



Natalie Dürr

Regional Commissioner WA, Senior Executive Leader | ASIC



Rhonda Luo

Senior Specialist | Market Infrastructure | ASIC



Jonathan Hatch

Senior Adviser | Innovation Hub | ASIC



Kirsty Baldassar

Regional Intelligence Manager | Operations Hub | AUSTRAC



Hoa Wood

Assistant Commissioner | Tax Counsel Network | ATO



Lauren Pamerter

Senior Technical Adviser | Tax Counsel Network | ATO



ASIC

Australian Securities & Investments Commission

Initial Coin Offerings and Cryptocurrencies

Natalie Dürr

Regional Commissioner WA, Senior Executive Leader | ASIC

Rhonda Luo

Senior Specialist | Market Infrastructure | ASIC

Jonathan Hatch

Senior Adviser | Innovation Hub | ASIC

6 June 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/

asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings/

Email: innovationhub@asic.gov.au

AUSTRAC regulation of digital currency exchanges

Kirsty Baldassar

6 June 2018



Australian Government

AUSTRAC

Operating environment

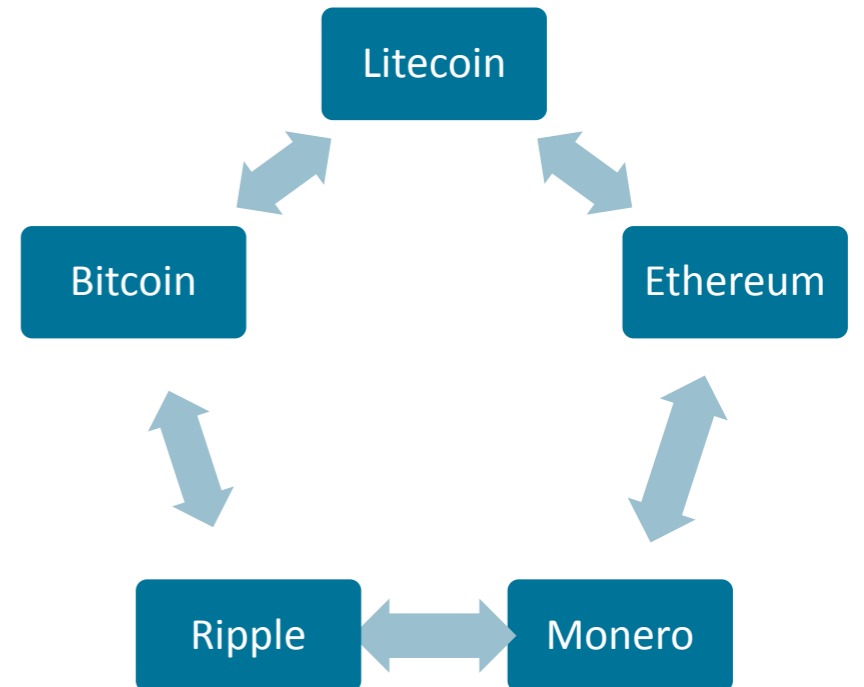


AUSTRAC regulation 3 April 2018

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

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

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



Public statements

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





Australian Government

AUSTRAC

www.austrac.gov.au

DISCLAIMER: The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute nor should it be treated as legal advice or opinion. This presentation contains statements of policy which reflect AUSTRAC's administration of the legislation in carrying out its statutory functions. The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication, including any errors or omissions therein. AUSTRAC recommends that independent professional advice be sought. The information contained herein is current as at the date of this document.



Australian Government

Australian Taxation Office

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

Presented by Assistant Commissioner Hoa Wood and Senior Technical Adviser Lauren Pamerter
Australian Taxation Office / **6 June 2018**

Taxation of cryptocurrency

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

- In March-April 2018, the ATO consulted 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
- ATO is currently considering the feedback from that consultation

Initial coin offerings (ICOs)

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

Need advice from the ATO?

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)