

**IN THE ADMINISTRATIVE
APPEALS TRIBUNAL
SYDNEY
Small Business Tax Division**

Tribunal reference: 2019/4118

SERIBU PTY LTD
Applicant

and

COMMISSIONER OF TAXATION
Respondent

RESPONDENT'S SUBMISSIONS

A INTRODUCTION

1. These proceedings are an application pursuant to s 14ZZ(1)(a)(i) of the Taxation Administration Act 1953 (**TAA**) by Seribu Pty Ltd (the **applicant**) for review of an objection decision made by the Commissioner of Taxation.
2. The objection decision confirmed a private ruling for the year ended 30 June 2018 (**2018 Year**)¹ issued by the Commissioner to the applicant on 19 February 2019. In the private ruling, the Commissioner ruled that the applicant's bitcoin is not a "foreign currency" for the purposes of s 995-1 of the Income Tax Assessment Act 1997 (Cth) (**ITAA 1997**). The applicant is dissatisfied with the ruling and with the objection decision and has sought review of the objection decision.
3. The legal question raised by these proceedings is whether bitcoin is a "foreign currency" for the purposes of s 995-1 of the ITAA 1997.

¹ The first page of the ruling, at T5-17 of the Section 37 Documents (**T-Documents**), has a typographical error in stating that the ruling applies for the "Year ending 30 June 2019"; it should state "Year ending 30 June 2018".

Filed on behalf of (name & role of party)	Commissioner of Taxation, Respondent
Prepared by (name of person/lawyer)	Florence Li
Law firm (if applicable)	ATO Review and Dispute Resolution
Tel	02 9374 1865
Email	Florence.Li@ato.gov.au
Address for service	
(include state and postcode)	52 Goulburn Street, Sydney, New South Wales 2000

4. In summary, the Commissioner submits that Bitcoin is not a “foreign currency” under s 995-1. Bitcoin is a digital token, used as a medium of exchange on the internet in some limited circumstances. However, it is not the means of payment, unit of account and store of value (or any one of these) under the laws of any country, therefore it is not a foreign currency under s 995-1 of the ITAA 1997.

B FACTUAL BACKGROUND

The transaction in issue

5. The facts can be stated shortly. They are described in the ruling application.² These facts constitute the “specified scheme” for the purposes of s 359-5(1) of Schedule 1 to the TAA. They are not in dispute (nor would these proceedings be a forum for any such dispute).³
6. The applicant acquired 0.56 Bitcoins during the 2018 Year, before 6 February 2018. On 6 February 2018, the applicant settled a payment with 0.50 Bitcoins.
7. There was a decline in value of Bitcoins between the time the taxpayer acquired them and 6 February 2018. The cost to the applicant of acquiring the 0.50 Bitcoins that were used had been \$5,318.24. On 6 February, when they were used, the market value of 0.50 Bitcoins was \$3,892.19. The difference is \$1,426.05.
8. The applicant wishes to deduct a “forex realisation loss” of \$1,426.05 from its assessable income under s 775-30 of the ITAA 1997. To do so, Bitcoin must be a “foreign currency” for the purposes of Division 775, as defined in s 995-1. That question is addressed in the “Analysis” section further below.

The nature of Bitcoin

9. There is no dispute between the parties about the essential nature of Bitcoin.
10. Bitcoin is a digital token, sometimes referred to as a “cryptocurrency” or “digital currency”. It is a decentralised system, operating through a network of persons using the internet, for the creation, recording and use of Bitcoins. Bitcoins are not the currency of any sovereign state. They cannot be used to purchase any good or service, in the manner of the currency of the nation in question, although they can be used to purchase some limited goods and services online. They are not the unit of account of any country. Their value has varied significantly over the last handful of years and they have been the subject of financial speculation.
11. Australian courts have described Bitcoin in similar terms: *Commissioner of the Australian Federal Police v Bigatton* [2020] NSWSC 245 at [33]-[34] per Cavanagh J; *R v Collopy* [2017] SASCFC 64 at [16] per Lovell J (with whom Peek and Blue JJ agreed).

² T-Documents, T3-10.

³ *Commissioner of Taxation v McMahon* (1997) 79 FCR 127; *Rosgoe Pty Ltd v Commissioner of Taxation* [2015] FCA 1231; *Commissioner of Taxation v Eichmann* [2019] FCA 2155.

For recent international judgments containing descriptions of cryptocurrency, see *Ruscoe v Cryptopia Ltd (in liquidation)* [2020] NZHC 728 (High Court of New Zealand) at [21] per Gendall J⁴ and *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 3, [2019] 4 SLR 17 (High Court of Singapore) per Thorley JJ at [142] (“Cryptocurrencies are not legal tender in the sense of being a regulated currency issued by a government”).⁵

12. The following more detailed description is extracted from Taxation Determination TD 2014/25 “Income tax: is Bitcoin a ‘foreign currency’ for the purposes of Division 775 of the Income Tax Assessment Act 1997?”. It is also set out, verbatim, in the first three pages of the applicant’s objection.⁶ This is uncontentious background information as to the nature of Bitcoin. The paragraph and footnote numbers below are those within TD 2014/25, with the citations reproduced in footnotes below (the footnoted articles have been filed in the Tribunal by the Respondent).

“7. The Oxford Dictionary of English (3rd Ed.) defines Bitcoin as:

a type of digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank: *bitcoin has become a hot commodity among speculators | If you want to buy something using bitcoin you need to make sure the seller accepts the cryptocurrency.*

8. It is described by commentators as ‘a virtual currency that essentially operates as online cash’[3]⁷ and as a ‘crypto-currency, designed to reinvent the way that money works’.[4]⁸ Bitcoin operates as a decentralized peer-to-peer payments network whose implementation relies on the use of public-key cryptography to validate transactions involving existing bitcoin and in doing so generates new bitcoin.[5]⁹ The Bitcoin system is decentralized in that it is not under the control of a central authority.[6]¹⁰ Transactions on the Bitcoin network are denominated in bitcoin. The value of bitcoin is ‘not derived from gold or government fiat, but from the value that people assign it’.[7]¹¹

9. The process through which bitcoin are created and enter into circulation is called ‘Bitcoin mining’. Mining involves a ‘miner’ using freely downloadable Bitcoin software to solve complex cryptographic equations that essentially verify and validate transactions involving the transfer of existing bitcoin between other parties,

⁴ <https://www.courtsofnz.govt.nz/assets/cases/Ruscoe-v-Cryptopia-Ltd-in-liq-CIV-2019-409-544.pdf>

⁵ [https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/sic-7-of-2017---b2c2-v-quoine-\(final-14-3-19\)-pdf.pdf](https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/sic-7-of-2017---b2c2-v-quoine-(final-14-3-19)-pdf.pdf)

⁶ T-Documents, T6-27 to T6-29

⁷ Brito, J and Castillo, A 'Bitcoin: A Primer for Policymakers', *Policy*, Summer 2013-2014, vol. 29, no. 4, pp 3-12.

⁸ Bradbury, D 'The problem with Bitcoin', *Computer Fraud & Security* November 2013, issue 11, pp 5-8.

⁹ *Supra* Note 7.

¹⁰ See also Guthrie, N 'The End of Cash? Bitcoin, the Regulators and the Courts' *Banking & Finance Law Review* Apr 2014, vol 29, no. 2, pp 355-367; Moore, T 'The promise and perils of digital currencies' *International Journal of Critical Infrastructure Protection*, 2013, pp 147-149.

¹¹ *Supra* Note 7; *Supra* Note 10: Guthrie, N at 357 and Moore, T at p 147.

for example, to ensure an existing bitcoin cannot be transferred more than once by the one person. The first ‘miner’ to successfully solve an equation receives as a reward a specified number of newly created bitcoin to their ‘Bitcoin address’. The process of ‘mining’ has been explained as follows:[8]¹²

The actual mining of bitcoins is by a purely mathematical process. A useful analogy is with the search for prime numbers: it used to be fairly easy to find the small ones (Eratosthenes in Ancient Greece produced the first algorithm for finding them). But as they were found it got harder to find the larger ones.

...

For bitcoins the search is not actually for prime numbers but to find a sequence of data (called a ‘block’) that produces a particular pattern when the Bitcoin ‘hash’ algorithm is applied to the data. When a match occurs the miner obtains a bounty of bitcoins (and also a fee if that block was used to certify a transaction). The size of the bounty reduces as bitcoins around the world are mined.

The difficulty of the search is also increased so that it becomes computationally more difficult to find a match. These two effects combine to reduce over time the rate at which bitcoins are produced and mimic the production rate of a commodity like gold. At some point new bitcoins will not be produced and the only incentive for miners will be transaction fees.

10. Bitcoin that are already in circulation can be acquired either by exchanging ‘national’ or ‘fiat’ currencies[9]¹³ for them through an online exchange (or through a Bitcoin ATM), or by accepting them as a gift or in exchange for goods and services.

11. Bitcoin are sent and received via Bitcoin addresses. A Bitcoin address is a long alphanumeric string used by the network as an identifier. The address can be generated at no cost by any user of Bitcoin and a person can have any number of Bitcoin addresses.[10]¹⁴

12. Bitcoin uses public key cryptography to make and verify digital signatures used in bitcoin transactions.[11]¹⁵ Each user is assigned a ‘public/private’ keypair which is saved in that person's ‘Bitcoin wallet’. A Bitcoin wallet has been described as something ‘that stores the digital credentials for [a person's] bitcoin holdings’.[12]¹⁶

¹² Tindell, K ‘Geeks Love the Bitcoin Phenomenon Like They Loved the Internet in 1995’ *Business Insider* 5 April 2013. See also *supra* Note 7.

¹³ For example, Australian dollars, US dollars etcetera. ‘Fiat money’ is defined as ‘Money that a government has declared to be legal tender, although it has no intrinsic value and is not backed by reserves. Most of the world’s paper money is now fiat money.’: *A Dictionary of Finance and Banking* (Oxford) 4th revised ed.

¹⁴ *Supra* Note 8.

¹⁵ *Supra* Note 7.

¹⁶ Villasenor, J ‘Secure Bitcoin Storage: A Q&A With Three Bitcoin Company CEOs’ *Forbes* 26 April 2014.

13. The public key is an alphanumeric number that mathematically corresponds to the Bitcoin address which is publicly known. The private key is also an alphanumeric number; however, it is kept secret as it is what allows bitcoin to be transferred between Bitcoin addresses.[13]¹⁷ The private key is also mathematically related to the Bitcoin address. It is designed so that the Bitcoin address can be calculated from that private key, but importantly, the same cannot be done in reverse.[14]¹⁸

14. To transfer bitcoin, a person creates a transaction message with the number of bitcoin to be transferred and signs the transaction with their private key.[15]¹⁹ Those bitcoin are associated with the person's public key. The transaction is then broadcast to the Bitcoin network for validation through the Bitcoin mining process.[16]²⁰ Once validated they are added to the 'block chain', which is a public global ledger of all Bitcoin transactions.

15. A bitcoin is only accessible by the person in possession of the private key that relates to the Bitcoin address associated with that person's bitcoin holdings. Accordingly, a bitcoin consists not just of the numerical amount (or balance) of bitcoin and the Bitcoin address to which they are associated, but also the related private key that allows the holder to do anything with those bitcoin.”

13. The Commissioner notes that while, in paragraph 8 of the TD 2014/25 description above, it is stated that commentators describe Bitcoin as “online cash”, Bitcoin cannot, in fact, be used to settle all (or even a large proportion of) transactions online, nor could it in the 2018 Year. There is no such fact set out in the ruling application, accordingly no factual finding to that effect can be made.
14. The applicant has on 2 April 2020 filed material with the Tribunal. Some of that material is descriptive of the nature of Bitcoin and is consistent with the above. Other of it is more detailed and technical material which, it is submitted, is not relevant to the question for determination by the Tribunal. It also includes some foreign authorities on other legal issues; none consider whether Bitcoin is a currency or foreign currency for the purposes of the jurisdiction's rules for the taxation of foreign exchange gains and losses. A further category of material (the source of which is often unclear) seems designed to support a factual finding that Bitcoin can be used to purchase certain specific goods or services. Such factual material, other difficulties with it aside, was not part of the ruling application and accordingly cannot be considered by the Tribunal:²¹ see, further, paragraph 31 below.

¹⁷ *Supra* Note 7.

¹⁸ Wiener, H, Zelnik, J, Tarshish, I, & Rodgers, M 'Chomping at the Bit: U.S. Federal Income Taxation of Bitcoin Transactions' *Journal Of Taxation Of Financial Products* (2013) vol. 11, no. 3, pp. 35-47 at 35.

¹⁹ Kondor D, Posfai M, Csabai I, Vattay G 'Do the Rich Get Richer? An Empirical Analysis of the Bitcoin Transaction Network' (2014) *PLoS ONE* vol. 9, issue 2 pp 1-10 at p 1.

²⁰ *Supra* Note 7.

²¹ *Commissioner of Taxation v McMahon* (1997) 79 FCR 127; *Rosgoe Pty Ltd v Commissioner of Taxation* [2015] FCA 1231; *Commissioner of Taxation v Eichmann* [2019] FCA 2155.

C ANALYSIS

15. To have a forex realisation loss from a “currency exchange rate effect” (see ss 775-40, 775-105) which is deductible under s 775-30 of the ITAA 1997, the item disposed of must be “foreign currency” or “a right, or part of a right, to receive foreign currency”: s 775-40(1). The latter is not suggested to apply, nor would it.

16. The question is whether Bitcoin is “foreign currency” for these purposes. Foreign currency is defined in s 995-1(1) of the ITAA 1997 in the following way:

“Foreign currency means a currency other than Australian currency”

17. Definitions in s 995-1(1) prevail, subject to a contrary intention: chapeau to s 995-1(1). There is no suggestion that a contrary intention is manifest in Division 775. Rather, Division 775 clearly attracts the statutory definition: it is the prime set of rules for which the concept of foreign currency is relevant. Division 775 is specific to *foreign currency* gains and losses: see s 775-10. It is not directed at gains and losses from the disposal of other assets the value of which may fluctuate over time; other regimes, such as the capital gains tax provisions, cover those circumstances.

18. While it is relevant to consider the meaning of the word “currency” which appears twice in the statutory definition, it should be borne in mind in statutory interpretation that:

“[i]t is axiomatic that (a) the words in a sentence are not building blocks whose meaning is unaffected by the rest of the sentence, (b) the sentence is the unit of communication by which language works, and (c) the significance of individual words is affected by other words and the syntax of the whole sentence.”²²

19. Accordingly, after considering the meaning of “currency”, these submissions will return to the definition as a whole in order to identify its correct construction.

20. The word “currency” is defined in the Macquarie Dictionary as “that which is current as a medium of exchange; the money in actual use”. It is also defined in the Oxford English Dictionary as “of money: The fact or quality of being current or passing from man to man as a medium of exchange; circulation” and “that which is current as a medium of exchange; the circulating medium (whether coins or notes); the money of a country in actual use”.

21. The word “currency” also has a legal meaning, and it presumed Parliament intended the legal meaning to apply in using the word in this statutory definition.²³ No contrary intention is manifest in Division 775 or the s 995-1(1) definition.

22. In *Leask v Commonwealth* (1996) 187 CLR 579, Brennan J held at 595:

²² 2 *Elizabeth Bay Road Pty Ltd v Owners - Strata Plan No 73943* (2014) 88 NSWLR 488 at [82] per Leeming JA (with whom Basten JA agreed).

²³ *Attorney-General (NSW) v Brewery Employees Union of New South Wales* (1908) 6 CLR 469 at 531.

“Currency consists of notes or coins of denominations expressed as units of account of a country and is issued under the laws of that country for use as a medium of exchange of wealth [60] [*cf* the description of “money” proposed by F A Mann in *The Legal Aspect of Money*, 5th ed (1992), p 8.]”

23. Gummow J held at 617-18:

“Section 8(1) of the Currency Act 1965 (Cth) (“the Currency Act”) states that the monetary unit, or unit of currency, of Australia is the dollar; s 9(1), so far as is material, requires every transaction, dealing, matter or thing relating to money or involving the payment of, or a liability to pay, money to be made, executed, entered into or done according to the currency of Australia, unless the currency of some other country is used; and s 11(1) requires that every payment, unless made according to the currency of some other country, be made according to the currency of Australia.”

24. His Honour went on to hold at 622 (footnotes omitted, emphasis added):

“In *Watson v Lee*, Mason J, with whom Gibbs J agreed, held that s 51(xii) gave the Parliament power “to control and regulate the receipt and use” in Australia of foreign currency. Barwick CJ and Stephen J (with whom Gibbs J also agreed) spoke to the same effect. By parity of reasoning, the power also supports laws to control and regulate the receipt and use of coin and paper money in Australia, being the medium of exchange in Australia.

Stephen J and Mason J also emphasised that, while “coinage” and “legal tender” involved quite specific and narrow concepts, the former being concerned with coins as money and the latter with the prescription of that which at any particular time may be a lawful mode of payment, “currency” was a broader expression. This is exemplified by the provisions of the Currency Act to which I have referred earlier in these reasons. They illustrate the proposition that *currency is a universal means of exchange, designated by a particular unit of account.*”

25. The High Court in *Travellex Ltd v Commissioner of Taxation* (2010) 241 CLR 510 considered that what gives currency (there, Fijian Dollars) its value is its status as the means of payment and store of value that is universally accepted in a certain country. French CJ and Hayne J stated at [26]:

“By the supply which is constituted by the sale and delivery of the foreign currency, the supplier supplies to the acquirer the rights that attach to the tokens (be they notes or coins) that are the foreign currency. The supply (by sale) is not sufficiently described as a sale of the particular tokens. Those tokens are valuable because they are currency in at least the country or area of issue. Because the tokens are currency, the holder of the tokens can use them as a medium of exchange and as a store of economic value.[23] [Fox, *Property Rights in Money*, (2008) at 6 [1.19]]. Currency has value only because of the rights that attach to it.”

26. Heydon J stated at [50]:

“to transfer currency does more than transfer the right of ownership of the pieces of paper: it transfers the rights associated with legal tender. To use currency is to employ it in discharging debts, acquiring goods or services, and creating new debts. For the transferee to “use” the legal tender is to exercise those rights — it is to discharge obligations owed by the transferee or create new obligations in others.”

27. While the statutory definition does not use the word “money”, some analogy can be drawn to the law on the legal meaning of that word. *Halsbury’s Law of Australia* (4th edition, paragraphs 101, 102) states:

“The primary function of money is to serve as a medium of exchange, and as such it is accepted without question in final discharge of debts or payment for goods or services. Money also serves as a common standard of value by reference to which the comparative values of different commodities are ascertained, as a unit of account in which debts and liabilities are expressed, and as a store of value or purchasing power.”

28. In *Mann on the Legal Aspects of Money*, 6th Ed, (2005), Proctor states at [1.12] that money:

“must exist within some form of legal framework, because it reflects an exercise of sovereignty by the State in question.”

29. Proctor goes on to state at [1.13]:

“For anything which is treated as “money” purely in consequence of local custom of the consent of the parties does not represent or reflect an exercise of monetary sovereignty by the State concerned, and thus cannot be considered as “money” in a legal sense.”

30. The Commissioner submits that the meaning of “currency” in the s 995-1(1) definition of “foreign currency”, whether it be the ordinary meaning or its legal meaning in Australia, is that which is recognised and adopted by the laws of a sovereign State as the means of payment, unit of account and store of value. Bitcoin is not within that meaning.

31. The applicant contended in its objection that “currency should be defined as a medium of exchange”, without any further criteria to be satisfied.²⁴ There are several difficulties with that argument:

- a. the ruling application was silent as to whether the Bitcoins which the applicant acquired and disposed of in the 2018 Year could have been used as a medium of exchange in the general, “universal”²⁵ sense in which the currency of a sovereign

²⁴ T-Documents, T6-32.

²⁵ *Leask* at 622 per Gummow J.

state is a medium of exchange in that nation. Accordingly, no fact could be found to that effect.²⁶

- b. The materials filed by the applicant on 2 April 2020 cannot supplement the facts in the ruling application,²⁷ and in any event those materials do not establish that Bitcoin was a medium of exchange in the requisite sense in the 2018 Year.
 - c. Furthermore, the mere fact that an asset can be used to purchase certain specific items (assuming for a moment that Bitcoin can) does not make it a “currency”. On that basis, frequent flyer points and ride tokens in amusement parks, for example, would be currencies, which they clearly are not.
32. The applicant has also contended that the fact that Bitcoin has not been forbidden by countries such as the USA and Canada is sufficient to make it a foreign currency.²⁸ The objection reasons that, given it has not been forbidden in these countries, “it is assumed that Bitcoin is legally recognised by these countries.”²⁹ However, it does not follow that merely because Bitcoin is not illegal in the USA or Canada (or, indeed, Australia) that it is “legally recognised” by the monetary systems of those countries *as a currency*. This is a leap which cannot be bridged.
33. However, even if the word “currency” was capable of a highly generous interpretation which might embrace Bitcoin, that would not be its proper interpretation in the statutory context of the s 995-1(1) definition of “foreign currency”. The definition uses the word “currency” twice,³⁰ and the second time it does so it is by reference to “Australian currency”, that is, the Australian Dollar. The first usage of “currency” in the definition is thus a reference to equivalent currencies, being the means of payment, unit of account and store of value of the monetary system of another nation. Such an interpretation meets the object and purpose of Division 775, which is to deal with gains and losses from fluctuations in foreign currencies against the Australian Dollar. Division 775 is not intended to cover all assets which fluctuate in value by reference to Australian Dollars; there are ample other schemes within the tax legislation for those circumstances.
34. If Bitcoin were viewed as a foreign currency for the reasons contended by the applicant, it would also *equally* be an Australian currency. Bitcoin can be participated in from Australia just the same as it can be participated in from various other countries of the world. This would make a misconstruction of the statutory definition of “foreign currency”. It would defy the dichotomy at its heart, being between Australian currency on the one hand and foreign currency on the other.
35. While treatment in other jurisdictions is not binding in relation to the interpretation of the s 995-1(1) definition of “foreign currency”, it may be noted that no jurisdiction has been

²⁶ *Commissioner of Taxation v McMahon* (1997) 79 FCR 127; *Rosgoe Pty Ltd v Commissioner of Taxation* [2015] FCA 1231; *Commissioner of Taxation v Eichmann* [2019] FCA 2155.

²⁷ *Commissioner of Taxation v Eichmann* [2019] FCA 2155 at [21]

²⁸ T-Documents, T6-33.

²⁹ T-Documents, T6-33.

³⁰ *McGraw-Hinds (Aust) Pty Ltd v Smith* (1979) 144 CLR 633 at 643.

identified which treats Bitcoin as a foreign currency for the purposes of its rules for taxation of foreign exchange gains and losses. The specific guidance of the Internal Revenue Service in the United States is that Bitcoin is not a foreign currency for those purposes.³¹ Her Majesty's Revenue and Customs in the United Kingdom takes the same position,³² as does the Canadian Revenue Agency³³ and the New Zealand Inland Revenue Department.³⁴

36. The applicant has referred to the 2017 changes to the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**).³⁵ Their context is quite different, but putting that to one side momentarily, the changes do not assist the applicant. They brought in a new defined term "digital currency", but left in place right alongside it the existing term "a currency other than Australian currency".³⁶ Digital currency was not thought to have come within the latter term. They are mutually exclusive. The extrinsic material to the 2017 changes also makes it clear that Parliament did not regard digital currency as "a currency other than Australian currency" or as money.³⁷ The Commissioner accepts the principle that legislation is interpreted in an ambulatory fashion and that amendments to legislation may sometimes alter the meaning of other legislation.³⁸ However, those principles are not relevantly engaged in the present case.
37. The definition of "foreign currency" clearly places Australian currency, the Australian Dollar, in contradistinction to its foreign counterparts. Bitcoin is not a foreign counterpart to the Australian Dollar. It is not the unit of account, store of value and "universally"³⁹ accepted means of payment of another nation and accordingly it is not a "foreign currency" for the purposes of s 995-1(1) and s 775-30 of the ITAA 1997.

E ORDER SOUGHT

38. It is respectfully submitted that the objection decision should be affirmed.

³¹ <https://www.irs.gov/pub/irs-drop/n-14-21.pdf> US Internal Revenue Service Notice 2014-21, Question 2 ("Under currently applicable law, virtual currency is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes.")

³² <https://www.gov.uk/government/publications/tax-on-cryptoassets/cryptoassets-tax-for-businesses> ("This means that any Corporation Tax legislation which relates solely to money or currency does not apply to exchange tokens or other types of cryptoasset. For example: the foreign currency rules (section 328 of the Corporation Tax Act 2009)")

³³ <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency/cryptocurrency-guide.html> ("The CRA generally treats cryptocurrency like a commodity for purposes of the Income Tax Act. Any income from transactions involving cryptocurrency is generally treated as business income or as a capital gain, depending on the circumstances.")

³⁴ <https://www.ird.govt.nz/cryptocurrency/taxing-cryptocurrency> ("Because cryptocurrency is treated as property and not currency for tax purposes, foreign currency gains or loss provisions do not apply.")

³⁵ Applicant's Statement of Facts, Issues and Contentions filed 12 December 2019, [13].

³⁶ Subsections 9-85(2)(a) and (b) of the GST Act; see also item 9 of the table to subreg 40-5.09(3) of the A New Tax System (Goods and Services Tax) Regulations 1999

³⁷ Explanatory Memorandum to Treasury Laws Amendment (2017 Measures No. 6) Bill 2017, [1.9], [1.37], [1.38].

³⁸ *Commissioner of Stamps (SA) v Telegraph Investment Co Pty Ltd* (1995) 184 CLR 453.

³⁹ *Leask* at 622 per Gummow J.

17 April 2020

Chloe Burnett

Sixth Floor Selborne Wentworth Chambers

02 9232 1295

cburnett@sixthfloor.com.au