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# Initial Coin Offerings and Cryptocurrencies

John Price | Commissioner | ASIC

26 April 2018



# Tonight...

- How ASIC is engaging with ICOs and cryptocurrencies
- ASIC resources (Information Sheet 225)
- Risks we all need to consider
- How best to engage with ASIC

# ASIC's strategic objectives

- Promote confident and informed financial consumers and investors
- Promote fair and efficient financial markets

# What ASIC is doing - engagement

- Addressing interest from consumers, investors, entities, advisors, service providers and intermediaries
- Working and sharing information with domestic and overseas regulators
- Working closely with the ACCC on a delegation of power

# What ASIC is doing - resources

- Information Sheet 225 provides guidance for entities considering ICOs
- Covers legal status of ICOs and how Australian corporate and consumer law applies
- Provides examples

# Examples

- Managed investment scheme
- Offer of shares
- Offer of a derivative
- Non-cash payment facility
- Financial markets

# Further information

**Web:** [asic.gov.au/for-business/your-business/innovation-hub/](https://asic.gov.au/for-business/your-business/innovation-hub/)

[asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings/](https://asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings/)

**Email:** [innovationhub@asic.gov.au](mailto:innovationhub@asic.gov.au)



# AUSTRAC regulation of digital currency exchanges

Tony Prior

26 April 2018



Australian Government

AUSTRAC

# Operating environment

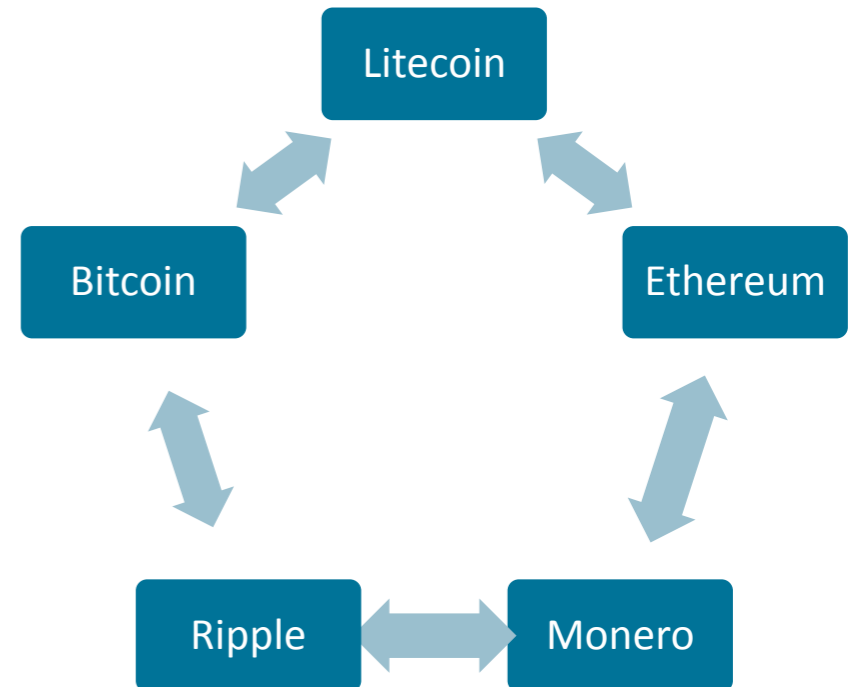


# AUSTRAC regulation 3 April 2018

## Regulated: Money/Cryptocurrencies



## Not regulated: Crypto/Crypto



# Designated service

## **50A Provision of designated service**

exchanging digital currency for money (whether Australian or not) or exchanging money (whether Australian or not) for digital currency, where the exchange is provided in the course of carrying on a digital currency exchange business

## **Customer of the designated service**

the person whose digital currency or money is exchanged



# Key dates

- 3 April 2018: Regulation commenced
- 3 April to 14 May 2018 (six weeks):  
registration transitional period
- 3 April to 2 October 2018: Policy Principles  
period



# ML/TF risk

Risk based approach

Determined by:

- Services provided
- How they are provided
- Customer profile
- Foreign jurisdictions
- Changes to risk



# Key requirements

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1. Enrol & Register
2. Conduct a risk assessment
3. AML/CTF program
4. Reporting



# Reporting obligations for DCEs

Act reference	Reporting obligation	Does this obligation apply to digital currency exchanges?
s41	Suspicious matters	✓
s43	Threshold transactions	✓
s45	International funds transfer instructions	✗
s47	AML/CTF compliance reports	✓





# AUSTRAC assistance to industry

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- To date:
  - Aust Digital Commerce Association working group
  - Industry specific guidance
  - Workshops
- Upcoming:
  - Webinar (workshop)
  - Industry experience (approx. July)



# Public statements

- Registration/Registered
- Endorsed
- Approved
- Licensed
- Use of logos





**Australian Government**

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**AUSTRAC**

[www.austrac.gov.au](http://www.austrac.gov.au)

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**Australian Government**

**Australian Taxation Office**

# Taxation of cryptocurrency and tax issues that arise for initial coin offerings

Presented by Acting Assistant Commissioner Andrea Wood and Senior Technical Adviser Lauren Pamenter, Australian Taxation Office / April 2018

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# Taxation of cryptocurrency

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# Cryptocurrency transactions are taxable

- In 2014, the ATO published its view that Bitcoin is a CGT asset
- Bitcoin is not money or currency for tax purposes
- This means that there are tax consequences of acquiring and transacting with Bitcoin
- This view applies to any cryptocurrency with the same characteristics as Bitcoin
- Specific tax treatment will depend on the facts and circumstances of the particular taxpayer

## Income tax

- Transacting in cryptocurrency will result in ordinary income and/or deductible losses when done in the conduct of a business or as a commercial transaction with a profit-making intention
- If the gain or loss is not assessed as ordinary income then the CGT provisions will apply
- Each type of cryptocurrency is a separate CGT asset
- Exchanging one cryptocurrency for another cryptocurrency will therefore be a CGT event

## Income tax – personal use asset exemption

- To qualify for this CGT exemption the cryptocurrency must be acquired and kept mainly for your personal use or enjoyment, not for investment purposes
  - for example, acquired and used to purchase online goods or services for personal consumption
- Capital gains are disregarded if the personal use asset was acquired for less than \$10,000
- Capital losses from personal use assets are disregarded



# Record-keeping

- The following records must be kept in relation to your cryptocurrency transactions:
  - date of the cryptocurrency transaction
  - value of the cryptocurrency in Australian dollars (which can be taken from a reputable online exchange)
  - what the transaction was for
  - who the other party was (even if it is just their wallet address)

# GST

## *Prior to 1 July 2017*

- A transfer of Bitcoin was a supply for GST purposes (not money)
- Had the potential to create a double GST liability - on the purchase of the Bitcoin and again on its use in exchange for other goods and services subject to GST

## *From 1 July 2017*

- Law amended to align the GST treatment of 'digital currency' with money - supplies and acquisitions of digital currency no longer subject to GST
- Where digital currency received as payment for taxable goods and services, GST must be remitted in AUD

## PAYG/FBT

- Cryptocurrency is property, not money, and falls within the definition of a 'non-cash benefit' for the PAYG withholding rules. It is a property fringe benefit
- Employers who pay their employees cryptocurrency in lieu of salary and wages under an effective salary sacrifice agreement are subject to FBT rather than PAYG withholding

## Self managed superannuation funds (SMSFs)

- No rules that specifically prohibit SMSFs from investing in cryptocurrency
- However you must comply with the same regulatory requirements that apply to investments in other assets
- Refer to ATO website: *SMSF investing in cryptocurrencies* (QC 54800) for more information

# Consultation

- ATO has been consulting with the community on any practical issues arising in two areas:
  - exchanging one cryptocurrency for another cryptocurrency
  - record-keeping rules as they apply to cryptocurrency transactions
- Consultation period closed 20 April
- ATO is currently considering the feedback

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# Initial coin offerings (ICOs)

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## General comments

- Normal taxation rules apply
- No 'one size fits all' answer – there will be tax consequences, but the particular consequences will depend on the facts and circumstances of the particular arrangement

## General tax issues for an ICO issuer

- Are you carrying on a business or undertaking a commercial transaction with a profit making intention?
- Structure – sole trader, partnership, company, trust etc
- Registrations – ABN, GST, PAYG, etc
- Status of workers – employees or contractors?
- Residency and source
- Intellectual property considerations

There is already existing ATO web guidance on the relevant principles to apply regarding these issues



## Specific tax issues to consider – ICO issuer

An ICO issuer will need to consider:

- the type of token, products and/or services being offered under the ICO
- what rights, if any, are being offered to investors under the ICO, and what obligations do investors have
- the character of the funds it receives under the ICO

## Specific tax issues to consider – ICO investor

An investor in an ICO will need to consider:

- the products and/or services being offered under the ICO and any rights or obligations provided
- the characteristics of the token or new cryptocurrency they receive under the ICO
- the character of any returns received from the ICO or the resulting token/cryptocurrency, for example income, interest, dividends

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Need advice from the ATO?

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## Resources and channels for advice

- ATO website: *Tax treatment of cryptocurrencies* (QC 42159)
- ATO Community – Cryptocurrency board
- Early engagement request (QC 50061)
- Private ruling (QC 40428)