FinTech Australia

Submission to the Board of Taxation

Review of the Tax Treatment of Digital Assets and Transactions in Australia

October 2022

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members: over 400 FinTech Startups, VCs, Accelerators and Incubators across Australia.

About this Submission

This document was created by FinTech Australia in consultation with its members.

In developing this submission, our Members participated in a series of roundtables and consultation processes to discuss key issues relating to this submission.

We also particularly acknowledge the support and contribution of King & Wood Mallesons to the topics explored in this submission.

1. Introduction

FinTech Australia welcomes the opportunity to engage with the Board of Taxation to provide input into its review into the appropriate policy framework for the taxation of crypto assets and transactions in Australia.

Our Members suggest that an effective framework for regulating crypto asset service providers:

- considers the perspective all stakeholders involved, including retail and wholesale investors, issuers, exchanges and other service providers;
- should be based on a series of considered principles; and
- fairly balance the interests of taxpayers and regulatory bodies, bearing in mind the potential effect of the underlying principles on the Australian economy.

Above all, any change must support innovation.

2. Background

On 8 December 2021, the Government released its response to the Senate Select Committee on Australia as a Technology and Financial Centre Final Report (**Senate Committee Final Report**) and announced that the Government would task the Board of Taxation to commence a review into the appropriate policy framework for the taxation of crypto assets and transactions in Australia.

The Board of Taxation on 18 August 2022 published a consultation guide "Review of the Tax Treatment of Digital Assets and Transactions in Australia: Consultation Guide" (**Consultation Guide**). The Board of Taxation is seeking feedback from interested parties on the questions outlined in the Consultation Guide and any other issues relevant to the current Australian tax treatment of crypto assets and emerging tax policy issues.

FinTech Australia's response to some of the questions posed in the Consultation Guide and the other key issues is set out below.

3. Responses

Where relevant, international tax treatment and experience (Question 8) has been addressed through the responses to other questions below.

Questions 1 and 2: Current tax treatment of crypto assets

FinTech Australia and its Members acknowledge the Australian Tax Office's (**ATO**) efforts to provide guidance in this rapidly changing environment and its recent modification of how it presents a large part of this information on its website. This guidance provides a good starting point and general information for particular transactions, including staking, airdrops and gifts, as well as for particular crypto assets, including non-fungible tokens.

However, there is a need for further detail and clarity in relation to the transactions and assets for which guidance already exists, and members have reported that there is a lack of guidance in relation to a range of other uses of crypto assets. We have set some of these out below.

An important consideration to bear in mind in assessing the current legislative and regulatory regime, as well as the guidance available, is that "crypto assets" are not a single asset class. In reality, certain crypto assets are financial products, others are property, others are commodities; there are a variety of assets stored on blockchains. This complexity in taxonomy also exists in respect of crypto asset transactions and commonly used terms are not definitive (i.e. "staking" can have a number of meanings). For the purposes of this submission, transactions have been identified through such terminology and described in further detail as required. These complexities underline the need for a principles-based approach in order to adequately address the tax treatment of crypto assets and transactions.

Initial coin offerings

Initial coin offerings (**ICOs**) are a form of capital raising which involve the creation of digital tokens by an issuer on a blockchain. Start-ups use ICOs to raise funds through the issuance of digital tokens which are often purchased by users on the open market, or in private seed rounds.

FinTech Australia considers that there is insufficient guidance on the tax treatment of ICOs for both issuers and token recipients. For completeness, it is noted that Treasury released an Issues Paper on 31 January 2019 which states that the current tax treatment flows from the

characteristics of the token, the product or service being offered, and the rights and obligations between the parties. The paper also contemplates possible tax outcomes for issuers and token recipients.[1] However, taxpayers are unable to rely on this information, especially in the absence of guidance from the ATO.

There is a particular need for legislative change in order to keep pace with the rapid evolution of token characteristics and token distribution models. For example, the tax treatment for both issuers and token recipients will vary depending on whether a token could be characterised as an equity interest, prepayment for a service or a derivative. This is further complicated where a token possesses a number of features, such as voting rights and the right of redemption for a specific product/service. From a GST perspective, it is unclear whether the exemption for financial supplies will apply to tokens issued as part of an ICO. Legislative changes may need to be made to better align the tax treatment of ICOs for both issuers and token recipients.

From a tax compliance perspective, at present, investors and tax advisers must rely on what limited information is available in the white paper for an ICO in order to characterise the token and in turn, determine the appropriate tax treatment. Consideration needs to be given to what steps can be taken to ensure that taxpayers have the requisite information to comply with their tax obligations.

Decentralised autonomous organisations

Coordination with other regulators will be critical given the prevalence of decentralised autonomous organisations (**DAOs**) in this space and the tax challenges posed in determining ownership, control, residence and liability. For example, the ICO model may be used to raise capital for the development of a protocol by issuing tokens with voting rights in a DAO, akin to an equity instrument. However, it is unclear whether the principle of mutuality will apply if all ICO proceeds are used to build a protocol for the use of token recipients.

It should be noted that the Government, in its response to the Senate Committee Final Report, agreed in principle with the recommendation that a new DAO company structure should be established and tasked Treasury to consult with industry on the appropriate regulatory structure.[2] FinTech Australia considers that the development of any principles for legislative change or new ATO guidelines will need to take into account the proposed regulatory structure resulting from the Treasury's consultation.

[1] The Treasury, *Initial Coin Offerings* (Issue Paper, January 2019) 17, 20-23.

[2] Australian Government, *Transforming Australia's Payments System* (December 2021) 12.

Airdrops

An airdrop involves the receipt of an allocation of tokens often due to other tokens being held or may be related to actions of the recipient. An individual can either receive an airdrop automatically or manually by claiming it directly from the relevant smart contract. While the issuance of updated ATO web guidance on airdrops last month[3] is welcomed, it has been suggested by some Members that the new characterisation of "initial allocation airdrops" and "established token airdrops" does not adequately address circumstances where airdrops have properties that resemble gifts or where airdrops involve the unwanted or undesirable receipt of tokens.

Current guidance states that all "established tokens" received by way of airdrop are ordinary income of the recipient at the time of receipt. Members have suggested that the Board should consider the position taken in the UK by HM Revenue and Customs (**HMRC**) which provides that, for individuals, airdropped tokens may not be taxable on receipt where no nexus with some action can be established (i.e. the airdrop is not related to any services rendered) and the tokens are not received as part of a trade or business.[4]

Airdrops can also involve the unwanted provision of tokens as part of a marketing campaign which, under current guidance, may be taxed as ordinary income despite no action being taken by the recipient and noting the volatility of crypto asset values. There is also uncertainty in circumstances where tokens are airdropped to users which have some kind of market value and are unable to be sold or otherwise disposed of. FinTech Australia considers that current guidance should be revised to better reflect the meaning of ordinary income in light of examples where airdrops resemble gifts or involve the unwanted receipt of tokens.

NFTs

Non-fungible tokens (**NFTs**) are a class of crypto assets that are unique (or represent something unique) and can either be digitally native (i.e. tokens that are inherently digital in nature and do not rely on real-world assets for their existence, such as collectibles, in-game assets, artwork or music) or be related to other assets/interest and therefore reflect the ownership of the related real-world assets/interests (e.g. interest in title, physical artwork,

[3] ATO Website, 'Staking rewards and airdrops', <https://www.ato.gov.au/individuals/investments-and-assets/crypto-asset-investments/transactions---acquiring-and-disposing-of-crypto-assets/staking-rewards-and-airdrops/> (accessed 10 October 2022).
[4] HM Revenue and Customs, *CRYPTO21250 - Cryptoassets for individuals: Income Tax: airdrops*, <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto21250> (accessed 12 October 2022).

diamonds, etc). Each NFT contains unique identifiers, metadata, and may contain links to digital objects such as images, audio and videos.

FinTech Australia considers that there is insufficient guidance on the tax treatment of NFTs and is concerned that the existing guidance does not properly reflect that NFTs can vary in functionality and characteristics, which are distinct from other crypto assets such as cryptocurrencies and other fungible tokens. Current guidance[5] does not provide a principles-based approach which can be applied to NFTs which are digitally native or are related to real-world assets/interests. Instead, limited examples are provided which do not adequately illustrate the factors that may be relevant in determining whether an NFT is a collectable or personal use asset. The guidance also does not adequately address the application of GST in respect of NFTs other than noting that the digital currency exemption does apply to non-fungible "digital units of value".

GameFi

A particular issue which a significant number of Members have asked the Board to consider in more detail is the tax treatment of crypto assets in the context of gaming (**GameFi**) or play-to-earn (**P2E**) systems. In such systems, participants are engaging in recreational gaming while earning crypto assets by playing digital games. These games are often linked to a blockchain platform. Such crypto assets may be traded or sold to other players for other crypto assets.

However, many users of P2E and GameFi systems may not turn their mind to tax implications when engaging in the gameplay recreationally, even if they have an intention to earn the crypto assets and eventual income. Further, many users tend to be minors who are largely unaware of potential income tax consequences of these activities.[6] This issue will only become more pressing as the GameFi space and the metaverse develops and accelerates. This is already being seen with the triple A gaming companies (e.g. Ubisoft,[7] Square Enix, and Electronics Arts) developing their own blockchain games or releasing their own NFTs.

[5] ATO Website, 'Non-fungible tokens' <https://www.ato.gov.au/individuals/investments-and-assets/crypto-asset-investments/transactions---acquiring-and-disposing-of-crypto-assets/non-fungible-tokens/> (accessed 11 October 2022).

[6] This issue has been recently covered in certain crypto media outlets: see for example, CryptoNews, 'P2E gamers, minors not any safer from the tax man, says Koinly' (20 September 2022), <https://cryptonews.net/news/regulation/12813777/> (accessed 11 October 2022).

[7] See for example, Ubisoft Quartz (Beta) <https://quartz.ubisoft.com/> (accessed 11 October 2022).

FinTech considers that guidance related to GameFi is wholly inadequate noting that available information exists solely on the ATO Community page. The ATO has not released any binding rulings or non-binding website guidance on this specific issue which makes it difficult for taxpayers to comply. The desire to comply with tax obligations when operating beyond the recreational context is demonstrated by the activity in the ATO Community pages.[8]

Further guidance is needed, especially in respect of:

- factors to assist in determining when a gamer who is playing on GameFi and DeFi systems is considered to be "carrying on a business" or engaging in a hobby;
- factors to assist in delineating when a gamer is playing these games as an investor or as a trader (and therefore, when the CGT regime and trading stock definition would be applicable);
- consideration of how tax law is to apply, where the accessibility to certain transactions (e.g. staking, bridging, etc.) are simplified such that users are not aware of the complex mechanisms and transactions taking place;
- consideration of whether there is a difference between crypto assets:
    (a) earned through the natural progression of the game;
    (b) earned through the direct (or indirect) payment (or betting) of fiat money;
    (c) to the extent not covered by "indirect" payment in point (b) - earned or created through the direct (or indirect) use of other crypto assets;
    (d) to the extent not covered by point (a) - random drops or other lottery-style events in the game;
- record keeping obligations for both players and game developers; and
- consideration of the application of tax laws to minors specifically.

FinTech Australia considers that a principles-based approach is required in respect of GameFi given the variety, complexity and rapidly evolving nature of transactions in the space (including those in the metaverse). In developing this approach, Members have suggested that the Board and the ATO, as appropriate, should consider undertaking a transaction mapping exercise.

[8] See for example, ATO Community, 'Playing NFT game earning coins', <https://community.ato.gov.au/s/question/a0J9s0000001IOr/p00047031> (accessed 11 October 2022).

It has been suggested by one Member that any guidance developed as a result of this exercise could be published through Practical Compliance Guidelines.

FinTech Australia also recommends the development of a specific taxpayer education program for GameFi which may also draw on the role of intermediaries, such as game developers, and could involve providing reminders to gamers of potential tax obligations.

Bridging

Broadly, a "bridge" is a series of smart contracts that allows the use of a crypto asset on another blockchain. A bridge also enables interoperability where different blockchains use different standards, protocols or rules.

Importantly, crypto assets do not move between blockchains as a consequence of using a "bridge". Instead, a smart contract is deployed on each blockchain that provides bridging services by, for example, locking and minting or burning and unlocking crypto assets, depending on the nature of the transaction.

FinTech Australia Members are concerned that there is insufficient guidance by the ATO in respect of bridging as demonstrated by the activity on the ATO Community website.[9] What guidance was available on the ATO Website has recently been removed. FinTech Australia considers that principles-based guidance is needed to clarify whether a CGT event occurs when bridging occurs.

Wrapping

Token wrapping is also used to change or enhance the functionality of a token, or otherwise enable smart contract functionality for tokens that were not originally capable of interacting with smart contracts. For example, Ethereum may not be able to be exchanged on decentralised exchanges until it is converted to an ERC-20 compliant version (being WETH) which is exchanged at a 1:1 ratio with Ethereum. Taxpayers can engage in token wrapping by sending their ETH to a smart contract which locks up the original asset and provides WETH in return. Under this method of wrapping, taxpayers maintain a right to have their ETH returned upon redemption of the WETH (which is then burned by the smart contract).

[9] See for example, 'Moving ETH or any crypto between to different chains' (original posted 3 August 2021) <https://community.ato.gov.au/s/question/a0J9s0000001IP7/p00047047> (accessed 11 October 2022); 'Transfer crypto over a bridge' (original post dated 3 December 2021) <https://community.ato.gov.au/s/question/a0J9s0000002oDg/p00172412> (access 11 October 2022).

However, taxpayers can also receive WETH by simply exchanging ETH for WETH using a decentralised crypto exchange such as Uniswap.

There is currently no guidance on the tax treatment of wrapping crypto assets such as Ethereum. FinTech Australia considers that principles-based guidance, and where the Board considers appropriate, regulatory reform, is needed which provides clarity in respect of the following issues:

- whether the wrapping of a crypto asset is a disposal of one asset and acquisition of another;
- if that is the case, is there any value accretion on the wrapping or are those assets in essence the same?
- whether this tax treatment will vary if a taxpayer engages in wrapping directly with a smart contract or through an exchange on a crypto exchange.

Rebasing

Certain tokens have a rebase protocol by which tokens are removed from or additional tokens are issued to an existing token holder, typically to either rebalance a price (e.g. Ampleforth's AMPL) or to pay out a reward to investors (e.g. Lido's stETH). Broadly speaking, rebasing allows crypto assets (e.g. cryptocurrencies or other tokens) to increase or decrease their total supply across holders.

The ATO has not issued specific guidance on the tax implications of (and therefore tax reporting obligations in respect of) token rebases. FinTech Australia considers that guidance is needed which provides clarity in respect of the following issues:

- whether the additional tokens should be treated as a dividend, and/or a return of capital and/or an interest-like receipt;
- if underlying tokens are held as an investment on capital account, whether the receipt of additional tokens are treated as a capital receipt;
- if the additional tokens are issued so as to rebalance a price, consideration of whether what occurs is likened sufficiently to a stock split such that there is no taxable event; and

- if the additional tokens are issued by way of reward to investors during a set period (e.g. 8 hours), consideration of whether a taxable event occurs at the end of each cycle (e.g. gain or loss incurred) or upon final disposal of relevant underlying/additional tokens.

Staking

As has been noted by the UK Law Commission, the term "staking" can be broadly used to describe the transferring or locking up a crypto assets into smart contracts. There are different mechanics, purposes and "rewards" involved in staking. Four contexts in which staking can be said to occur are:

- proof of stake (PoS) consensus mechanisms, which involves users securing the network by locking up crypto assets and processing and validating transactions in return for a reward (e.g. the native token);
- liquidity mining schemes or liquidity pools, which involves users contributing crypto assets to a decentralised exchange's "liquidity pool" in return for a liquidity pool token (which effectively acts as a receipt for the proportional share of the pool contributed);
- by lending and borrowing crypto assets, which involves users locking up crypto assets with DeFi lending platforms in return for interest bearing crypto assets that are representative of their "deposit"; and
- yield farming, which involves users locking up crypto assets with certain protocols with the aim of generating yield. Users are able to deposit crypto assets, including liquidity pool tokens, cryptocurrencies, tokens and NFTs, in smart contract protocols in return for rewards.

There are differences in the role of market participants, underlying technology, rewards and risks of the above categories. As suggested above, these are not four distinct and separate activities in practice; rather, there can be overlaps. However, noting their existence is useful for demonstrating where the current tax law is falling short and ATO guidance is needed.

No distinction between when carrying on a business and not

As a preliminary note, the ATO's current guidance on the taxation of staking rewards does not distinguish between the tax treatment applicable to staked rewards acquired in the course of

carrying on a business, and staked rewards not acquired in carrying on a business. This should be addressed.

Proof of stake rewards

The current ATO guidance in relation to staking is specifically in respect of PoS schemes and provides that staking rewards are assessable as ordinary income *at the time of receipt*, with the cost base of the staked rewards being their market value at the time they were received.[10] However, the ATO is yet to address how this approach will operate with respect to staking rewards derived by the taxpayer from the staking of cryptocurrencies such as ETH, in respect of which taxpayers were not able to withdraw staked crypto assets or earned rewards prior to a hard fork scheduled for some time in the future which will enable withdrawals.

Other forms of staking rewards

Furthermore, the current ATO guidance does not go beyond the PoS scheme, which leaves market participants who engage in the other forms of staking such as liquidity mining schemes, either without any guidance or blanket guidance that does not properly take into account the nuances of these other activities. For example, liquidity mining schemes involve the creation of new assets (i.e. liquidity pool tokens) and therefore does not necessarily solely involve the distribution of revenue/profit; rather they may involve a creation of a new and separate crypto asset, in addition to distributing trading fees or interest.

This blanket guidance on staking appears inconsistent with the ATO's previous position on mining (i.e. mining rewards should be recognised as capital asset subject to CGT regime when not acquired in the course of carrying on a business). Effectively, in both mining and staking (both in a PoS and a liquidity mining scheme context) there is the creation of a new asset.

FinTech Australia considers that there needs to be more nuanced, principles-based guidance in respect of the different kinds of "staking" activities mentioned above.

Liquidity pool transactions

There is also an absence of guidance on the characterisation and treatment of the transactions in which market participants enter when contributing and withdrawing crypto assets from

[10] Australian Taxation Office, Staking rewards and airdrops (29 June 2022) <https://www.ato.gov.au/individuals/investments-and-assets/crypto-asset-investments/transactions---acquiring-and-disposing-of-crypto-assets/staking-rewards-and-airdrops> (accessed 11 October 2022).

liquidity pools. For example, it is unclear whether by depositing one or more crypto assets into a liquidity pool in receipt of a liquidity token, a market participant is disposing of their original crypto assets and receiving new crypto assets all together.

Stablecoins & CBDCs

A stablecoin is a crypto asset, the value of which is stabilised with reference to fiat currency, an asset (including a crypto asset or commodity) or basket of assets, or by a smart contract algorithmically balancing references to any or all of the above. The purpose and use of stablecoins may vary, including ease of transfer (compared to fiat currency), interoperability with blockchains and smart contracts and storage of value with, in some cases, less risk and volatility of other crypto assets such as Bitcoin or Ethereum.

FinTech Australia considers that further guidance should be provided on:

- how gains (and losses) on stablecoins should be treated for tax purposes;
- when a holder is "carrying on a business" by issuing, transferring, disposing or otherwise using stablecoins;
- whether stablecoins are considered trading stock if they are used as a medium of transferring fiat currency, rather than as a product in and of itself; and
- whether the TOFA regime applies to stablecoins (e.g. where there is a right to the pegged fiat currency upon presentment of the stablecoin).

Similarly, Central Bank Digital Currencies (**CBDCs**) are digital assets issued and regulated by a nation's monetary authority or central bank, the value of which is pegged to the value of the issuing country's fiat currency (the conventional state-backed currency). FinTech Australia notes the release of the Reserve Bank's White Paper on an Australian CBDC Pilot for Digital Finance Innovation which contemplates the issuance of eAUD in the context of retail consumers.[11] In this context, consideration should be given to the tax implications of the future rollout of eAUD and whether regulatory reform will be required from both an income tax and GST perspective.

[11] Reserve Bank of Australia, *Australian CBDC Pilot for Digital Finance Innovation: White Paper* (26 September 2022).

Questions 3 to 6: Awareness of the treatment of crypto assets

On a broad note, FinTech Australia Members have suggested that there is room for greater engagement from the ATO with the industry. This also extends to when the ATO plans to release guidance which affects the industry, such as the recent airdrop website guidance which was released without any announcement. The ATO could reach out to industry bodies such as FinTech Australia to assist with raising awareness of new or updated guidance, as well as consider making announcements on its social media channels such as Twitter and LinkedIn.

Retail investors

FinTech Australia has received feedback from Members, including exchanges, that some retail investors have limited understanding of the current tax treatment of crypto assets and/or are operating in areas that are not well covered by the current ATO guidance. The issue is only permeated by the fact that exchanges can do little more than continue to inform investors (both retail and wholesale) that it is their own responsibility to do their taxes and seek professional tax advice.

However, there are accessibility issues in obtaining professional tax advice as well, due to an absence of specialisation (or knowledge) in respect of the crypto assets industry amongst tax advisers. This in turn aggravates the affordability of such services. Members continue to report that professional tax advice in respect of the crypto assets industry is “quite niche and unaffordable to many retail users”.

FinTech Australia recommends that the Board consider whether a simplified compliance regime should be made available for retail investors in crypto assets. For example, some crypto assets may resemble a financial arrangement that is ordinarily subject to TOFA. However, given the complexity of the TOFA regime, consideration should be given to whether retail investors, many of whom self-assess every year through myTax, should have a simpler path.

Small business

Businesses are often in a better position to seek professional tax advice. FinTech Australia has received feedback from Members that taxpayers who operate crypto businesses are aware of relevant crypto tax regulations, especially those with in-house finance / tax departments that oversee tax compliance. Although some Members consider the existing ATO's guidelines to be

fairly clear, there are calls for the ATO to publish more in-depth guidelines and provide binding guidance more generally.

Questions 9 and 10: Changes to Australia's taxation laws for crypto assets

While the Board may not seek to adopt all of the recommendations contained in this submission, FinTech Australia requests that the Board consider the effects of its recommendations on investment and innovation locally.

As a starting point, FinTech Australia advises that particular caution is needed when undertaking regulatory reform in relation to a specific market, industry or asset. FinTech Australia recommends against creating distortions when introducing rules specific for crypto assets, as this could easily lead to unintended side effects that can hurt stakeholders, particularly retail investors.

GST

From GST perspective, Members have suggested that the Board should consider whether it is appropriate to expand the digital currency exemption to the crypto industry as a whole, to cover other current (and future) use-cases of the technology, such as mining, staking, minting and exchanging of NFTs etc.

Keeping pace

On the question of how tax laws could be designed to ensure that they keep pace with the evolution of crypto assets, Members have echoed key principles of maintaining certainty, simplicity and transparency. They have also encouraged greater engagement with industry which will help to increase the understanding of the nature of transactions and their development.

FinTech Australia recommends the establishment of a working group to assist the ATO in issuing guidance on the taxation of crypto assets (including DeFi protocols) in a timely manner so as to provide greater certainty to the sector.

Competitiveness on a global stage

FinTech Australia has received feedback from Members that elements of Australia's current tax system and its administration are not conducive to attracting international investment and innovation. Some barriers are the lack of clarity in the operation of current tax laws including the TOFA regime and Division 6C.

FinTech Australia considers that coordination with Treasury and other regulators is critical to ensuring Australia's policy and regulatory environment can be improved to better nurture and facilitate innovation in the blockchain and crypto asset space while maintaining a safe, internationally competitive and efficient market.

Questions 7 and 11 to 15: Administration of Australian taxation laws for crypto assets

Tax transparency

Key pieces of information that tax administrations need to know for the purposes of compliance and enforcement are the time of relevant transactions and the corresponding value of the crypto asset. FinTech Australia recognises that the ATO has been running its data matching program since 2019 which involves comparing data provided by designated service providers against ATO records to identify taxpayers who may not be meeting their registration, reporting, lodgement, or payment obligations. It is understood that the ATO is considering the OECD's draft Crypto-Asset Reporting Framework in the context of developing a regime for the reporting and exchange of information on crypto assets, as well as proposed amendments to the Common Reporting Standard for the automatic exchange of financial account information between countries.

FinTech Australia considers that the Board and ATO, as appropriate, should have regard to other tax transparency programs being rolled out internationally. For example, in the United States, decentralised exchanges will be required to report their customers' annual crypto gains and losses to the Internal Revenue Service (**IRS**) starting 1 January 2023, similar to stock brokerages.

As part of these reforms, it has been reported that the IRS is developing a new tax form for decentralised exchanges to capture individual annual crypto activity subject to taxation.[12] It is also anticipated that the IRS will publish rules which would bring foreign holders of crypto assets into the scope of Foreign Account Tax Compliance Act tax reporting in line with US Treasury proposals.[13]

Improvements to better ensure compliance

FinTech considers that the following recommendations are critical to easing the compliance burden and improving revenue collection:

- the development of a simple filings method for taxpayers;
- upgrades to the MyTax self-assessment portal which ease crypto transaction disclosure;
- greater ATO engagement with industry for their inputs to increase tax transparency;
- more detailed and timely guidance from the ATO; and
- a dedicated taxpayer education program for crypto assets and transactions.

Role of intermediaries in compliance

Exchanges are simultaneously a key intermediary and place where other stakeholders (sometimes, including other exchanges) converge. Any obligations imposed upon this stakeholder must be balanced with incentives to operate within this field. In this vein, one of our Members that operates an exchange has told us that the "burden to collect taxes should not rest with the exchange, rather the users / traders should be responsible to remit its own taxes".

Other FinTech Australia Members, who use the exchanges, suggest that it may be beneficial for retail users if exchanges could provide "warnings of users' potential tax obligations…when executing crypto-to-crypto swaps…so they are encouraged to take appropriate profits for tax purposes" or else provide "reminders to users of potential tax obligations when enabling crypto-crypto swaps or staking rewards". Such an obligation may not be considered burdensome,

[12] Forbes, *The IRS Is Working On A New Tax Form To Capture Your Crypto Activity* (1 August 2020) <https://www.forbes.com/sites/shehanchandrasekera/2022/08/01/the-irs-is-working-on-a-new-tax-form-to-capture-your-crypto-activity/> (accessed 12 October 2022).

[13] US Treasury, *Greenbook* (28 March 2022) <https://home.treasury.gov/system/files/131/General-Explanations-FY2023.pdf> (accessed 12 October 2022), 100-101.

especially since members report that exchanges already adopt a practice of informing all investors that it is their responsibility to be aware of tax implications from the transactions. Any more detailed obligations would require clearer guidance from the ATO.

4. Conclusion

FinTech Australia appreciates the opportunity to provide its views to the Board of Taxation and would welcome any further discussions on the appropriate tax framework for crypto assets and transactions in Australia.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 400 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

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