Australia as a Technology and Financial Centre

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Compliance Activity

Question:

CHAIR: So you think there is a lot of noncompliance at the moment, do you?
Mr O'Grady: I think there's a lack of understanding, not willing noncompliance. People just don't know what they don't know. You buy a crypto and exchange off that. At the moment, you trade that multiple times throughout the year. That is all a single CGT event under the law. When it comes to reporting that on the tax return—
CHAIR: Well, they all are, right?
Ms Wood: They all are, yes.
CHAIR: At the moment, everything is. If I trade it five times, or if I sell it five times for a profit, that's five CGT events, right?
Mr O'Grady: Correct.
Ms Wood: If we go back to the share-trading example, there might be some people who transact in such a regular way, treating it as a business—similar to what you'd look at in terms of the features of someone's share trading—that it brings it onto what we would call a revenue account. So that is more in alignment with the treatment that has been represented in other submissions, as you've outlined at the start, and you can calculate your gains and losses, and that becomes a revenue account outcome for you, which is similar to share trading. So we see it as very similar to that. The education piece—
CHAIR: Could you provide some other information on notice about that, because I think that would be quite useful?
Ms Wood: Sure.
CHAIR: I don't want to put you a difficult position now in the committee. If you could provide that in writing on notice, that could be useful.

Answer:

The same Australian taxation law principles that apply to share trading apply to cryptocurrency activities. While the underlying characteristics of a share compared to a cryptocurrency is different, the Australian taxation treatment is similar. ATO guidance on the tax treatment of cryptocurrency can be found at: https://www.ato.gov.au/general/gen/tax-treatment-of-crypto-currencies-in-australia---specifically-bitcoin/

Depending on the facts and circumstances of a taxpayer, the trading of cryptocurrency can be on capital account or revenue account. In most circumstances individuals investing in cryptocurrency will report their gains on capital account.

<u>Not carrying on a business</u>
A taxpayer that is not carrying on a business is treated as an 'investor' and is subject to the capital gains tax (CGT) regime. When a taxpayer sells, swaps, or exchanges cryptocurrency, each transaction will generally be subject to CGT and the net capital gain or loss must be reported in the taxpayer's income tax return.

If a taxpayer has held the cryptocurrency for at least 12 months, a taxpayer can get a capital gains tax discount. Capital losses from cryptocurrency can be offset against capital gains made from other investments.

<u>Carrying on a business of cryptocurrency trading</u>
For a taxpayer 'carrying on a business' of dealing with cryptocurrency, each disposal of cryptocurrency is taxed as business activity on revenue account and each item is held as trading stock.

The courts have considered the following factors when determining whether someone is in the business of trading shares, and these same tests apply in determining if someone is in the business of trading cryptocurrency:

- the nature and purpose of the activities;
- the repetition, volume and regularity of the activities;
- whether the activities are organised in a business-like way; and
- the amount of capital invested.

Some examples of businesses that involve cryptocurrency include:

- cryptocurrency trading businesses;
- cryptocurrency mining businesses; and
- cryptocurrency exchange businesses (including ATMs).

<u>Business receiving cryptocurrency for goods or services</u>
If a taxpayer receives cryptocurrency for goods or services they provide as part of their business, the taxpayer needs to include the value of the cryptocurrency in Australian dollars as part of their ordinary income in their tax return. One way of determining the value of the cryptocurrency in Australian dollars is the fair market value which can be obtained from a reputable cryptocurrency exchange.

<u>Foreign Currency Exchange Rules</u>
The ATO does not consider that cryptocurrency meets the definition of a foreign currency under Division 775 of the *Income Tax Assessment Act 1997* (Cth) (**FOREX rules**). Accordingly, the disposal of cryptocurrency by a taxpayer would not trigger a foreign exchange gain or a foreign exchange loss under the FOREX rules.

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ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Digital Assets CGT

Question:

CHAIR: This may be a question for Treasury, but we've already had them and I forgot to ask them, so maybe you could take it on notice. How much CGT is being collected on digital assets?
Ms Wood: In terms of cryptocurrency? I might pass to Adam O'Grady. I don't know that we have accurate figures for you, but we can give you an outline of how we're actually managing responsibilities around disclosing gains and losses in trading cryptocurrencies in the current regime.
Mr O'Grady: I don't know that we will have the exact figure. I don't have one with me today, but we can take that on notice and come back to you. A lot of what we have been doing in this space—and it's why I mentioned this earlier—is trying to make those who I'll call the mum and dad investors aware of their obligations. Those heavily involved in the industry obviously pay close attention to the tax regime that we have on digital assets, but, with the explosion in popularity of them at the moment, really our focus has been on letting the small-time investors understand that there are actually tax consequences of this. So there's lots of advice and guidance to these taxpayers, and through our online lodgement platforms such as myTax and our agent software we're actually prompting people, saying: 'You've traded in crypto; there are tax consequences of this. These are the sorts of things that you need to do to calculate that gain.' But it is under the existing legislative framework.
CHAIR: So how much has been collected, in a broad sense?
Mr O'Grady: I'd need to take that on notice.
CHAIR: Yes, can you take it on notice.

Answer

The information provided at the Capital Gains Tax (CGT) label in the individuals income tax return is not granular and includes gains or losses from all asset classes including, but not limited to, shares, property and cryptocurrency.

There has been growth in CGT events and values. In the 2019-20 income tax return approximately 1 million individuals reported over $41 billion in capital gains. This compares to just over 900,000 who reported $39 billion in the 2018-19 income tax return.

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ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Offshore CGT

Question:

CHAIR: My last question gets more into the policy space, but I will ask you to take it on notice if you can. Do you have any information about how the CGT-like activity is treated offshore in the US, Singapore and the UK and whether or not there are, as you say, share-trading-equivalent tax arrangements? Any information you could provide to the committee on that would be useful. I know you probably talk to Treasury about that, and that's all good. I forgot to ask them good questions, so I'll ask you.
Ms Wood: Yes, sure. We can take that on notice and get back to you

Answer:

The taxation of cryptocurrency is an evolving area across the globe with many jurisdictions considering how to treat these new assets. The rapid change in the technology combined with existing frameworks has resulted in a range of policy responses by jurisdictions ranging from full adoption as legal tender through to a complete ban on cryptocurrency.

Similar to the Australian approach, many jurisdictions consider digital/virtual currencies to be a form of property.

In addition a number of jurisdictions also provide a different tax treatment for cryptocurrency based on the owning entity (Individual vs Business) or if the person is an investor or trader. This distinction exists in Argentina, Austria, Belgium, Canada, Estonia, Finland, France, Greece, Ireland, Israel, Japan, Luxembourg, Netherlands, Slovak Republic, Slovenia, South Africa, Spain, Sweden and the United Kingdom.

The treatment of income arising from shares and cryptocurrency transactions in Australia is broadly consistent with the United States and the United Kingdom.

In Singapore, businesses that trade in cryptocurrencies are taxed on profits as business income. There is no capital gains tax regime in Singapore and investors who sell cryptocurrencies for a profit are not taxed.

In October 2020, the OECD published its first overview of the approaches to cryptocurrency, which provides an overview of how these assets are treated in various countries. "Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues", OECD, Paris. https://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.htm