

06 June 2016

Division Head
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

Attention: Chris Lyon

By email digitalcurrency@treasury.gov.au

Dear Chris

GST treatment of digital currency

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments on Treasury's Discussion Paper: *GST treatment of digital currency* (**Discussion Paper**).

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

This submission addresses three key aspects of the Discussion Paper as follows:

- The desired policy outcome
- Identifying and characterising digital currencies; and
- The alternative approaches to the GST treatment of digital currencies.

Desired policy outcome

The ABA believes that innovation and technological change is to be welcomed as a key driver of continued advances in economic growth and prosperity. As impediments to change are identified, they should be carefully assessed to ensure the benefits of innovation can be maximised whilst ensuring that we preserve the integrity of the financial system and the tax base.

The ABA supports the Government's commitment to prevent 'double taxation' of digital currencies. 'Double taxation' not only represents a direct impediment to the continuing development of digital currencies, at least in Australia, it may indirectly impede other adjunct technological advancements, such as distributed ledgers.

Identification of digital currencies

There are essentially two issues to be resolved; the definition of digital currency, and the mechanism by which digital currencies are to be recognised.

Broadly speaking, the ABA favours a formal "specify and list" approach to the identification of digital currencies. This would require digital currencies to be approved by a decision maker and for the decision maker to publish a list of those digital currencies that would be eligible for relief from 'double taxation'. The Commissioner of Taxation would be the appropriate decision maker in this context.



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In our view, a “specify and list” approach is preferred on the following grounds:

- 1) The lack of a common vocabulary that reflects the various forms and features of what constitutes digital currencies and what distinguishes them from other virtual currencies and other synthetic instruments.
- 2) The Government can maintain a degree of oversight as to the extent to which relief from ‘double taxation’ is granted thus preserving the integrity of the tax system.
- 3) It encourages active consultation and collaboration between industry participants and the relevant government agencies, which is particularly important in the context of the rapid evolution of digital currencies and related technologies.

A similar “specify and list” approach was adopted in the application of GST to government taxes under (former) Division 81. The ABA notes similarities in the manner in which Australian taxes were identified and listed for the purpose of being classified as exempt under Division 81. While the ABA acknowledges the “specify and list” approach requires a degree of administration and may give rise to timing issues, we do not consider these concerns to be insurmountable.

In our view, adopting the “specify and list” approach ameliorates concerns over the scope of a legislative definition of digital currency (being too broad or too narrow). There is much to be gained from having a simple definition of digital currency in the legislation and for individual digital currencies to be identified via regulation. Acceptance of this approach would be supported by the authority and impartiality of the decision maker. Overall this approach strikes the appropriate balance between ensuring that tax certainty can be provided to a rapidly evolving industry while preserving the integrity of the tax and financial system.

The “specify and list” approach could be complemented by a set of principles and criteria to provide guidance to the Commissioner. The criteria and requirements noted in paragraph 33 of the Discussion Paper would form an appropriate basis for such a definition and, if inserted by way of regulation, would be capable of adjustment without requiring a change to the GST legislation. This would help to maintain consistency in decision making and would provide a yardstick for prospective issuers of digital currency who were seeking GST relief.

Approaches to GST treatment

The Discussion Paper outlines two main options for addressing ‘double taxation’ of digital currencies: input taxed treatment, and treatment as money.

Of these, the ABA believes the Government’s policy objective of removing ‘double taxation’ can best be addressed by treating digital currencies as input taxed. We see merit in this approach over the option of treating digital currency as ‘money’ for the reasons outlined in paragraphs 43-49 of the Discussion Paper, particularly paragraphs 48 and 49.

There is also the more philosophical point that care needs to be exercised in determining what is defined as money. Maintaining community acceptance and confidence in money as a widely accepted means of exchange and as a store of value is fundamental to the modern fiat currency based system of commerce. There is force in the argument that we should seek to avoid unnecessarily creating concepts for purposes in the GST Act and GST Regulations which may conflict with other Commonwealth legislation or with preserving community confidence in the monetary system.

The ABA does not support the other “alternative option” outlined in the Discussion Paper, primarily because, as noted, it would create preferential treatment for digital currencies relative to fiat currencies with resultant market distortions.



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Conclusion

The ABA believes that innovation and technological change is to be welcomed as a key driver of continuing advances in economic growth and prosperity. The ABA supports the Government's commitment to consider and, where practicable, remove major impediments.

The ABA would welcome further discussion with the Treasury on these issues.

Yours sincerely

A handwritten signature in black ink that reads 'Tony Pearson'. The signature is written in a cursive, flowing style.

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