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Tax Policy and Statistics Division  
Centre for Tax Policy and Administration  
OECD

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Dear Sir/Madam,

## OECD consultation on Action 1

Thank you for the opportunity to provide a submission in relation to the OECD's consultation on "Addressing the Tax Challenges of the Digitalisation of the Economy".

Our submission responds to Question 5 by proposing an "opt-in" taxing framework for blockchain-based token transactions, which has regard to the work being undertaken by the OECD under Action 1 of the BEPS Project. We consider that such a framework could form an alternative option that reduces complexity, ensures early tax certainty and could assist in avoiding, managing and resolving multi-jurisdictional disputes.

A straw man of the "opt-in" taxing framework was included in our recent submission to Treasury in relation to their current consultation on the Australian regulatory and taxation landscape surrounding ICOs and token economies. We have attached a copy of this submission for broader context around the taxation issues and uncertainties associated with ICOs, cryptocurrency and blockchain-based transactions.

In summary, we consider that the work being undertaken by the OECD to address the tax challenges of the digital economy is the appropriate stream of work to consider an "opt-in" tax framework for the following reasons:

- (a) Blockchain-based businesses generally rely on network effects to improve the network's value as well as the token's value. As such, blockchain-based businesses are likely to be caught within measures that may be proposed by the OECD, which are focussed on the taxation of user created value and network effects.
- (b) If taxing rights could be modified to include taxation of user-created value, blockchain and cryptocurrency could offer a relatively efficient means of tax administration and collection of international tax revenue on cryptocurrency transactions, as well as appropriate distribution of tax revenue amongst countries on an agreed upon basis. Presumably, the upfront agreement of tax allocation between countries would assist in avoiding multi-jurisdictional disputes.
- (c) Tax administrations are struggling, and may continue to struggle, to obtain meaningful data about cryptocurrency transactions, especially privacy coins, as well as transactions conducted on decentralised exchanges, DOs, DAOs and DACs. Revenue authorities have traditionally been able to rely on information access powers and data matching protocols to obtain data necessary to conduct matching exercises. From these exercises, the revenue

authority is able to identify non-reporting or misreporting of information in tax returns and better target the use of compliance resources to collect unpaid tax. Whilst some forensic techniques are being used globally to attempt to identify unreported and taxable cryptocurrency transactions, the levels of success now and into the future are unknown and unreliable.

- (d) With the above reasons in mind, the OECD might consider whether the benefits of an opt-in tax framework outweigh the costs of data matching procedures and after-the-fact tax collection efforts. The opt-in framework might initially apply to any or all of exchanges offering crypto-to-crypto pairs, multi-tiered token economies and other scenarios deemed appropriate.
- (e) An opt-in framework could require the development team to “opt in” by incorporating a tax collection function into the protocol layer or smart contract code and having that tax function promptly reviewed and approved by the revenue authority/ies and/or the OECD.
- (f) In particular, an opt in framework might:
  - (i) effectively “switch off” traditional domestic income tax and GST/VAT rules that might otherwise apply to cryptocurrency transactions, which can be unclear and relatively onerous to apply - especially for multi-characteristic tokens and multi-tier token economies;
  - (ii) create an efficient taxing mechanism, whereby either the protocol layer or a smart contract would collect the designated percentage of tax on each cryptocurrency transaction and either pool tax funds in a holding account before being remitted to one or multiple revenue authorities or automatically remit the tax funds to the revenue authority/ies;
  - (iii) promote jurisdictions that permit the opt-in framework as more simple and certain regulatory jurisdictions in which to operate blockchain-based businesses and token economies;
  - (iv) signal to the global crypto-DLT community that the OECD anticipates the pervasiveness of blockchain technology and is at the forefront of simple, certain and appropriate tax policy;
  - (v) alleviate pressure on revenue authorities to forensically analyse blockchain data to attempt to identify unreported and taxable cryptocurrency transactions;
  - (vi) demonstrate the OECD’s awareness that particular types of tokens (e.g. payment, stablecoin, utility) should be used to promote network effects, rather than held as a speculative asset, and thus compliance with tax laws should promote high volume / frequent use and low tax compliance rather than high tax compliance that distorts and reduces use.
- (g) Blockchain-based businesses could provide fertile ground to test the viability of an alternative, opt-in, basis of taxation, particularly for the new concept of taxation of user-created value. In the absence of international consensus until at least 2020, the OECD should consider the merits of introducing an opt-in taxing framework for blockchain-based businesses or design considerations for an opt-in framework. Such a framework should not be net detrimental to the existing international tax regime because of the opt-in nature of the framework for development teams.

Hall & Wilcox look forward to discussing our submission and lending assistance as the consultation progresses. Please contact Joni Pirovich directly on (03) 9603 3615 to discuss.

Yours faithfully

**Hall & Wilcox**

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**ATTACHMENT 1**

**Hall & Wilcox submission to Treasury dated 1 March 2019**

*Our submission has been prepared for the OECD Consultation on Addressing the Tax Challenges of the Digitalisation of the Economy.*

*This submission cannot be relied on by third parties, for any purpose, without our written consent. Neither Hall & Wilcox, nor any partner or employee of Hall & Wilcox, are liable in any way for any entity other than the OECD relying on this submission.*

*Our submission is based on Australian tax law as it stands at the date of this letter, and the published views of the Commissioner of Taxation, as at the date of the submission.*

*We express no opinion as to the laws of any other jurisdiction.*