

Review of the Tax Treatment of Digital Assets and Transaction in Australia

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Summary

- 1) The tax laws should be amended such that a capital gains disposal under section 104.10 of the *Income Tax Assessment Act 1997* (Cth) is not triggered when a person deposits or lends cryptocurrency into a cryptocurrency interest account to earn interest. Much like making a deposit of money into a bank account to earn interest, a deposit of cryptocurrency into a cryptocurrency account should not trigger a capital gains disposal. This is unfair to investors who do not intend to dispose of their cryptocurrency when depositing them into such products.

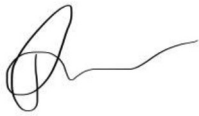
Issue

- 2) Certain platforms which operate in a bank like way offer interest on cryptocurrency deposits and lending. For example, one can currently deposit 1 Bitcoin into a BlockFi (www.blockfi.com) interest bearing account and earn up to 3.50% interest in kind per annum. The cryptocurrency is used much like banks use money to generate interest. The investors interest bearing account will display a balance, much like a bank account, and is available at call unless one has deposited into a fixed term account (much like a bank short term deposit).
- 3) Foreign examples of these platforms include Blockfi and Ledn (United States of America) and Nexo (Global). These platforms have tens of billions of dollars in assets under management.
- 4) An issue has arisen, however, in that the Australian Taxation Office has intimated that depositing or lending cryptocurrency into such an interest bearing account is considered a disposal of the cryptocurrency thus triggering a capital gains tax event.
- 5) It is clearly not the intention of investors to dispose of the cryptocurrency because they retain the right to withdraw exactly the same amount of cryptocurrency they deposited plus any interest. It is unfair to impose a capital gains tax burden on such investors when they are not intending to or not truly effecting a disposal.
- 6) Australian platforms are developing such interest bearing and lending products and if deposits with these platforms trigger a capital gains disposal it would be very likely to deter investors from making deposits with such platforms and stifle investment in Australia.
- 7) Such matter has arisen previously in the context of equities security lending (for example, shares). In the 1980s the introduction of the capital gains tax laws triggered capital gains tax on the practice of securities lending thus stifling the practice in Australia to its detriment.¹ As a result an exception was introduced into the tax legislation in the form of section 26BC of the *Income Tax Assessment Act 1936* (Cth) (**ITAA 1936**) whereby lending of “eligible securities” would not trigger a capital gains disposal and thus not trigger a capital gains tax event.

¹ “History of Securities Lending” <http://www.asla.com.au/about-securities-lending/>

Solution

- 8) It is submitted that the tax laws should be amended so that cryptocurrency deposits or lending into interest bearing accounts should be exempt from capital gains disposals.
- 9) It is submitted that one of the simplest and most appropriate ways to effect this would be to amend the definition of “eligible securities” in section 26BC of the ITAA 1936 to include cryptocurrency.



Ms Razwina Raihman