

7 October 2022

The Board of Taxation
C/- The Treasury
Langton Crescent
PARKES ACT 2600

Re: Review of the Tax Treatment of Digital Assets and Transactions in Australia

To the Board of Taxation,

Thank you for the opportunity to respond to the consultation paper on the review of the tax treatment of digital assets and transactions.

About the Tech Council of Australia and the Australian tech sector

The TCA is Australia's peak industry body for the tech sector. The tech sector is a key pillar of the Australian economy, contributing \$167 billion per annum to GDP and employing over 860,000 people. This makes the tech sector equivalent to Australia's third largest industry, behind mining and banking, and Australia's seventh largest employing sector.

The TCA represents over 160 member companies from a diverse cross-section of Australia's tech sector, including leading Australian fintech companies. Many of our members are leaders in cryptocurrency and payments technology. Regulatory clarity is crucial in ensuring that tax policy is consistent and clear across different aspects of Australia's financial system, and we therefore welcome the Board of Taxation's review.

Overview

We welcome the Board of Taxation's consultation paper reviewing the tax treatment of digital assets and transactions. The TCA supports fair and transparent tax rules that ensure Australia remains an attractive place for global investment. More broadly, we encourage reforms to the tax system that can drive investment in Australian innovation and R&D, creating more jobs and new industries, while keeping pace with technological change.

Uptake of cryptocurrencies shows that many Australians already place a reasonable level of trust in digital assets. The Senate Select Committee on Australia as a Technology and Financial Centre Final report noted that 25 per cent of Australians either currently or have previously held cryptocurrencies, making Australians one of the leading adopters of this technology on a per capita basis. Ensuring that tax policy continues to evolve and reflects changes in Australia's financial system is key to ensuring the tax system is fair, effective and supports taxpayer compliance.

Our submission primarily focuses on ensuring that tax rules are clear and fit-for-purpose for digital assets. We are seeking greater clarity on current and potential future tax treatment through clearer definitions of key activities and actors. Like other financial products, such as listed company shares, crypto assets bought and sold by consumers are supported by extensive B2B supply chains and infrastructure. A shared understanding of the actors and

activities along these supply chains will provide greater regulatory clarity and support consultation with industry. This submission also supports a key recommendation from the Senate Select Committee on Australia as a Technology and Financial Centre Final report, which recommended that the rules around CGT were updated to reflect changes in technology.

1. Confirmation of current tax treatment scope

The consultation paper notes that the current tax treatment of crypto assets is the result of different published guidance. Our members are seeking greater clarity on the terms used in to understand the crypto assets and payment types in scope.

Crypto assets

To provide industry and consumers with greater regulatory certainty, the TCA suggests the definition of 'crypto asset' be further clarified.

The TCA supports consistent application of tax policy across asset types so that taxation is consistent with the characteristics of the underlying asset. In the context of crypto assets, this means that all digital currencies should receive the same tax treatment.

Recommendation 1: The TCA recommends the Board of Taxation clarify that the GST treatment to be provided for bitcoin and digital currency includes other digital stablecoins (such as USDC).

In this regard, the TCA considers that the current definition of digital currency includes other digital stablecoins.

Payments related to buying and selling crypto assets

We understand current GST treatment of crypto assets broadly applies to buying and selling activities, which is explained in the Consultation paper. To provide industry and consumers with greater regulatory certainty, the TCA suggests the Board of Taxation clarify the scope of this tax treatment.

An extensive digital assets supply chain supports consumers to buy and sell crypto assets. The services along this supply chain charge fees, which is key to ensuring stable, sustainable growth in the Australian cryptocurrency industry. Confirming there is consistent tax treatment across key parts of the digital assets supply chain is important to provide certainty and ensure compliance.

We note that the ATO provided [guidance](#) that sales and purchases of digital currency are not subject to GST from 1 July 2017. However, the guidance did not clarify the GST treatment on common fees charged from companies to companies or individuals buying crypto assets, such as those listed below.

We note that GSTR 2002/2 provides an extensive listing of fees and charges that are input taxed financial supplies and include a section related to currency and another section related to brokerage and facilitation services. However, there is no mention of the GST treatment of fees or charges that are related to crypto assets. GSTR 2014/03 did provide

some observations regarding bitcoin exchange and bitcoin market. However, our understanding is that the ruling was withdrawn and ATO has not issued a replacement to this ruling.

Recommendation 2: The TCA recommends the Board of Taxation confirm the current GST treatment on the following payments associated with buying and selling crypto assets:

- the fee charged by a company to a company (i.e. B2B) to sell crypto assets
- the fee charged by a company to a company (i.e. B2B) to buy crypto assets
- the fee charged by a company to an individual (i.e. B2C) to sell crypto assets
- the fee charged by a company to an individual (i.e. B2C) to buy crypto assets

In confirming the tax treatment of these payments, we recommend the Board of Taxation provide guidance on assessing tax payable if this fee is paid in crypto assets.

2. Clarification of additional key definitions

The Consultation Paper provides definitions of five core terms. To assist with industry consultation the TCA suggests expanding this list. A shared understanding of key definitions would provide industry with clearer understanding of how they relate to ongoing changes to tax policy, and support more productive conversations between industry and Government.

Recommendation 3: The TCA recommends the Board of Taxation confirm the definition of:

- Crypto assets trader
- Intermediary
- Crypto trading platform operator
- When a commission/fee charge is considered a separate brokerage service or part of the crypto asset supply

3. Amend rules relating to Capital Gains Tax (CGT) to reflect technological change

The Consultation Paper notes the purpose of the Board's review stems from the Senate Select Committee on Australia as a Technology and Financial Centre Final report, which recommended that the rules around CGT were updated to reflect changes in technology.

Crypto assets should be subject to CGT, but the TCA suggests the Board of Taxation consider amending the rules used to apply this tax in a way that supports compliance.

Applying the existing CGT rules to a broad range of crypto asset transactions generally results in a much higher compliance burden for the tax revenue, compared to other assets such as shares, due to the nature of the technology underpinning crypto assets. For example, users can very quickly complete a large number of transactions for various purposes, each of which need to be assessed for tax purposes, and not all of these transactions may result in a capital gain or loss. This results in a relatively complex tax assessment, often for relatively unsophisticated individual taxpayers.

The TCA would welcome more nuanced treatment of crypto that also accounts for the sophistication of the wide range of crypto users, shifting focus to the outcome of the activity rather than the activity itself in keeping with a key recommendation from the Senate Select Committee on Australia as a Technology and Financial Centre Final report.

Recommendation 4: The TCA recommends the Board of Taxation consider options to adopt Recommendation 6 from the Senate Select Committee on Australia as a Technology and Financial Centre Final report "...that the Capital Gains Tax (CGT) regime be amended so that digital asset transactions only create a CGT event when they genuinely result in a clearly definable capital gain or loss."

We appreciate the opportunity to contribute feedback to areas discussed in this submission and look forward to ongoing dialogue.

Yours sincerely,

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