



30 September 2022

Board of Taxation Secretariat
Treasury
Langton Crescent
Parkes ACT 2600

Email: TaxDigitalAssets@taxboard.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – REVIEW OF THE TAX TREATMENT OF DIGITAL ASSETS AND TRANSACTIONS

The SMSF Association welcomes the opportunity to provide this submission in response to the Board of Taxation’s consultation paper on the *Review of the tax treatment of digital assets and transactions*. This is a complex and rapidly evolving area from both a financial product regulation and taxation perspective.

One of the biggest challenges with cryptocurrencies and digital assets is the lack of regulation. This coupled with a rapidly expanding market which encompasses a wide variety of different products and their hybrids, means that there is little basic information available to aid professional advisers and consumers.

Financial advisers are currently unable to provide advice on crypto currencies or digital assets as:

1. They are not classed as a financial product;
2. Most licensees will not authorise an adviser to advise on these products; and
3. Professional indemnity insurances do not cover advice in relation to this asset class.

This gap in regulation means that an adviser is not only unable to advise on the making of an investment, but they are also unable to advise a client to not invest or to dispose of an interest held in digital assets.

It is concerning to see the increase in spruiking activity around these assets. A range of investors are targeted, including SMSFs and inexperienced investors. The promotion of these products is at times accompanied by misleading taxation advice including the promotion of tax exemptions. The inability to obtain professional advice, the lack of credible guidance and consumer education materials has created a vacuum which enables these activities to flourish.

Digital currencies and digital assets are a rapidly growing area and there is an urgent need for clear guidance for financial advisers, accountants and tax agents on their classification and treatment as financial products and the application of Australian tax law.

We would welcome further guidance from ASIC and the Australian Taxation Office to assist professionals and the public to navigate these classes and sub classes of products and provide certainty on the application the relevant laws.



Taxation of Certain Assets in a SMSF

Since 10 May 2011, SMSFs have been prohibited from using the trading stock exception provided by *Income Tax Assessment Act 1997* item 5 of section [295-85\(4\)](#). This item allows for gains and losses on certain assets to be accounted for on revenue account.

Item 5 does not apply to “covered assets” as defined in ITAA97 section [70-10\(2\)](#) and [275-105](#), which includes shares, units in a unit trust and land (including an interest in land) held by a SMSF.

We would welcome these provisions being extended to include a new category for digital assets.

Valuation of Assets

Asset valuation rules are important from a capital gains tax perspective. However, valuation rules must also be considered for compliance with both taxation and superannuation law purposes.

We would welcome further guidance from the Australian Taxation Office on how the various digital assets should be valued. This will be necessary to assist tax agents and accountants but also SMSF trustees, administrators, and auditors to fulfil their duties and obligations.

Asset Ownership and Records

Two of the biggest issues identified in our sector, are the challenges in being able to prove asset ownership and title and maintaining appropriate accounting records.

The nature of many of these assets mean that it is difficult to prove title or ownership of a particular asset. This is an issue from a taxation perspective but is a serious issue for SMSFs seeking to invest in these assets whilst complying the relevant superannuation laws.

Accounts held on cryptocurrency exchanges are commonly accessed via smartphone apps, stored on a smartphone owned and controlled by the person authorised to access the exchange. This may not be reflective of the intended ownership of the assets. For example, where an SMSF trustee invests in cryptocurrency both in an account held in their personal name, and one purportedly held in the name of the SMSF, challenges may arise in objectively proving ownership of the account held.

An arguably greater challenge arises when attempting to demonstrate objectively, a hardware wallet, with no features identifying the owner other than a private key (long string of unique characters) is an asset of the taxpayer.

Due to the underlying nature of digital assets, it is difficult to obtain and retain compliant accounting records. The nature of blockchain technology means that transactions are represented by code and are not supported by contemporaneous documentation. The only record will be that provided by the trading platform used to facilitate the transaction. What is provided by a trading platform is highly variable with some providing on screen information only via their dedicated app through to downloadable transaction listings in a CSV file format only.

Currently there are no statutory or regulatory reporting requirements or regulation of the registration of ownership of digital assets. This is an area that needs regulation.



If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'.

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.