reality of her loss.

However, the deeper lesson of *Amicarelli* lies in its implicit critique of the “mark-to-market” taxation philosophies gaining traction globally. In the United States, political debates have cycled through proposals to tax the unrealized gains of high-net-worth individuals, essentially asking taxpayers to pay cash taxes on the increase in value of their assets, even if those assets haven’t been sold. Similar ideas circulate in the European Union under the guise of wealth equalization, while countries in East Asia and Australia continue to refine the timing of capital gains events.

The *Amicarelli* judgment exposes the peril of these approaches by highlighting the concept of symmetry. Justice Sorensen wrote what should be a guiding maxim for tax authorities everywhere: “Ultimately, to the extent that material profits earned in a market frenzy are fully taxable regardless of the risk profile of the market, losses, including catastrophic losses, must be given symmetrical treatment.”

Consider the timeline of the *Amicarelli* case through the lens of taxing unrealized gains. In late 2017, the taxpayer’s account balance reportedly swelled to over two million dollars. In a regime that taxes paper wealth, the government might have assessed a massive tax liability on those gains at the end of the fiscal year. Yet, just weeks later, the exchange collapsed, and the balance “inexplicably fallen to nil.” If the taxman had already taken a cut of the two million dollars, the taxpayer would have been left destitute, having paid taxes on wealth she never truly possessed and could never access.

The court’s recognition that cryptocurrency is merely a “temporary store of value” underscores the volatility that makes taxing unrealized gains so dangerous. Assets in this sector are not stable; they are prone to “modern cryptocurrency surges” that the judgment compared to “Dutch tulip mania” or the “dot com bubble.” When a government steps in to tax the upside of a bubble before it bursts, they effectively become a partner in the speculation. The *Amicarelli* decision confirms that if the state wants a share of the “market frenzy,” it must also underwrite the “catastrophic losses” that follow.

Furthermore, the judgment acknowledges the unique risks of the crypto ecosystem. The court accepted that “asset loss due to theft or fraud is a business risk.” In the unregulated “wild west” of digital exchanges, where platforms “operate outside the purview of securities regulators,” wealth is far more precarious than it is in traditional banking. Taxing the theoretical value of a Bitcoin wallet as if it were a savings account ignores the reality that the wallet can be emptied by a hacker or a fraudster in seconds.

In jurisdictions like Japan, where crypto income is often treated as miscellaneous income upon realization, or Australia, where Capital Gains Tax events are strictly defined by disposal, the tax codes generally align with the "realization" principle upheld in *Amicarelli*. These systems wait until the money is real before asking for a share. The Canadian ruling reinforces the wisdom of this caution. It reminds us that "Bitcoin is property" but it is a distinct, volatile, and intangible form of property that "can even be stolen."

Ultimately, *Amicarelli v. The King* is a vindication of economic reality over theoretical valuation. The court looked at the taxpayer's "actual conduct", her borrowing, her daily monitoring, her "scheme for profit making", and determined that she was running a business. Because she was running a business, she was entitled to deduct her losses when the business failed due to "malfeasance."

For global policymakers, the warning is clear. If you rewrite the rules to tax the phantom wealth of a rising market, you must be prepared to refund those taxes when the market crashes or the assets disappear. As Justice Sorensen concluded, the tax system must provide "symmetrical treatment." Without that symmetry, the tax code becomes a mechanism for confiscation rather than contribution, punishing taxpayers for the ephemeral spikes of a volatile market while offering no shelter when the screen goes black.

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