CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

27 June 2016

Division Head
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: digitalcurrency@treasury.gov.au

Dear Madam / Sir

Chartered Accountants Australia and New Zealand (CA ANZ) appreciates the opportunity to provide our brief comments on the *GST treatment of digital currency Discussion Paper*, May 2016 (the Discussion Paper).

We also welcome the Government's announcement of its intention to fix the impediments that exist to the use of digital currency in its 'Backing Australian Fin Tech' statement on 21 March 2016, under the current law and interpretation of the Australian Taxation Office (ATO) in Goods and Services Tax Ruling GSTR 2014/3.

CA ANZ supports the conclusions of the Senate Economics References Committee in its report of 4 August 2015 that "digital currency transactions should be treated in the same manner as national or foreign currency for the purposes of the GST", and that the current GST "treatment of digital currency transactions as barter transactions, creates a double taxation effect that has placed an additional burden on Australian digital currency businesses."

We outline our brief summary of the key issues and our recommendations in response to the Discussion Paper below.

Summary of current problems and recommendations to fix them

There are three main issues that require fixing in order for digital currencies to be able to function properly in the economy, and in particular to resolve the problem of double taxation of digital currencies. The problems and the recommended solutions to fix them are discussed below:

1. Digital currency needs to be "money"

Digital currencies that are used in the same manner as money should be treated in the same way under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

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This is necessary to ensure that when digital currencies are paid as consideration (payment) for goods or services, they do not constitute a taxable supply of digital currency. As the Discussion Paper itself recognises, many other countries are already treating digital currencies as 'money' or 'currency'.

While we consider that the rules of statutory interpretation allow an interpretation to be taken that would produce the outcome whereby many widely used digital currencies are regarded as "money" within the meaning of the GST law, the ATO's current interpretation in GSTR 2014/3 means that there is a need to amend the definition of "money" to make this policy intent express and unequivocal.

Money is defined in the GST Act in section 195-1 as:

> *Money includes:*
>
> *(a) currency (whether of Australia or of any other country); and*
> *(b) promissory notes and bills of exchange; and*
> *(c) any negotiable instrument used or circulated, or intended for use or circulation, as currency (whether of Australia or of any other country); and*
> *(d) postal notes and money orders; and*
> *(e) whatever is supplied as payment by way of:*
> *(i) credit card or debit card; or*
> *(ii) crediting or debiting an account; or*
> *(iii) creation or transfer of a debt.*
>
> *However, it does not include: a collector's piece; or*
>
> *(f) an investment article; or*
> *(g) an item of numismatic interest; or*
> *(h) currency the market value of which exceeds its stated value as legal tender in the country of issue.*

Recommended amendment:

We recommend that the above definition of "money" in the GST Act be amended to expressly include "(aa) digital currency", as defined in the GST Act (see discussion below).

Once digital currency is a form of "money", subsection 9-10(4) of the GST Act can operate to ensure that the supply of digital currency is not a "supply" for GST purposes when it is made in payment for a supply, unless it is "provided as consideration for a supply that is a supply of money", i.e. a financial supply.

In this way, the payment of digital currency for goods and services will no longer be a taxable supply, as it is under the current GST treatment / interpretation.

2. Digital currency needs an appropriate, globally-consistent definition

The Discussion Paper notes that digital currencies need to be identified so that their GST treatment can be put into effect in the law, and it queries whether they should be defined or listed.

In our view, digital currencies should be defined, rather than separately listed prescriptively or exhaustively. Also, the definition should be one that is globally consistent, not one uniquely crafted for Australian purposes, otherwise the Australian GST treatment of digital currencies risks diverging from the international treatment and putting Australian businesses and digital currency

suppliers at an ongoing commercial disadvantage compared with those dealing with digital currencies in other jurisdictions.

Recommended amendment:

An appropriate, globally-relevant definition of "digital currency" should be inserted into s195-1 of the GST Act.

We recommend, at least as a starting point, that the definition developed by the Financial Action Task Force established by the G7, should be considered and adopted. The Task Force recommended that "digital currency" be regarded as a:

> "digital representation of value that can be digitally traded and functions as:
> 1. a medium of exchange; and/or
> 2. a unit of account; and/or
> 3. a store of value
>
> but does not have legal tender status in any jurisdiction."

We disagree with the strategy proposed in paragraph 29 which is to create a definition that establishes a precise set of criteria. For example, it is our view that a definition that meets all of the criteria within paragraph 33 is more likely to fail to cater for rapidly developing technology. Rather, we recommend adoption of a wider, globally-relevant definition of "digital currency".

In our view, digital currency should be treated the same regardless of whether it is being used for legal or illegal purposes, remembering that legal currency is also used for both legal and illegal purposes. While digital currencies may be used by people for illegal activities (the same people who also like and tend to prefer the cash economy), digital currencies are also used by many others in legitimate commercial transactions.

Having said this, to build in some flexibility for the Revenue to respond quickly to any integrity concerns, the GST Act could include a power for the Commissioner to determine that a specified "digital currency" is not "money". In other words, our recommendation is for a wider, globally-relevant definition of "digital currency", with a carve-out, being a means to exclude certain digital currencies or other instruments from being included if felt necessary for integrity or policy reasons.

3. Digital currency supplies need to be input taxed

Where digital currency is paid as consideration for a supply of money, it is a "supply" for GST purposes.

Digital currencies that are used in the same manner as financial supplies of Australian currency or foreign currency should be treated in the same way under the GST Act. This is necessary to ensure that when digital currencies are used to supply an interest in or under the digital currency, including where a right in relation to digital currency is supplied, in exchange for money, they do not constitute a taxable supply of digital currency, or of a right to the underlying digital currency.

Rather, the supply of the interest in or under the digital currency, or of the rights in relation to the underlying digital currency, should be treated as a financial supply which is input taxed.

Recommended amendment:

In addition to the amendment to the definition of "money" (discussed in 1. above), a further amendment is required to the table of "financial supplies" under the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Regulations).

Item 9 of Regulation 40-5.09 only applies to "Australian currency, the currency of a foreign country or an agreement to buy or sell currency of either kind". As digital currency is arguably none of those forms of currency, we recommend that "digital currency" be inserted as a new item in the table in subsection (3) of Regulation 40-5.09.

In this way, the supply of digital currency by way of exchange, as well as rights in relation to the underlying digital currency, would be input taxed.

Where digital currency is supplied by way of ATM kiosk, we consider that sub-regulation 40-5.09(4A) arguably applies to achieve input taxed treatment (at least for the ATM service provider). However, to avoid doubt, we recommend that the meaning of the word 'account' in that provision be clarified so that it is not limited to ADI accounts, but would cover accounts relating to digital currency.

As a concluding remark, we note that the recommendations in this submission, if implemented, would bring the Australian GST treatment of digital currency in line with the European treatment of Bitcoin (and by extension other digital currency in Europe). In the recent European Court of Justice (ECJ) decision in *Case C-264/14*, the ECJ ruled that exchange transactions of and for Bitcoin are transactions exempt from VAT.

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We trust that the above comments assist you in finalising the amendments to the GST Act to implement the Government's decision to fix the impediments to the use of digital currencies in Australia.

If you have any questions in relation to any aspect of this submission, please contact Donna Bagnall in the first instance on (02) 9290 5761, or me on (02) 9290 5609.

Yours faithfully

Michael Croker
Tax Australia Leader
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