John Price
Commissioner | ASIC

Tony Prior
Director | Compliance | AUSTRAC

Andrea Wood
A/g Assistant Commissioner | Tax Counsel Network | ATO

Lauren Pamenter
Senior Technical Adviser | Tax Counsel Network | ATO
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


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

Email: innovationhub@asic.gov.au
AUSTRAC regulation of digital currency exchanges

Tony Prior
26 April 2018
Operating environment

People committing crimes → Interact with businesses → Financial institutions, bullion dealers, gambling service providers and money service businesses → Report suspicious behaviour and transaction reports

Monitor and enforce AML/CTF Act obligations → Identify illicit activity and apprehend people committing crimes

AUSTRAC

Collect, analyse, disseminate financial intelligence → Feedback of effectiveness of financial intelligence

Other information and intelligence

Revenue, law enforcement, national security and other partner agencies
AUSTRAC regulation 3 April 2018

Regulated: Money/Cryptocurrencies

Not regulated: Crypto/Crypto

- Bitcoin
- Ethereum
- Ripple
- Zcash
- Litecoin
- Dash
- Monero
- Ethereum Classic
- NEM
- Stratis
- Bitcoin Cash
- NEO
- Ripple
- Monero
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

<table>
<thead>
<tr>
<th>Act reference</th>
<th>Reporting obligation</th>
<th>Does this obligation apply to digital currency exchanges?</th>
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<tbody>
<tr>
<td>s41</td>
<td>Suspicious matters</td>
<td>√</td>
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<tr>
<td>s43</td>
<td>Threshold transactions</td>
<td>√</td>
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<tr>
<td>s45</td>
<td>International funds transfer instructions</td>
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<tr>
<td>s47</td>
<td>AML/CTF compliance reports</td>
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AUSTRAC assistance to industry

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

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

• 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
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)