



Blockchain Australia

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21st October 2022

Board of Taxation

C/- The Treasury; Langton Crescent
Parkes ACT 2600
Australia

By email: TaxDigitalAssets@taxboard.gov.au

Dear Board of Taxation

Thank you for the extension to our submission on the Review of the Tax Treatment of Digital Assets and Transactions in Australia. On behalf of the association we appreciate the opportunity to provide feedback and are appreciative of the government's efforts to ensure the regulatory framework and tax treatment of digital assets are developed with industry consultation.

Blockchain Australia on behalf of its members seeks to ensure that any legislative or tax changes proposed by government support the following objectives:

- Encourage innovation and adoption of blockchain
- Ensure appropriate investor protection
- Contribute to a consistent, flexible and transparent tax framework
- Are designed to deal with both institutional and retail investors

We are conscious that our submission is late and that a number of our members and other industry bodies have made detailed responses to the review. Blockchain Australia is broadly in support of these submissions which we see as having well described the many complexities and subtle nuances of trying to modify the tax framework for digital assets.

Those reviewed and supported by Blockchain Australia include:

Blockchain & Digital Assets - Services + Law	Financial Services Council
CPA Australia	KPMG
CryptoTaxCalculator	Koinly
Deloitte	PwC

Although we have not provided a detailed response to each question we have provided highlevel comments.



We would welcome the opportunity to meet with the Board of Taxation to discuss any matters in our submission or broader tax issues associated with cryptocurrencies.

Please direct any questions you may have to:

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Or

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Current tax treatment of crypto assets

The current tax framework is not consistent for all situations involving trading and investing in digital assets. As set out in a number of other submissions, situations include:

- Foreign currency application (TD 2014/25, proposed amendments)
- Payment of salary via a digital currency would not be allowable under FBT laws (TD 2014/28)
- Definitional characteristic and implications of a DAO
- Capital vs revenue treatment of staking tokens and other Decentralised Finance (DeFi) protocols
- A lack of clarity in determining whether crypto tokens fall under the Capital Gains Tax (CGT) provisions

We would also refer you to the Koinly submission, which provides details of the complexities within the crypto gaming ecosystem, which by its very nature is one of the fastest growing segments in blockchain. Gaming brings together a multitude of the key complexities in tax compliance (e.g., interpretations relating to play-to-earn, underlying DeFi protocols, triggering of high frequency, interrelated transactions across cryptocurrencies and NFTs, recreational->professional characterisation etc.). It is important to recognise the demographics of gamers and the extent of awareness of their tax compliance obligations extending into GameFi.

Of pressing concern is the need to provide guidance on the revenue-capital distinction for taxpayers that invest and or trade crypto assets. For example, many crypto investors have both a long term investment portfolio (which is likely to be on capital account) as well as a short term trading account with a profit making intention (which is likely to be on revenue account). It is important to recognise that activities can be found to be on revenue account, despite not being part of carrying on a business. Moreover, even when carrying on a business, not all crypto will necessarily be held on revenue account. It is pertinent for guidance to recognise the bespoke nature of taxpayer activities and the not so black and white application of the principles of law.

A general observation would be that it would be beneficial if the ATO were to provide more timely and specific tax guidance on significant crypto events. For example, the Ethereum merge. This will greatly assist taxpayers and their advisors with greater clarity and the ability to meet tax obligations. However, in doing so, there is a balance with efficient and effective tax administration. Taxpayers and tax practitioners need certainty, thus ATO guidance should not be too fluid, else there can be a continuous need for amending tax returns. A pertinent example here is the change in ATO position on airdrops that occurred in September 2022. Whilst welcome in recognising more openly the nuanced situations that airdrops can arise, occurred mid-way through the period for which taxpayers are required to submit their tax returns (31 October 2022, albeit recognising alternative deadlines for tax agents etc.). Depending on the willingness of a taxpayer to go against ATO guidance, this change of position is likely to have led to a multitude of taxpayers seeking to amend their tax return. It is also important to recognise here, that for many, this change of position was unknown. The ATO did not appear to advertise the changes in position and so it was not necessarily known by the profession.

Awareness of the tax treatment of crypto assets

Our view is that the correct tax treatment of crypto assets is not clear across the spectrum of users be that investors, businesses, accountants, specialist tax advisors and lawyers. Whilst many retail investors are unaware of the tax treatment of engaging in crypto assets, more sophisticated investors are put off by the number of taxable events, which is likely to stifle innovation in this space. The mere fact that whilst crypto tokens can function like a means of payment, the barter nature of transactions due to their fundamental characterisation as property, creates an exponential growth in taxable events. This in itself creates significant burden and complexity in tax compliance.

It is apparent that from a retail perspective, there are an increasing number of Australians who engage with complex Crypto protocols such as Decentralised Finance (DeFi) or games (GameFi) who are seemingly unaware of the resulting tax implications. This is particularly pertinent when considering the demographic of potential gamers.

Subjecting all crypto assets and tokens to the capital gains tax regime also captures an unreasonably broad range of transactions from hobbies, recreational pursuits and pastimes. Such activities which lack a profit motive are normally disregarded by tax professionals as non-assessable from a revenue perspective (*Ferguson v FCT*, TR 2005/1). Excluding these activities into the scope of tax returns would be consistent with standard tax treatment and remove the increasing compliance burden for hobbyists and minors. Current guidance tends to disregard the notions of personal asset and collectable characteristics more readily than off-chain counterparts. Whilst we recognise that implicit in this is the acknowledgement of the capacity and enabling of commodification via the technology, not so readily observable factors such as taxpayer intention are critical in the tax interpretation. What is required is an understanding of activities being undertaken and the consequential movement of crypto tokens being held.¹

The majority of these new participants in the Digital Asset ecosystem do not have the means to seek professional advice. This may be reflective of their level of awareness of their tax obligations, or due to the cost incurred in seeking advice. It is important to recognise that high levels of transactions do not necessarily equate to high levels of gains necessarily being derived. However, to understand and interpret the activities therein, a tax practitioner faces the challenges of time and value, information gathering and uncertainty.² As such, it is incumbent on the government to ensure that the tax framework evolves to support all classes of investors - regardless of whether their activities are on or off chain.

There are also concerns with institutional investors being able to get exposure to this asset class through the existing unit trust structure in managed funds due to the definition of eligible investments not specifying this asset class. We believe institutional access to this asset class through the existing trust structure offered by many fund managers is critical to the broader uptake of digital assets.

¹ See Elizabeth Morton and Michael Curran, 'Understanding Non-Fungible Tokens and the Income Tax Consequences' (SSRN Paper, 12 April 2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4174666>.

² Elizabeth Morton, Gillian Vesty, Lan Nguyen and Ken Devos, 'The crypto-economy and tax practitioner competencies: An Australian exploratory study' (Working paper, 2022). Further details of this can be provided on request.



As such we support the FSC's recommendation that the wording in section 102M of the Income Tax Assessment Act 1936 (ITAA36) allows for digital assets such as bitcoin do not qualify as eligible investment business.

The list in section 102M contains a number of very specific asset descriptions, however does not include 'digital assets' specifically, but finishes with "any similar financial instruments". The ATO has not expressed a view on whether or not digital currencies fit into the phrase "any similar financial instruments. This is similarly connected to the issues with respect to appropriately characterising DAOs.

To support the growth/evolution of crypto funds it is important that they are treated the same as other investment vehicles for flow through tax purposes, etc.

For the application of Div 6C public unit trust test consideration should be given to crypto specific events for example a crypto bear market and the impact on the number of investors having holdings in crypto funds.

Characteristics and features of crypto assets

By its very nature blockchain based platforms were designed to provide both pseudo-anonymity of parties and transparency of transaction to all. Given the governments need to prevent tax avoidance and automate the collection of tax related data for prepopulation we are supportive of the development of a framework to protect the privacy and security of investor data.

To this end, the European Union has proposed Crypto-Asset Reporting Framework (CARF), whilst not perfect, provides a starting point.

Given the global nature of blockchain it would be very difficult for Australia to enforce a framework that is inconsistent with other developed markets. If we make it too hard for investors here to use their services, providers would simply focus on other markets to develop products. Similarly, if compliance is too onerous or difficult for domestic taxpayers, there is the risk that taxpayers will become non-compliant.

International tax treatment of crypto assets and experience

This is a dynamic space and regulators across the globe are scrambling to develop competitive regulatory frameworks that also protect their sovereignty. It is our view that a bespoke fractured global regulatory framework will create more opportunities for unscrupulous behaviour.

Our recommendation is that the Australian government actively work with other OECD countries to develop consistent regulatory and tax frameworks.

Changes to Australia's taxation laws for crypto assets

An opt in simplified basis of taxation would assist in preserving existing tax laws if taxpayers



seek to engage with tax rules that are familiar even if complex to apply whilst also providing a clear and activities-based taxation framework that can transition tax advisors and taxpayers into an increasingly tokenised economy.

Administration of Australia's taxation laws for crypto assets

Current complexity as referred to above, leads to concerns over the compliance burden for those taxpayers participating in the blockchain ecosystems, particularly when contemplating the self-assessment system operating in Australia. Reform should contemplate tax policy objectives that are suited to a digital economy. This needs to reflect upon the diversity of activities occurring on-chain, off-chain or in combinations thereof.

Guidance needs to be effective and efficient, including with respect to the provision of guidance that is binding on the Commissioner. E.g., only core elements of the 2014 tax determinations are currently binding on the Commissioner. Given the narrow scope and age of these, in practice, they offer limited support for taxpayers and tax practitioners. In contrast, web guidance offers more robust interpretation, however it is neither binding nor persistent (as identified earlier with respect to airdrops).



About Blockchain Australia

Blockchain Australia is the peak industry body representing Australian businesses and business professionals participating in the digital economy through blockchain technology. Blockchain Australia encourages the responsible adoption of blockchain technology by the government and industry sectors across Australia as a means to drive innovation and create jobs in Australia.

The Blockchain Australia membership base consists of 120+ leading cryptocurrency and Blockchain centric businesses and 100+ individuals across multiple verticals including:

- Accounting and Taxation
- Artificial Intelligence
- Banking
- Cyber Security
- Art
- Development
- Building & Construction
- Digital ID
- Energy and Resources
- Entertainment
- Gaming
- Health and Wellbeing
- Insurance
- Investment
- Legal
- Professional Services
- Recruitment
- Real Estate
- Risk and Compliance
- Supply Chain
- Venture Capital

The sector contributes AU\$2.1 billion and employs around 11,600 people ([Source](#)) and with reform and growth these figures could increase to AU\$68.4 billion and over 206,000 people employed in the sector.

We seek a fit for purpose, technology neutral, regulatory framework with clear guideposts for consumers and a focus on driving innovation and Investment.