
TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2022: TAXATION TREATMENT OF DIGITAL CURRENCY

EXPOSURE DRAFT EXPLANATORY MATERIALS

DRAFT

Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
CGT	capital gains tax
GST	goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
GST Regulations	<i>A New Tax System (Goods and Services Tax) Regulations 2019</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>

Chapter 1: Taxation treatment of digital currency

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Outline of chapter

- 1.1 Schedule 1 to this Bill amends the ITAA 1997 to clarify that digital currencies (such as bitcoin) continue to be excluded from the income tax treatment of foreign currency. For the purpose of these amendments, the term digital currency does not include digital currencies issued by, or under the authority of, a government agency ('government-issued digital currency') which continue to be taxed as foreign currency.

Context of amendments

- 1.2 The Legislative Assembly of the Republic of El Salvador recognised bitcoin as an unrestricted legal tender by legislative decree which took effect on 7 September 2021. As an unintended consequence of this, there is the potential that bitcoin may be a 'foreign currency' for the purposes of the ITAA 1997 due to its status as a legal tender in El Salvador.
- 1.3 This is inconsistent with current policy intent. Bitcoin and other similar digital currencies were never intended to be foreign currencies for Australian income tax purposes.
- 1.4 Without clarification of the tax treatment of bitcoin and digital currencies, there would be uncertainty about the status of these assets for Australian income tax purposes.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
Digital currencies (such as bitcoin) are not foreign currencies for the purposes of the ITAA 1997, even if they are adopted as a legal tender by a foreign jurisdiction.	Digital currencies (such as bitcoin) may potentially become a foreign currency for the purposes of the ITAA 1997 if they are adopted as a legal tender by a foreign jurisdiction.

Detailed explanation of new law

- 1.5 The amendments to the ITAA 1997 and the GST Act are intended to maintain the status quo prior to the El Salvador decree and clarify that bitcoin and similar digital currencies continue not to be treated as foreign currency, even if they are adopted as a legal tender by a foreign jurisdiction.
- 1.6 To achieve this, Schedule 1 to the Bill:
- amends the definition of *foreign currency* in the ITAA 1997 to exclude digital currencies. The definition of digital currency has been adopted from the GST Act;
 - amends the GST Act definition of *digital currency* to ensure it excludes government-issued digital currencies and includes digital currencies that are not government-issued but have been adopted as a legal tender; and
 - amends the ITAA 1997 to include a power to make regulations to provide for further exclusions from the definition of foreign currency in the ITAA 1997.

Foreign currency does not include digital currency

- 1.7 The amendments to the *foreign currency* definition in subsection 995-1(1) of the ITAA 1997 ensure digital currencies such as bitcoin, but excluding government-issued digital currencies, are not foreign currencies.

[Schedule 1, item 12, subsection 995-1(1) of the ITAA 1997]

- 1.8 Subsection 995-1(1) of the ITAA 1997 provides that *digital currency* has the same meaning as in the GST Act.

[Schedule 1, item 11, subsection 995-1(1) of the ITAA 1997]

- 1.9 This maintains the status quo prior to the El Salvador decree, being that the income tax treatment of digital currencies depends on the individual circumstances of the taxpayer. For example, an investment in bitcoin is typically held on capital account. If this is the case, gains or losses arising from the disposal of bitcoin would be subject to the CGT rules.

Definition of digital currency

- 1.10 The amendments to the definition of *digital currency* in section 195-1 of the GST Act ensure the definition operates effectively for the purposes of excluding digital currency from being foreign currency under the ITAA 1997. In doing so, the amendments clarify that bitcoin and other similar assets will remain digital currencies in circumstances where they are adopted as a legal tender.

Government-issued digital currencies are excluded

- 1.11 The *digital currency* definition has been amended to ensure it excludes government-issued digital currencies and includes digital currencies that are not government-issued but have been adopted as a legal tender.
- 1.12 The existing requirement under paragraph (d) of the *digital currency* definition effectively excludes digital currencies that are denominated in a country's currency. If a digital currency is adopted as a legal tender (e.g. bitcoin), that digital currency may potentially be seen as a currency of the country that adopted it and, therefore, excluded from the *digital currency* definition. This is not the intended policy outcome.
- 1.13 Schedule 1 amends paragraph (d) of the *digital currency* definition to allow for digital currencies to be denominated in a currency, provided the currency is not issued by, or under the authority of, an Australian government agency or foreign government agency.

[Schedule 1, item 1, the definition of 'digital currency' in section 195-1 of the GST Act]

- 1.14 This amendment ensures bitcoin continues to be a digital currency. Despite it being adopted as a legal tender and therefore potentially being considered a currency, it is decentralised, and it is not issued by, or controlled by, any government. In contrast, what are commonly referred to as 'central bank digital currencies' are a government-issued digital form of money that will continue to be money, not digital currency.

Digital currency is not money

- 1.15 Under the current law, if something is both money and digital currency, it is considered money due to the operation of paragraph (g) of the *digital currency* definition which excludes money from being digital currency. The amendments change this order of priority so that something that is both money and digital currency is considered to be digital currency.

[Schedule 1, items 2 and 3, the definition of ‘money’ in section 195-1 of the GST Act]

- 1.16 This ensures that where a government adopts a digital currency as a legal tender, it remains a digital currency and does not become money, despite potentially being considered a currency and therefore meeting the definition of *money*. Apart from the instance of bitcoin, there is unlikely to be any current overlap between the definitions of *money* and *digital currency*.
- 1.17 The definition of digital currency continues to exclude financial supplies, except where the supply is only a financial supply because it is a supply of digital currency. In a situation where a financial supply would be a supply of money were it not digital currency, it will continue to be a supply of digital currency.

GST outcomes are not affected

- 1.18 The amendments made to the GST Act are not intended to affect GST outcomes. The treatment of digital currency remains the same. That is, supplies and acquisitions of digital currency are generally disregarded for the purposes of GST. Consistent with supplies of money, supplies of digital currency are only recognised for the purposes of GST if the supply is made in exchange for money or digital currency.
- 1.19 Whether or not bitcoin is considered a digital currency or money does not have a material impact for the purposes of GST, as both digital currency and money receive the same treatment.
- 1.20 The main purpose of the amendments to the GST Act are to ensure the *digital currency* definition can be used for the purposes of excluding digital currency from being foreign currency under the ITAA 1997. Additionally, these amendments also clarify that bitcoin remains a digital currency for GST purposes.

Example 1.1 – An existing digital currency remains digital currency

Coin A is a cryptographic currency utilising a consensus-based distributed ledger. New Coin A is issued under an automated process to entities that participate in the process of validating the ledger. Prior to 2025, it satisfied all of the requirements to be a digital currency under section 195-1 of the GST Act.

In 2025, Coin A is made a legal tender in a foreign country. As a result, it may potentially be considered a currency, satisfying the definition of *money* under paragraph (a) in section 195-1 of the GST Act.

However, under these amendments, Coin A remains within the definition of *digital currency* and is not *money*. This is because:

- Despite Coin A potentially being considered the currency of a foreign country, it is **not** issued by or on behalf of a foreign government agency and so it satisfies subparagraph (d)(ii) of the definition of *digital currency*.
- Its treatment as digital currency means that it cannot meet the definition of *money* as a result of these amendments which excludes digital currency from the definition of *money* (at paragraph (j)). This change means that if something is both digital currency and money, then it will always be digital currency.

For income tax purposes, as Coin A meets the definition of *digital currency*, it is not foreign currency under the amended definition of *foreign currency* in the ITAA 1997. The income tax treatment of Coin A will depend on the individual circumstances of the taxpayer who holds it.

Example 1.2 – Government-issued digital currencies are money

The government of a foreign country establishes a digital currency, Coin B. It is a digital unit of value that has the status of a legal tender in that jurisdiction.

Despite this, Coin B **cannot** be digital currency as it does not satisfy paragraph (d) of the *digital currency* definition because:

- it is denominated in the currency of the foreign country; and
- it is issued by or on behalf of a foreign government agency.

As Coin B would be considered currency, it satisfies paragraph (a) of the definition of *money*.

Under these amendments, the digital currency exclusion in the *money* definition does not apply as Coin B is not digital currency. Coin B will be money unless, in specific cases, it falls within one of the other exclusions set out in paragraphs (f) to (i) of the definition of *money*, such as being a collector's piece.

For income tax purposes, as Coin B is a currency of a foreign country, and not a digital currency, it will be foreign currency.

Regulation-making power

- 1.21 The amendments include a power to make regulations to provide for further exclusions from the definition of *foreign currency* in the ITAA 1997.
[Schedule 1, item 12, subsection 995-1(1) of the ITAA 1997]
- 1.22 This will enable digital currency-like assets not captured by these amendments to be excluded from being foreign currency through regulations in the future, if required.
- 1.23 This regulation-making power is necessary because the crypto ecosystem is relatively new and continues to evolve, and further exclusions may be needed to respond to changes in technology or unforeseen circumstances. For example, one such circumstance would be if a country were to adopt as a legal tender a digital currency-like asset that is not captured by the definition of *digital currency*.
- 1.24 The regulation-making power will allow the Government flexibility to provide taxpayers and administrators with clarity and certainty on income tax arrangements in a timely manner. The regulations would be subject to disallowance and therefore will be subject to appropriate parliamentary scrutiny.

Consequential amendments

- 1.25 To support the amendments to the ITAA 1997 and the GST Act, Schedule 1 to the Bill makes consequential amendments to the GST Regulations.
[Schedule 1, items 4-10, subsection 40-5.09(3), section 40-5.12, subsection 70-5.02(1) and section 196-1.01 of the GST Regulations]
- 1.26 The GST Regulations refer to ‘foreign currency’ and ‘currency of a foreign country’. To ensure the GST Regulations are consistent with, and do not limit, the intended effect of the amendments to the ITAA 1997 and the GST Act, these terms have been given the same meaning as *foreign currency* in the ITAA 1997. However, this does not include the regulation-making power that exists in the ITAA 1997, as it is not needed for the purposes of the GST Regulations.
- 1.27 Additionally, references to ‘currency of a foreign country’ in the GST Regulations have been replaced with ‘foreign currency’ to provide consistency in terminology.
- 1.28 Consistent with the amendments to the GST Act, the amendments to the GST Regulations do not affect GST outcomes.

Commencement and application provisions

1.29 The amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after the date the bill receives Royal Assent.

1.30 The amendments to the definition of *foreign currency* in the ITAA 1997 apply in relation to income years that include 1 July 2021 and to subsequent income years. Accordingly, the amendments have retrospective application.

[Schedule 1, subitem 14(2)]

1.31 The purpose of applying the amendments to income years that *include* 1 July 2021 is to ensure consistent tax outcomes for all taxpayers, including those with substituted accounting periods. For example, for a taxpayer with a 31 December year end, the amendments will apply for the income year starting on 1 January 2021 until 31 December 2021.

1.32 The amendments to the GST Act and GST regulations apply in relation to supplies or payments made on or after 1 July 2021, to align their application with the application of the amendments to the ITAA 1997. Accordingly, these amendments also have retrospective application.

[Schedule 1, item 13 and subitem 14(1)]

1.33 Retrospective application is necessary to clarify that the tax treatment of digital currencies that applied prior to 7 September 2021 (the date at which the El Salvador decree took effect) continues to apply after that date. The effect of the El Salvador decree was unexpected and could potentially lead to unintended income tax outcomes. Therefore, it is appropriate for the amendments to apply retrospectively to pre-date the event that creates the uncertainty.

1.34 The amendments maintain the status quo of the income tax treatment of digital currencies like bitcoin, prior to the El Salvador decree. Further, they do not alter any substantive outcome for GST. In that respect, retrospective application does not adversely impact or disadvantage taxpayers.

1.35 If the amendments did not apply retrospectively, the potential unintended change in the tax treatment of bitcoin could result in risks to revenue in the broader tax system. It would also result in bitcoin receiving inconsistent income tax treatment with other crypto assets that share similar characteristics. Therefore, retrospective application is justified to ensure these unintended outcomes are avoided
