

31 January 2023

Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted via the Parliament of Australia website and by email: economics.sen@aph.gov.au

Dear Committee Secretariat,

Treasury Laws Amendment (2022 Measures No. 4) Bill 2022

Thank you for the invitation to provide a submission to the Senate Economics Legislation Committee inquiry of the *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022*, Schedule 2: Taxation Treatment of Digital Currency.

Legislative reform to clarify the tax treatment of digital currency is welcome. However, Schedule 2 should be removed from the Bill so that the Board of Taxation can complete its current review of the taxation of digital assets and so that the remaining Schedules of the Bill are not delayed by the further work required for Schedule 2.

The Board of Taxation plays and has played an important role in consulting with the tax profession to recommend tax reform that upholds core principles that a taxation system be fair, equitable and efficient. A significant number of tax professionals and blockchain / digital currency industry participants have been engaging with the Board of Taxation with respect to tax issues including the issue of whether BTC and other tokens can (and should) be characterised as a foreign currency for income tax purposes. Proposed Schedule 2 does not capture the genuine and considered feedback from the tax profession and industry that has been provided to the Board of Taxation. To proceed with Schedule 2 in its current form would create further tax complexity, particularly if further amendments to the Schedule 2 provisions are required (which is anticipated) once the Board of Taxation delivers its report and recommendations for considered and holistic tax reform in this area.

The approach taken in Schedule 2 is to amend the GST Act definition of 'digital currency' in order to remediate the 'foreign currency' income tax issue. This approach does not achieve simplicity and creates concerns that require consequential amendments across the GST Act and income tax assessment acts. As such, further work is necessary and is appropriate to be undertaken by the Board of Taxation before Schedule 2 can proceed further in Parliament.

The Government has been clear with its policy intent, to apply retrospectively, that BTC should not be treated as a foreign currency for income tax purposes. With such a clear policy statement, my anecdotal understanding is that most if not all tax practitioners do not feel a reasonably arguable tax position can be supported to treat BTC as a foreign currency for income tax purposes. Thus, the policy statement from Government is sufficient indication as to the interpretation of the law for the interim period in which the legislative detail is developed and the legislative detail should not be rushed and result in greater tax complexity.

As a result of the Government's policy statement, Australia is missing out on opportunities to attract businesses that treat BTC, ETH and other tokens as a foreign and functional currency, and the associated tax revenue from corporate and other taxes collectable if those businesses had chosen to operate in Australia.



I welcome the opportunity to discuss this submission and assist the Committee with their inquiry.

Yours sincerely,

Signed by:

A9255021ED166D0E

Joni Pirovich
Principal
Blockchain & Digital Assets – Services + Law (BADAS*L)

A web3 focussed firm providing legal, strategic and policy services.