

# GST TREATMENT OF DIGITAL CURRENCY LIKELY TO CHANGE

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Legal Briefings - By **Toby Eggleston**

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## IN BRIEF

On 3 May 2016, the Australian Treasury released a discussion paper<sup>1</sup> on the GST treatment of digital currency, launching the public consultation process on how to 'address the double GST treatment of digital currencies'.<sup>2</sup>

Since the Australian government's policy announcement on 21 March, it was clear that the tax treatment of digital currencies was likely to change, the question however, is how.

## BACKGROUND

Discussion between the ATO and industry on the tax treatment of digital currency commenced in 2014. In December of that year, the ATO concluded that digital currency is neither money nor a foreign currency. Instead, the ATO was of the view that digital currency is a form of intangible property that is neither 'money' nor an input taxed supply.<sup>3</sup>

That characterisation means that the supply of digital currency to the consumer is taxed (i.e. the merchant pays GST when it receives the Bitcoin) and the supply of the good or service paid for with the digital currency may also be taxed (i.e. the consumer pays GST when purchasing the good as it is included in the price). This is in effect double taxation.

Both the Senate Economics References Committee<sup>4</sup> and the Productivity Commission<sup>5</sup> reviewed this decision and recommended that the GST 'double taxation' treatment be changed.

# AND SO IT SHALL BE. BUT HOW?

The Treasury Discussion Paper raises two main issues to resolve in making the change:

1. How should 'digital currencies' be identified – a stand-alone definition or a list determined by the Treasurer or Commissioner?
2. What should the treatment be – expand the definition of 'money' or make supplies of digital currencies 'input taxed'?

The definition of a digital currency needs to be carefully drafted to encapsulate all current and future digital currencies. As there are over 600 types of digital currencies, it would be unhelpful to list each currency, even as a starting point. On the other hand, the Government does not want to include loyalty points, videogame 'currency' or synthetic derivatives in the changes so a generalised definition must be carefully worded.

As far as the treatment of digital currencies is concerned, treating it as input taxed should have the same GST consequence for the most part as deeming it to be money and would be simpler to implement.

However, other knock-on issues might arise, such as valuation and timing issues involved in converting GST liabilities for supplies paid for by digital currency.

## OTHER ISSUES

While expressly not part of this policy announcement, other tax implications including capital gains tax (**CGT**), when someone uses bitcoin to buy something, and fringe benefits tax (**FBT**), if an employee is paid in a digital currency, will need to be considered.

Finally, it is worth remembering that any change to the GST treatment of digital currency will be a change to the GST base which will require unanimous agreement of all States and Territories, slowing the progress of any reform.

**This article was written by Toby Eggleston, Director, Greenwoods & Herbert Smith Freehills, Melbourne and Hannah Glass, Solicitor, Herbert Smith Freehills, Sydney.**

Endnotes

1. [Australia's FinTech priorities.](#)
2. [Tax treatment of crypto-currencies in Australia - specifically bitcoin.](#)
3. 4 August 2015, [Digital currency—game changer or bit player.](#)
4. 7 December 2015, [Business Set-up, Transfer and Closure.](#)

More information

For information regarding the tax treatment of digital currencies and possible implications for your business, contact [Toby Eggleston](#).



## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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