

TD 2014/D13 - Income tax: is Bitcoin trading stock for the purposes of subsection 70-10(1) of the Income Tax Assessment Act 1997 (ITAA 1997)?

 This cover sheet is provided for information only. It does not form part of *TD 2014/D13 - Income tax: is Bitcoin trading stock for the purposes of subsection 70-10(1) of the Income Tax Assessment Act 1997 (ITAA 1997)?*

This document has been finalised by TD 2014/27.

 There is a Compendium for this document: **TD 2014/25EC** .

 You can access a guidance paper that has been issued with this draft Determination. The guidance paper provides an overview of the tax treatment for transactions associated with crypto-currencies, specifically Bitcoin. Where other crypto-currencies have the same characteristics as Bitcoin, the information in the guidance paper applies equally to the taxation treatment for other crypto-currencies.



Draft Taxation Determination

Income tax: is Bitcoin trading stock for the purposes of subsection 70-10(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)?

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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Ruling

1. Yes. Bitcoin, when held for the purpose of sale or exchange in the ordinary course of a business, is trading stock for the purposes of subsection 70-10(1) of the ITAA 1997.

Date of effect

2. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

3. While the ATO view will have application for periods prior to its publication, the ATO will not generally apply compliance resources to past year cases in relation to taxpayers who have behaved in a bona fide manner and made a genuine attempt to understand and satisfy their obligations.

Commissioner of Taxation

20 August 2014

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.***

Explanation

What is Bitcoin?

4. This Draft Taxation Determination is part of a suite of determinations issued by the Commissioner on Bitcoin. Accordingly, a detailed description of Bitcoin is contained in Draft Taxation Determination TD 2014/D11 *Income tax: is Bitcoin a 'foreign currency' for the purposes of Division 775 of the Income Tax Assessment Act 1997 (ITAA 1997)?*

5. In accordance with Draft Taxation Determination TD 2014/D12 *Income tax: is Bitcoin a CGT asset for the purposes of subsection 108-5(1) of the Income Tax Assessment Act 1997 (ITAA 1997)*, Bitcoin is considered property for tax purposes.

Is Bitcoin 'trading stock' for the purposes of subsection 70-10(1) of the ITAA 1997?

6. The term 'trading stock' is defined in subsection 70-10(1) of the ITAA 1997 as:

- (a) anything produced, manufactured or acquired that is held for the purposes of manufacture, sale or exchange in the ordinary course of a *business; and
- (b) *livestock.

7. The term 'anything' is not defined in the ITAA 1997 and therefore takes its ordinary meaning taking into account the legislative context in which the term is used. According to the *Macquarie Dictionary*, the term 'anything' means 'any thing whatever; something, no matter what; a thing of any kind'.

8. The Commissioner considers the ordinary meaning of the term 'anything' when considered in its legislative context, however, has a narrower meaning than the dictionary definition of the term.

9. Throughout Division 70, 'trading stock' is referred to as something that a taxpayer 'holds' or has 'on hand'. It is clear that the legislative context is one which is referring to a thing that is capable of ownership, that is, some form of property. This construction is also supported by the relevant case law.

10. In *Federal Commissioner of Taxation v. Suttons Motors (Chullora) Wholesale Pty Ltd*¹ (*Sutton Motors*), the majority of the High Court noted that shares and land had both been held to be capable of being trading stock and the term's central denotation was '...of goods held by a trader in such goods for sale or exchange in the ordinary course of his trade.'

11. The High Court in *John v. Federal Commissioner of Taxation*² (*John*) stated that the definition of trading stock 'presupposes that the person by whom [goods] are produced, manufactured, acquired or purchased is or will be engaged in trade in those goods.'

¹ (1985) 157 CLR 277; 85 ATC 4398; (1985) 16 ATR 567.

² (1989) 166 CLR 417; 89 ATC 4101; (1989) 20 ATR 1.

TD 2014/D13

Status: **draft only – for comment**

Page 3 of 5

12. It is evident from the context in *John* in which the definition of trading stock was being considered that the trading activity to which the definition applies involves the passing of a proprietary interest in the things traded. It is also clear from *Sutton Motors* that intangible property such as shares are capable of being trading stock.

13. Accordingly, as Bitcoin is property for tax purposes, Bitcoin is 'trading stock' for the purposes of subsection 70-10(1) of the ITAA 1997 where it is held for the purpose of sale or exchange in the ordinary course of a business.

TD 2014/D13

Appendix 2 – Your comments

14. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.

15. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	3 October 2014
Contact officer:	Andrea Wood
Email address:	andrea.wood@ato.gov.au
Telephone:	(02) 6216 1486
Facsimile:	(02) 6216 1250
Address:	Australian Taxation Office PO Box 9977 CIVIC SQUARE ACT 2608

TD 2014/D13

Status: **draft only – for comment**

Page 5 of 5

References

Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations:*TD 2014/D11; TD 2014/D12; TD 2014/D14;
GSTR 2014/D3; TR 2006/10*Subject references:*

- foreign currency
- trading stock

Legislative references:

- ITAA 1997 70-10(1)

Case references:

- Federal Commissioner of Taxation v. Suttons Motors (Chullora) Wholesale Pty Ltd (1985) 157 CLR 277; 85 ATC 4398; (1985) 16 ATR 567
- John v. Federal Commissioner of Taxation (1989) 166 CLR 417; 89 ATC 4101; (1989) 20 ATR 1

Other references:

- *The Macquarie Dictionary*, [Online], viewed 13 August 2014, www.macquariedictionary.com.au

ATO references

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