

14 March 2023

Director – Crypto Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: crypto@treasury.gov.au

CC: Alex Affleck, Deputy Chief Tax Counsel, Australian Taxation Office

Dear Director,

Token Mapping

Chartered Accountants Australia and New Zealand, CPA Australia, Institute of Public Accountants and The Tax Institute (together, the **Joint Bodies**) write to you as the peak professional accounting and tax practitioner bodies in Australia representing the tax profession. The Joint Bodies welcome the opportunity to make a submission to the Treasury in relation to the Token Mapping Consultation Paper (**Consultation Paper**).

In the development of this submission, we have closely consulted with members of the Joint Bodies who have specific knowledge, experience and expertise in digital assets and transactions and their tax treatment.

See below our responses to the issues and ideas raised in the Consultation Paper. We have limited our responses to those we consider are the most relevant from a tax policy and administration perspective.

Consideration of taxation implications

The Joint Bodies broadly support the Government's token mapping exercise to align token activities to financial services. However, the exercise may not result in the appropriate outcome from a tax perspective in all instances. Page 7 of the Consultation Paper notes that the purpose of token mapping is to map key activities and functions against existing regulatory frameworks. However, the current focus of the Consultation Paper is limited to financial services. The tax implications of token activity depend on a range of factors including the surrounding circumstances and intention of the parties involved, with potentially different outcomes for taxpayers undertaking the same type of token activity. There is a risk that a generalised approach which places token activities into broad buckets from only a financial services perspective will result in tax outcomes that may not be equitable or intended.

We consider that a token mapping exercise should also map the tax outcomes to token activities. For example, where a token activity is deemed to align to a share buyback, the tax implications of a share buyback should also apply to that activity. We note that some activities may not easily map to existing concepts or arrangements in tax due to fundamental structural and operative differences that exist in both public and intermediated token systems.

Where tax outcomes differ from the financial services outcomes under current tax laws, the issues and relevant provisions should be clearly identified so that any necessary reforms can then be progressed. Although the continually evolving nature of tokens and token activities requires a technologically neutral approach from both a financial services and tax perspective, additional guidance and clarity on the Government's policy positions and consequential economic bases for tax treatments will assist taxpayers and their advisers to understand and apply the rules (existing or new) to their circumstances.

Mapping token activities for tax purposes should focus on the substance of the transaction over the specific form. The combination of steps may be looked at holistically for a financial services assessment, but individual steps could separately give rise to tax outcomes that increase the overall tax burden and produce tax outcomes that are anomalous to the intended operation of the tax law.

There may be some tokens and token activities which, despite a token mapping exercise, may not provide any insights about the appropriate tax treatment. For example, we consider that challenges exist in determining the tax residency and/or spread of taxable permanent establishments and appropriate tax outcomes for decentralised autonomous organisations (**DAOs**). DAOs are unique structures that are enabled by borderless and permissionless blockchain technology and may not be directly analogous to traditional entities, such as companies, partnerships and trusts. Further, each DAO may be subject to a different tax treatment under our current tax system based on a range of different factors, including whether the decision making is self-activating and the determination of how proceeds will be distributed. To enable the efficient operation of businesses through a DAO, we recommend that Government considers recognising DAOs as a form of legal person (such that it can fall within references to 'entity' within the tax laws) and thereby providing certainty on the tax implications when commencing or engaging with a DAO.

Other tokens and token activities that may also require specialised rules include liquidity pool tokens and wrapped tokens. We refer to the Joint Bodies' [submission](#) to the Board of Taxation (**Board**) in relation to the Board's Review of the Tax Treatment of Digital Assets and Transactions (the **Joint Bodies Submission**) for detailed commentary on the taxation treatment of digital assets.

Separately, we note that while the high-level taxonomy proposed by Treasury appropriately distinguishes between public token systems and intermediated token systems, the Consultation Paper does not contemplate the transition between the two systems. We also note that Australia's taxing rights in relation to a public token system, and any income or net income it may generate as a result of Australian inputs, is a further matter for tax policy consideration.

The role and potential design of a bespoke 'crypto asset' taxonomy

As noted in the Consultation Paper, although a bespoke taxonomy would allow a common understanding across the various types of tokens and token activities, it may result in inequitable regulatory treatment and outcomes if the taxonomy is only designed for a single

purpose (such as determining whether the provision of a token is a financial service). A similar result may occur for a high-level taxonomy if each of the proposed broad categories carries an implied treatment for one purpose but not another.

The Joint Bodies consider that any taxonomy should be tax neutral and not imply or result in an inequitable tax outcome. In order to achieve this, tax should be considered alongside any legislative introduction of the taxonomy. Further, noting that this is a constantly evolving space, the creation of any taxonomy should be transferrable across purposes.

The taxation of tokens and token activities is not well understood by taxpayers and tax professionals, with guidance from the Australian Taxation Office (ATO) being general in nature and not providing sufficient clarity for particular circumstances. As noted in the Joint Bodies submission, there is a need to address the inequitable and uncertain taxation outcomes for tokens and token activities. Certainty may be provided through greater guidance from the ATO and Government. The need for a bespoke tax system should be carefully considered only after extensive consultation with government administrators, professional bodies and industry specialists.

We would be pleased to continue to work with the Government on the progress of the token mapping exercise to ensure that it can also be used for the development of the principles and law governing the tax treatment of digital assets and transactions in Australia. This can also inform the Board's Review as it progresses.

If you would like to discuss any of the above, please contact The Tax Institute's Senior Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Michael Croker
Tax Leader Australia
Chartered Accountants Australia and New Zealand



Dr Gary Pflugrath
Executive General Manager
Policy & Advocacy
CPA Australia



Tony Greco
General Manager Technical Policy
Institute of Public Accountants



Jerome Tse
Council Member
The Tax Institute