

ECONOMICS REFERENCES COMMITTEE
INQUIRY INTO DIGITAL CURRENCY
ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

4 March 2015

Topic: Changing GST act to change the definition of money - Regulation or legislation

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Senator CANAVAN: Sorry. No, I was being sincere. I want to clarify, though, and I am being very specific here, what aspects of the GST law contain these provisions?

Mr Peterson: When we are talking about tax we are talking about bundled different laws. We have been talking about GST. There is also income tax law and, relevantly here, there are also fringe benefits tax laws. If we go to GST, there are really two issues, broadly, on the table I would say from an industry perspective. The first is the definition of money. You have no doubt heard a lot about the definition of money. You have heard about Travelex. You have heard people arguing for a utility test and so on. Money is defined in the GST law. It says, 'Money includes,' and there is a list of a range of things starting with currency, Australian or foreign. Our view of course is that bitcoin is neither of those things. If bitcoin were money—let us go back to trading—

Senator CANAVAN: Just to clarify, that definition is in the GST law or some other law?

Mr Peterson: It is in the GST law. It is section 195 dash something or other

Senator CANAVAN: Could take it on notice to get us that section? That would be fantastic.

Mr Hardy: It will be section 195. Section 195 of the GST legislation is definitions. It goes for pages. Find 195 and alphabetically you will come down to 'Money' and then 'Money means ...' and it give you the list.

...

Senator CANAVAN: I was going to ask that. So we could, of course, change the official money to digital currency of some definition. That would mean that, for the supply of that good—in this case, that is digital currency—there would not be GST payable on that supply? Is that right—just to confirm it in my head?

Mr Peterson: If bitcoin were—

Senator CANAVAN: Defined as a money.

Mr Peterson: defined as money then the provision of bitcoin for something other than money would not be subject to GST.

Senator CANAVAN: They would not be exempt—the financial supply or the business of supplying digital currency would still be liable for GST?

Mr Peterson: Yes, because it would still be a supply for GST purposes as a supply of money for money.

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Senator CANAVAN: But then, if we included digital currency along with Australian currency and foreign currency, it would similarly be exempt?

Mr Peterson: In the—

Senator CANAVAN: In the regs.

Mr Peterson: financial supplies definition.

Senator CANAVAN: And that is in regulations, not in the law, as you went through?

Mr Peterson: It is in a regulation. Would you like the regulation number?

Senator CANAVAN: Maybe on notice you could drop that in.

CHAIR: Senator Canavan understands this better than I do so my apologies; I just need to unpack it a bit. You are saying that there is a definition of money and there is a list of what money is defined as. That is in a schedule, or is it part of the act?

Mr Peterson: The definition of 'money' is in the dictionary in the GST act itself at section 195.1.

CHAIR: So that is within the act. And then, separate to that, there is a regulation?

Mr Peterson: There are a range of regulations, a number of which in fact relate to financial supplies, which is this exchange type transaction: money for money.

CHAIR: You can take this on notice. The question is whether this can be changed simply through regulation to address the concerns. Is there a way—I am not asking this now, Mr Hardy and Mr Peterson; you can take this on notice—to address the concerns? Again, these are policy decisions for government should they choose to want to do this, but, if that were the path that we wanted to go down, is there a way of doing this simply through regulation, or do we need both regulation and legislation? Is there a way around changing the legislation and only doing it through regulation, or is the definition of money so vital to this that you actually have to change that to be able to do this? Take that on notice. That is a very technical question.

Senator CANAVAN: There is maybe just one straightaway. It seems to me that the definition of money in section 195 and the regulations you mentioned about defining what a 'financial supply' is—that is the right term, is it?—are quite unrelated in that way, because you mentioned before that money is not mentioned in the regs, so to speak.

Mr Peterson: 'Money' is not a term. Relevantly, the regulation refers to 'Australian currency' or 'the currency of a foreign country'.

Senator CANAVAN: There are no cross-references directly?

Mr Peterson: No, there are no cross-references, at least as far as I can—

Senator CANAVAN: There is no provision in the act to define 'money' through a regulation?

Mr Hardy: There are no cross-references except to the degree that the term 'currency' is used in the definition of 'money' in the GST act. So the same term is used—a referential thing of the same term.

Senator CANAVAN: Is there a provision in the GST act to change or add to or subtract from the definition of money through a regulation, or is that set in the legislation?

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Mr Peterson: Senator, I think we need to think about that.

Senator CANAVAN: Take that on notice.

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Mr Hardy: It is. When you boil it down, a lot of the concern of the business community, as I think you have pointed out, is that people deal with Bitcoin just like it was money—but the taxation outcomes are not the same as they would be if it were money, and they have largely said they would like to see parity of treatment. Our interpretation of the existing legislation is that it does not give parity of treatment. As to whether it should be changed or modified to give that parity of treatment, that is a policy question.

CHAIR: That is the process we are going through now—and we will make recommendations to the government at the end of this process. If that is the path the government wants to go down, can you provide some advice on notice on how you would be able to do that. Can it be done simply through regulation or must it be done through regulation and legislation? That can inform the view that we as a committee put to government.

Answer:

For goods and services tax (GST) purposes the definition of ‘money’ is set out at section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. Any change to the definition of money would require a change to the Act. There is no provision for that definition to be changed by the making of regulations.

The definition of what supplies are ‘financial supplies’ is set out at regulation 40-5.09 of the *A New Tax System (Goods and Services Tax) Regulations 1999*. Any change to this definition can be achieved by a change in the regulations.

The GST treatment of cryptocurrency such as Bitcoin could be changed by a means other than changing the definitions of ‘money’ and ‘financial supplies’, for example by the creation of specific exemptions or special rules. However, the ATO’s preliminary view is that alternative approaches will almost certainly require a change to the Act.

If the intention were to proceed with regulation change only, the best that could be achieved would be to deem all supplies of cryptocurrency (however defined) to be ‘financial supplies’. This would make the supply of cryptocurrency input taxed. To the extent a business made acquisitions relating to the supply of Bitcoin (e.g. payments to a relevant point of sale provider) it would be blocked from claiming related input tax credits. This would not apply to businesses that are below the ‘financial acquisitions threshold’: see Division 189 of the Act. Nevertheless, some businesses would face additional complexity and compliance cost with this approach. At a practical level some adverse effect on cash flow would also potentially arise for business.

For this reason, if the intention is to treat cryptocurrency like money for GST purposes, the most straight forward solution would be to amend the definition of “money” in the Act to this effect, in addition to defining it as a financial supply in the Regulations to cater for exchange transactions.

The GST is levied by the Commonwealth, but the revenue from the GST is distributed to the states and territories. This arrangement is set out in the *Intergovernmental Agreement*

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on Federal Financial Relations. Clause A4(c)(i) provides that the Standing Council on Federal Financial Relations, chaired by the Commonwealth Treasurer, has the oversight of approving changes to the GST base and rate. Clause A14 provides that any proposal to vary the GST base will require the unanimous support of the States and Territory Governments, the endorsement by the Commonwealth Government and the passage relevant legislation by both Houses of the Commonwealth Parliament. The requirement for unanimous agreement by the states and territories is legislated in Section 11 of the *New Tax System (Managing the GST Rate and Base) Act 1999*. The ‘base’ of the GST refers to the range of goods and services to which the GST applies.