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Our ref KPMG Submission Tsy Crypto  
ETC

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27 September 2022

Dear Sir / Madam

**Clarifying crypto not taxed as foreign currency**

KPMG Australia (**KPMG**) appreciates the opportunity to provide a submission to Treasury on the exposure draft inserts for the *Treasury Laws Amendment (Measures for Consultation) Bill 2022: Taxation treatment of digital currency*, released on 6 September 2022 (**Draft Bill**).

This clarification to the treatment of Bitcoin is being made at the time when there are various other activities about to commence, or underway, in relation to the taxation of digital assets more broadly (e.g. Board of Tax review). It is our view that the Draft Bill should provide certainty in relation to the treatment of not just Bitcoin, but also central bank issued digital currencies and other stable coins.

We understand the current policy position to be:

— Foreign currency for income tax purposes is to comprise:

- Fiat currency;
- Central bank issued digital currency; and
- Other digital currencies that might not be issued by a central bank but are issued under the authority of a foreign government agency;

But that the following are not to be considered foreign currency:

- Stable coins that are pegged to a particular currency which are not issued by or under the authority of a foreign government agency.

If the above is an accurate articulation of the policy position, we make the following observations:

- 1 The inclusion of central bank digital currencies and other digital currencies issued under the authority of a foreign government agency will need to be a 'currency' within the ordinary meaning of that term to be a foreign currency for income tax



purposes. Although the Explanatory Memorandum assumes this to be the case at 1.14, the ATO articulates the interpretive challenges in this regard in paragraphs 16-35 of *Taxation Determination TD 2014/25 Income Tax: is bitcoin a 'foreign currency' for the purposes of Division 775 of the Income Tax Assessment Act 1997*. In our view, the definition of foreign currency should remove any doubt in relation to this question.

To achieve this, we recommend the definition of foreign currency for income tax purposes positively include something that would have been a digital currency but for the proposed paragraph (d)(ii) of that digital currency definition. This would remove any doubt about the treatment of central bank digital currencies and similar from an income tax perspective.

- 2 We are concerned that the existing requirement in paragraph (e) of the digital currency definition could exclude stable coins from the definition of digital currency. This is because stable coins could be said to:
  - derive their value from the underlying fiat currency; or
  - have a value that depends on the value of the underlying fiat currency.

Hence, we recommend paragraph (e) be amended to clarify that the reference to 'anything else' is a reference to anything other than a currency.

- 3 The regulation making power should be widened to enable something that is not otherwise foreign currency to be treated as a foreign currency. Given the pace of development of digital assets, it may be the case that there is a situation in which clarity is required to treat a certain digital currency as a foreign currency.
- 4 There should be alignment between the use of "country's currency in paragraph (d)(i) of the proposed amendment to the digital currency definition and "currency" in paragraph (d)(ii) of the amendment. This will ensure there is no ambiguity in terms of there being something that is a "currency" but not a "country's currency."

Please contact the undersigned if you have questions in relation to this submission.

Yours faithfully

Yours faithfully

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