TD 2014/25EC - Compendium

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Ruling Compendium

This is a compendium of responses to the issues raised by external parties to:

- TD 2014/D11 *Income tax: is bitcoin a 'foreign currency' for the purposes of Division 775 of the Income Tax Assessment Act 1997?*
- 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?*
- TD 2014/D13 *Income tax: is bitcoin trading stock for the purposes of subsection 70-10(1) of the Income Tax Assessment Act 1997?*
- TD 2014/D14 *Fringe benefits tax: is the provision of bitcoin by an employer to an employee in respect of their employment a property fringe benefit for the purposes of subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986?*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
TD 2014/D11 (Finalised as TD 2014/25)		
1	**Germany treats bitcoin as units of account** ATO's initial determination states: 'As Bitcoin is not legally recognised as a unit of account and form of payment by the laws of any other sovereign country it is not 'foreign currency' for the purposes of Division 775 of the ITAA 1997'. This is not correct. In fact: The Finance Ministry of Germany has declared: 'Bitcoin is a financial instrument and is a unit of account'. http://www.cnbc.com/id/100971898#.	This quote from paragraph 33 of TD 2014/D11 does not fully reflect the view taken in earlier paragraphs of the Draft TD, particularly paragraph 31. Accordingly, changes have been made to the Draft TD to clarify that being a 'unit of account' (however defined by a foreign country) is not all that is required in order to be considered to be foreign currency, as the requirement from paragraph 31 of the Draft TD that it be legally accepted as a means of discharging monetary obligations is critical. The TD now states that to be a foreign currency bitcoin would need to be 'a monetary unit recognised and adopted by the laws of any other sovereign State as the means for discharging monetary obligations for all transactions and payments in a sovereign State'. Germany's BaFin (the Federal Financial Supervisory Authority), in classifying bitcoin as units of account (*Rechnungseinheiten*), has not legally accepted bitcoin as a means for discharging monetary obligations in

		Germany. Rather this classification under German law simply means that bitcoin is a unit of value, not being legal tender, that serves as a private means of payment in barter transactions. This classification is for the purposes of German banking law to ensure that entities trading in Bitcoin or undertaking bitcoin mining pools will be subject to regulation. Germany does not recognise bitcoin as legal tender, nor does it consider bitcoin is foreign currency.
2	**Germany treats bitcoin as units of account** In TD 2014/D11 point 33: 33. As Bitcoin is not legally recognised as a unit of account and form of payment by the laws of any other sovereign country it is not 'foreign currency' for the purposes of Division 775 of the ITAA 1997. In late 2013, Germany has recognised Bitcoin as an unit of account: http://www.cnbc.com/id/100971898 'Virtual currency bitcoin has been recognized by the German Finance Ministry as a 'unit of account', meaning it is can be used for tax and trading purposes in the country. Bitcoin is not classified as e-money or a foreign currency, the Finance Ministry said in a statement, but is rather a financial instrument under German banking rules. It is more akin to 'private money' that can be used in 'multilateral clearing circles', the Ministry said.' While Germany does not recognise Bitcoin as foreign currency, it is recognised as a unit of account by at least one sovereign, and it is recognised as a form of	See response above.

	payment (but not currency). I believe this should make Bitcoin fit under the definition of 'foreign currency'.	

3	**Bitcoin is foreign currency taking into account the ordinary meaning, legislative context and purpose** It was submitted that Bitcoin is 'currency' taking into account the ordinary meaning, legislative context and legislative purpose. ***Currency Act 1965*** 'Currency' is not defined in the Currency Act – so there is no explicit 'legal meaning' which can be adopted for tax law purposes. It is accepted that sections 9 and 11 of the Currency Act require transactions and payments, respectively, to be done or made in either 'the currency of Australia' or 'the currency of some country other than Australia'. For a relevant financial transaction or payment to be legally effective, there is no third permissible option. It is also accepted that 'the currency of some country other than Australia' necessarily requires recognition by a sovereign State other than Australia. It is an uncontroversial position that Bitcoin does not have State recognition. Accordingly, Bitcoin cannot be 'currency of Australia' or 'currency of some country other than Australia'. The draft TD appears to take the view that because the Currency Act only permits the use of two specific types of currency, the definition of 'currency' only comprises those two elements.	**The Currency Act** The Draft TD is not claiming the Currency Act defines the term 'currency'. The Draft TD refers to the Currency Act to identify the legal meaning of 'Australian currency' as this term is undefined in the *Income Tax Assessment Act 1997* (ITAA 1997) and is used in the definition of foreign currency in the ITAA 1997. The Draft TD then identifies that the Currency Act approach of permitting transactions and payments relating to money in Australia to only be undertaken with either Australian currency or currency of some other country (which the submission concedes bitcoin is neither), gives rise to a *concept* of 'currency' under the Currency Act that aligns with the State theory of money. The Draft TD considers the approach the ITAA 1997 takes of defining foreign currency as the antithesis of Australian currency demonstrates an intention that Parliament intended the term currency in the ITAA 1997 to be used in the same sense as it is used in the Currency Act. It would be a peculiar and inconsistent outcome if the Tax Acts recognised something as a foreign currency but that thing could not be legally used to fulfil monetary obligations in Australia as a foreign currency under the Currency Act. **The Commissioner's statutory duty** The Commissioner is not going beyond his statutory duty by referring to the Currency Act in order to identify the legal meaning of the term Australian currency. This is a normal part of the statutory interpretation process, and in doing so the Commissioner is not seeking to administer the Currency Act. The Currency Act does not need to have a taxing purpose in order for its

	Sections 9 and 11 of the Currency Act only permits – and only identifies – those two types of currency. But the wording of those provisions does not provide that the definition of 'currency' only comprises those two identified elements. The provisions of the Currency Act indicate that State recognition and adoption of a monetary unit under law are critical to a currency being deemed to be an acceptable currency for transactions and payments covered by the Currency Act. However, those same provisions do not force a conclusion that those elements are critical and necessary in a definition of the term 'currency'. **The Commissioner's statutory duty** In the exercise of his statutory duty to administer the taxation statutes, the Commissioner should not rely on an argument that Bitcoin is not an accepted currency for the purposes of the Currency Act. The purposes of the Currency Act do not include ensuring that taxpayers are taxed correctly on their transactions or enabling taxpayers to correctly calculate their tax liabilities. Section 8 of the *Income Tax Assessment Act 1936* (ITAA 1936) provides that the Commissioner shall have the general administration of the Taxation Acts. This power does not oblige nor permit the Commissioner to administer other laws over which he has no administrative jurisdiction. The extent to which non-taxation statutes do or do not adequately deal with the rising emergence of Bitcoin and similar digital currencies does not govern the manner in which the Commissioner administers the	definition of Australian currency to be relevant to determining the legal meaning of that undefined term in the ITAA 1997. The Commissioner considers the concept of 'currency' in the Currency Act is a relevant consideration in determining what Parliament intended when defining foreign currency in the ITAA 1997 as the antithesis of Australian currency. This approach is explained in detail at paragraph 28 of the TD with supporting case law. **Ordinary meaning** The Draft TD is not stating that the ordinary meaning is not relevant. The Draft TD addresses the ordinary meaning and concludes that bitcoin does not satisfy that ordinary meaning. The reference to the conclusion on the ordinary meaning not being 'critical' is to highlight that even if the usage and acceptance of bitcoin throughout the community where to increase substantially in the future such that bitcoin might be considered to satisfy the ordinary meaning, the legislative context and purpose requires that the meaning of currency for the purposes of the ITAA 1997 is different to the ordinary meaning of money and State recognition is required. The figures provided in the submission do not demonstrate that bitcoin usage and acceptance is widespread throughout the community. The bitcoin eftpos card referred to in the submission does not actually involve a customer providing bitcoin to businesses who accept eftpos, the card merely converts the customer's bitcoin to Australian dollars and provides those Australian dollars to the business. The submission refers to bitcoin eftpos cards and ATMs being 'symbols' of widespread use and that the investment in the sector means that it can be 'anticipated' that bitcoin will become more widespread. The Commissioner cannot interpret the law based on what may or may not happen in the future. The United States (US) District Court decision in *Securities and Exchange Commissioner v Trendon T. Shavers and Bitcoin Savings and Trust* related to non-tax legislation and has no relevance for determining the ordinary meaning of currency in the ITAA 1997. The US Inland Revenue Service

	taxation laws to ensure that a taxpayer pays the correct amount of tax. **Ordinary meaning** **Relevance of the ordinary meaning** The submissions disagree with the view expressed in paragraph 25 that it is not critical to conclude on whether Bitcoin is 'currency' and 'money' under the ordinary meanings of those terms. The term 'currency', as it is used in the section 995-1 of the ITAA 1997 definition of 'foreign currency', is not itself statutorily defined by either the taxation statutes or, as explained above, by the Currency Act. Accordingly, the ordinary meaning of the term is relevant, taking into account the legislative context and purpose. This is not inconsistent with the statute providing 'its own particular conception of currency' (paragraph 25). **Why Bitcoin is 'currency' under its ordinary meaning** CoinJar, an Australian Bitcoin startup, estimates that Bitcoin is currently being used by 500,000 Australians. Coinjar claims that over the 12 months leading up to September 2014, it has processed more than $50 million worth of bitcoin transactions for more than 30,000 customers. The business has recently commenced trialling a bitcoin EFTPOS card, which can be topped up with Australian dollars and enables users to use their Coinjar bitcoin wallet funds in any store that accepts EFTPOS.[1] Earlier this year, ABA Technologies installed Australia's	have published their view that bitcoin is not currency for tax purposes. It is important to note that US law is not relevant to the interpretation of Australian tax law. It is further noted, that the US District Court decision was not considered relevant for interpreting US tax law.

[1] 'CoinJar pioneers Australia's first bitcoin EFTPOS card', Kye White, 18 September 2014, www.startupsmart.com.au.

	first Automatic Teller Machine (ATM) and plans to roll out 100 more bitcoin ATMs in Australia by the end of 2016. Further, it is indisputable that the examples discussed, EFTPOS cards and ATMs, both facilitate and are symbols of the 'widespread use' of any State-recognised currency which the ATO would accept to be 'money'. Applying such technologies, which are common and pedestrian in relation to transactions involving accepted forms of 'money', to Bitcoin will result in perception and acceptance that Bitcoin is as valid a medium of exchange as other forms of 'money'. While it is impossible to predict the level of use or of acceptance in the future, the recent experiences and investments of Bitcoin enterprises certainly suggest that the sector anticipates use to become more widespread and accepted. The thresholds of use and/or acceptance that may qualify as 'currency' are arbitrary measures; trends and qualitative factors should be taken into account. Late in 2013, the United States (US) District Court in *Securities and Exchange Commission v. Trendon T. Shavers and Bitcoin Savings and Trust*[2] found that 'bitcoin is a currency or form of money, and investors wishing to invest in [the accused's entity] provided an investment of money.' The court's decision adds to a growing body of policy in the US markets and references in US law that assume bitcoin to be a currency. For example, the US Treasury Department's director of the Financial Crimes	

[2] CASE NO. 4:13-CV-416.

	Enforcement Network called companies that deal in bitcoin 'financial institutions' that had 'the same obligations as any money services business'. And a California court attempted to shut down the US Bitcoin Foundation on the grounds that it was operating an unlicensed 'money transmission' business. The US Internal Revenue Service published its view that virtual currency is to be treated as property for US tax purposes. However, this view is based on US taxation law. The trend in the US to increasingly recognise Bitcoin as currency or money for commercial and economic purposes clearly shows that it would be proper to characterise Bitcoin as 'currency' under the ordinary meaning of the term. **Section 995-1 and Division 775** In the definition of 'foreign currency' there is no explicit or implicit requirement that 'foreign currency' must be a currency of 'a country other than Australia' or otherwise have the recognition of a particular State. They accept the Commissioner's interpretation of 'Australian currency' but in the context of the definition of 'foreign currency' in section 995-1 of the ITAA 1997, 'Australian currency', however defined, is only a subset of 'currencies'. The provisions of Division 775 of the ITAA 1997, in relation to which the section 995-1 definition of 'foreign currency' is critical, do not implicitly or explicitly require that the 'foreign currency' in question be recognised by a State in order for the provisions to be operative. In fact, there is no mention of 'foreign country', 'country other than Australia', 'another country' or similar within the Division.	**Section 995-1 and Division 775** The submission claims that bitcoin being treated as a foreign currency does not contravene the legislative purpose and context of the section 995-1 definition of foreign currency as it would enable fluctuations in the value of bitcoin to be treated at an appropriate taxing point on revenue account. However, the correctness of this claim depends on the fundamental issue of whether Parliament intended things, such as bitcoin, which are not recognised by a State as a legal form of discharging monetary obligations, to be covered by the term 'foreign currency'. The fact that something does not contravene the legislative purpose and context of the provision and it is also something that fluctuates in value does not mean that Parliament intended it to be captured by Division 775. The critical issue is whether the thing is a foreign currency.

	The construction of Division 775 does not set any legislative or operational impediment for Bitcoin to be treated as foreign currency. It is possible to compare the Australian dollar value of Bitcoin at specific points in time to calculate any 'currency exchange rate effect'. It is also possible to measure Bitcoin by reference to the money (whether in Australian dollars or in the monetary unit of another sovereign State) exchanged for it or by the market value of the goods or services exchanged for it. While there will be administrative challenges in ensuring compliance, these challenges will exist regardless of which regime Bitcoin is taxed under. The explanatory memorandum to the Act that introduced Division 775 indicates that the legislative context was to provide a statutory framework under which a gain or loss that occurs as a result of currency exchange rate movements or fluctuations is brought to account at an appropriate time for tax purposes. Bitcoin as foreign currency does not contravene the legislative purpose and context of the section 995-1 definition of foreign currency. It would enable fluctuations and changes in the value of Bitcoin to be treated at an appropriate taxing point, on revenue account. **Other** **How is 'foreign currency' relevant for tax purposes? (paragraphs 4-6)** Paragraph 4 discusses the anti-overlap rule in subsection 775-15(4) of the ITAA 1997 in relation to foreign currency gains. It is suggested that there be an equivalent comment in relation to subsection 775-30(4) of the ITAA 1997 which provides that there is no double	**The anti-overlap rule** As requested by the submission, the TD now also includes a reference to the corresponding rule in subsection 775-30(4) of the ITAA 1997 that prevents double deductions for foreign exchange losses. **Concluding remarks** The conclusion in the TD that bitcoin is not foreign currency will not need to be reconsidered if in the future bitcoin usage and acceptance become widespread throughout the community because the TD concludes that the meaning of foreign currency, in light of its legislative context and purpose, essentially requires State recognition for its use as a form of discharging monetary obligations in a foreign country.

	deduction for a foreign exchange loss. **Concluding remarks** Treating Bitcoin as foreign currency will: • comply with current law, as explained above • provide a robust framework which will insulate against what is likely to be sudden and large changes. For example, once the use of Bitcoin increases to an arbitrary level that the Commissioner may consider to be sufficiently 'widespread', the taxation treatment does not require change • maximise the efficient use of resources, as the Commissioner would not be required to reconsider the treatment of Bitcoin under the same law at future, arbitrary points in time; and • provide fairness and certainty to taxpayers. A taxpayer, or different taxpayers, undertaking the same transaction in the same circumstances at different points in time will not be taxed differently simply because some changes (for example in the level of use, or if it receives recognition by sovereign states) means that it starts being 'foreign currency' according to the interpretation expressed in the draft TD. The submissions request that the Commissioner, in consultations with government, lobbies for legislative change to provide greater certainty for taxpayers who will increasingly use Bitcoin, other virtual currencies and other electronic or digital media of exchange which may be developed in the foreseeable future.	This outcome provides a robust framework, it does not create inefficient use of resources, and provides fairness and certainty for taxpayers. The ATO consulted with Treasury very early on in addressing this issue. The ATO has advised Treasury, the Assistant Treasurer and the Treasurer of the ATO view with respect to bitcoin and the alternative views and compliance issues being raised by the community. Treasury have not raised any concerns with the ATO view.
4	**A more flexible interpretation is open on whether bitcoin is foreign currency**	The conclusion in the TD that bitcoin is not foreign currency will not need to be reconsidered if in the future bitcoin usage and acceptance becomes a

	The submission questioned the ATO view that bitcoin does not satisfy the ordinary meaning of 'money' as per *Moss* and *Travelex*. They consider the position suggests the ATO view could change over time. Given the emergence not only of Bitcoin transactions but recent Bitcoin ATMs, they invite the ATO to reconsider this view. If Bitcoin were to be recognised as a currency by any sovereign country, then Bitcoin will be a foreign currency. Again, this suggests the ATO position is potentially changeable and subject to the approaches taken by any particular country, and therefore uncertain. The submission did not accept the ATO approach of following Mann and Proctor in rejecting a functional approach. It was considered that a more flexible interpretation is open. For example, Arthur Nussbaum in *Money in the Law* (1939) The Foundation Press Inc., Chicago takes an opposite position to that of F A Mann in *The Legal Aspect of Money* (5th ed 1992) The Clarendon Press, Oxford. Proctor enunciated the Mann approach in the 2005 work cited in TD 2014/D11. By contrast with Mann, Nussbaum maintains that all things must be counted as money that functions as money. Ultimately, according to Nussbaum it is society and custom that determines what is money. Mann was sceptical that the predecessor of the Euro (the European Currency Unit) could develop into money because it was not issued by a State, but instead was supra-national. Consequently, the emphasis on state sovereignty in TD 2014/D11 – citing Proctor and Mann – arguably does not reflect commercial reality. As *Moss*	widespread throughout the community because the TD concludes that the meaning of foreign currency, in light of its legislative context and purpose, essentially requires State recognition for its use as a form of discharging monetary obligations in a foreign country. The possibility that a sovereign state may in the future accept bitcoin as a legal form of discharging monetary obligations in their state does not mean the ATO's view is uncertain and thus requires reconsideration. This possibility extends beyond bitcoin and simply reflects the sovereign right of another state to accept something as currency in their state. This possibility does not justify taking a different view of what foreign currency means because any meaning of foreign currency will be subject to what another sovereign state considers to be currency within their own country. The ATO considers Nussbaum's approach does not reflect the Australian case law on this issue, as it is a far broader concept of money than the tests applied in *Moss* and *Travelex* and the reference to Mann in *Messenger Press*. The submission's suggestion that 'generally accepted' in *Travelex* should be considered met where there are simply merchants who accept bitcoin as money, and thus the parties to the transaction treat bitcoin as money, is untenable as it completely disregards the presence of the word 'generally' and it effectively involves applying a test of 'accepted'. There is no legal meaning of 'generally' and the ordinary meaning includes elements such as 'for the most part, extensively or commonly', which denote the opposite to a mere transactional specific meaning. Furthermore, the test in *Travelex* requires more than just general acceptance, it also requires general acceptance for the 'payment of debts', and it must be passed freely from hand to hand 'throughout' the community. The ATO view, in following the State theory of money, does not require that a sovereign state must 'issue' the currency in order for it to be foreign currency, rather it requires that a sovereign state accept it as a legal form of payment for the discharge of monetary obligations in that state. The UK HMRC position does not provide the technical analysis underlying

	v. Hancock demonstrates, notwithstanding the rules of statutory interpretation cited in the Draft TD in the context of the Acts it refers to, another approach legally is open which would accord more with commercial reality. The Submission also suggested that the ATO has interpreted Emmett J's reference in *Travelex* to 'money' as being 'generally accepted' too narrowly from a legal point of view. The correct level of generality should be whether there are merchants who operate so as to accept Bitcoin as money. Then the test would be whether Bitcoin has been treated as money by the parties to the transaction. The UK HMRC position appears to treat bitcoin as foreign currency. In the absence of change in the final ATO view, a specific 'Alternative views' section should be added to the final TD clearly setting out the alternative views. Treating bitcoin as foreign currency may provide more certain and consistent matching of gains and losses in relation to bitcoin to underlying transactions for business taxpayers, without the inherent uncertainty of having to determine whether bitcoin is trading stock, and income or capital in nature depending on the particular facts and circumstances of a taxpayer.	their view and does not expressly state that bitcoin is foreign currency for the purposes of their domestic tax law. The ATO can and must only apply its domestic law to determine whether bitcoin is foreign currency. The alternative view that bitcoin satisfies the ordinary meaning of currency and money is addressed in the body of the TD. The ATO does not consider a separate alternative view section in the TD is warranted. The arguments to support a different contextual view of foreign currency based on the fact that Division 775 could be applied to fluctuations in value of bitcoin because it is possible to compare the Australian dollar value of bitcoin at specific points in time are very weak, as the argument could equally apply to any item that fluctuates in value, for example seasonal fruit. This does not mean that the legislative context and purpose requires that bananas should be foreign currency. The consequences that flow from concluding that bitcoin is not foreign currency (for example, having to determine whether bitcoin gives rise to ordinary income or capital gains and whether it is held as trading stock) are the normal tax consequences of any non-monetary item that may be used in a barter transaction or for investment or business purposes. Having different tax consequences depending on the facts and circumstances of a particular taxpayer does not justify adopting a different interpretation of the term foreign currency.
5	**If bitcoin is foreign currency, small value bitcoin wallets should be excluded under Division 775** If ATO changed its view and found bitcoin to be foreign currency, Subdivision 775-D of the ITAA 1997 provides some exemptions (forex & CGT) where the balance of a	The ATO is not proposing to change its view that bitcoin is not foreign currency, so this issue does not need to be addressed in the Final TD. Even if this view changed, the issue of whether a bitcoin wallet could be a 'qualifying forex account' would need to take into account that the Draft GST Ruling on bitcoin currently applies the legal meaning of 'account' in the GST definition of money, which would prevent a bitcoin wallet from being an

	qualifying forex account is no greater than A$250,000. A qualifying forex account is defined as an account that is denominated in a particular foreign currency, and either has the primary purpose of facilitating transactions or is a credit card account. The question would be whether the ATO would accept a Bitcoin wallet (or other type of Bitcoin account) as a qualifying forex account. Our initial thoughts are that it is, on the basis that the wallet is denominated in Bitcoin (that is, the foreign currency) and has the primary purpose of facilitating transactions. This issue should be considered in greater detail given that many small business taxpayers may be able to avail themselves of the exemption (and thus have their bitcoin transactions taxed wholly under the ordinary income etcetera rules).	account. The ATO would also disagree with the outcome suggested by the submission that small business taxpayers that avail themselves of the exemption in Subdivision 775-D of the ITAA 1997 would have their bitcoin transactions taxed wholly under the ordinary income rules etcetera. Such an outcome would defeat the purpose of the provisions. The ATO considers that, taking into account the legislative context and purpose, Division 775 of the ITAA 1997 operates such that where amounts are disregarded under a provision in Division 775 those amounts are dealt with by Division 775 and the anti-overlap rule ensures the ordinary income rules etcetera do not apply to the disregarded amount.
TD 2014/D12 (Finalised as TD 2014/26)		
6	**If bitcoin is foreign currency, is there a tension with TD 2002/25** The submission agreed with the view that, on balance, Bitcoin should be a 'CGT asset' for the purposes of subsection108-5(1) of the ITAA 1997, on the basis that Bitcoin is 'foreign currency'. Note 1 to section 108-5 specifically states that 'foreign currency' is an example of a CGT asset. If the ATO were to change its view and accept that Bitcoin should be treated as 'foreign currency' for income tax purposes, there is an issue whether this creates a tension with the ATO's proposed approach and the approach taken in TD 2002/25: *Income tax:*	The ATO is not proposing to change its view that bitcoin is not foreign currency. Accordingly, no tension arises with respect to TD 2002/25. Even if the ATO were to change its view, there would be no tension with TD 2002/25 because bitcoin is not legal tender. In addition, note 1 to section 108-5 of the ITAA 1997 specifically states that foreign currency is a CGT asset.

	capital gains: is Australian currency a CGT asset under section 108-5 of the Income Tax Assessment Act 1997 (ITAA 1997) if it is used as legal tender to facilitate a transaction? The submission considered that the positions can be reconciled in that TD 2002/25 is limited to 'Australian currency' when it is used as legal tender, which under existing law, is not applicable to Bitcoin irrespective of whether Bitcoin is foreign currency or not.	
7	**Include examples of the application of the CGT anti-overlap rule** If ATO decides that Bitcoin is 'foreign currency', paragraph 16, which discusses the anti-overlap rule in section 118-20 of the ITAA 1997, should be amended. It should include a specific reference to section 118-20 where part or all of the capital gain is assessable as a foreign currency gain pursuant to Division 775 of the ITAA 1997. An appropriate example should also be included in the final TD. If the ATO maintains the view that Bitcoin is not 'foreign currency', they request that an appropriate example of the application of section 118-20 (discussed in paragraph 16) where part or all of the capital gain or loss is assessable or deductible on revenue account be included in the final TD.	The ATO is not proposing to change its view that bitcoin is not foreign currency, so the requested change specifically regarding Division 775 of the ITAA 1997 is not necessary. Whilst it is not appropriate to include an example of the application of the anti-overlap rule in the ruling section of the TD because the ruling section does not discuss the anti-overlap rule, an illustrative example has been used in the Explanation section to make it clear that gains otherwise assessable (in that illustration, under section 6-5 of the ITAA 1997) will reduce a corresponding capital gain. Whether a taxpayer holding bitcoin derives gains or losses that are of a revenue or capital nature will depend on the facts and circumstances of each case, just like other CGT assets, such as shares. Additional clarification has been added to the TD to provide guidance on the factors the Commissioner will take into account in order to determine whether an individual taxpayer undertaking an isolated transaction with bitcoin will derive ordinary income. Additional guidance has also been added to TD 2014/D13 to explain in what circumstances a business taxpayer will hold bitcoin as trading stock and thus be taxable under ordinary income provisions.
8	**Confirm no change to ATO view regarding know-**	There is no inconsistency between the position in the TD and TD 2000/33.

	how and information not being CGT assets The submission expressed concern that paragraph 13 of the TD may have broader unintended consequences for the CGT treatment of know-how and information. The submission stated that it does not believe that the ATO is seeking to change its long held view that information or know-how is generally not a CGT asset - see TD 2000/33. It was therefore requested that, for the avoidance of doubt, the final TD should expressly confirm that the position taken in the final TD does not represent a change in view of the capital gains tax treatment of know-how or information generally.	The TD concludes that the law of confidential information would point to the existence of an equitable right in relation to a bitcoin private key, enforceable by a court, and thus a CGT asset. This means that if someone obtained unauthorised access to another person's private key, the original holder of the private key would be entitled to an equitable remedy. TD 2000/33 concludes know-how is knowledge or information and is not a CGT asset because it is neither property nor a legal or equitable right. TD 2000/33 explains at Note 2 that 'a right in respect of know-how, such as a contractual right to require the disclosure or non-disclosure of know-how, is a CGT asset under subsection 108-5(1) of the Income Tax Assessment Act 1997. Similarly, a licence to use know-how is a CGT asset.' Accordingly, it is the equitable or contractual rights that relate to a bitcoin private key and know-how that make them CGT assets. A footnote has been added to the TD to confirm this.
9	**Include view regarding personal use asset in ruling section of TD** It was submitted that the personal use classification is important, in not being available for businesses, and the CGT exemption for personal use assets will be important for individual taxpayers that may come into possession of Bitcoin. The submission encouraged the ATO to incorporate those views in the Ruling part of the final TD.	Given that the TD specifically states that it does not intend to define the circumstances in which bitcoin would be a personal use asset, it would be counter to this intention and difficult given the nature of the issue (it depends on facts and circumstances of the taxpayer) to include any definitive guidance on the issue in the Ruling section of the TD. Two examples have been added to the TD to provide guidance on two clear and typical scenarios on whether bitcoin will be a personal use asset.
10	**Clarification sought on when bitcoin will be a personal use asset** Can you clarify the tax position of bitcoins in the following scenarios? 1. If buying a bottle of wine and aging it for 10 years before consumption is okay - then can I 'mature'	The Federal Court in *Favaro v. FC of T* 96 ATC 4975; (1996) 34 ATR 1 (*Favaro*) considered the term 'personal use' in the *Income Tax Assessment Act 1936* equivalent to subsection 108-20(2): > The expression 'personal use' is used in s.160B of the ITAA in contradistinction to use for business or profit making purposes. The Draft TD explains that there could be other forms of use apart from use

	my bitcoins for 10 years before 'consuming' them by buying goods and services? 2. Is buying bitcoins for spending in retirement 'consumption' or 'investment'? 3. Is buying bitcoins and then buying a house with it 'consumption' or 'investment'? 4. What if I sold my bitcoins then bought a house with it? Is that 'consumption' or 'investment'? 5. Is there a one year deadline for spending bitcoins that have been purchased for personal use? I don't see it written anywhere in the personal use asset definition that consumption must happen within a one year period.	for personal, business or profit making purposes and taxpayers can seek private rulings if they require further clarification on their particular circumstances. A number of short illustrative examples have been added to the TD to provide guidance, in respect of certain clear and typical scenarios, on whether bitcoin will be a personal use asset. It is not appropriate to provide guidance in the TD on each of the scenarios raised in this submission. Whilst any assessment of whether or not an asset is a personal use asset will depend on a consideration of all the relevant facts and circumstances, it would seem that based on the limited information in each of the scenarios set out, that the outcome would likely be as follows: 1. A person does not consume bitcoin in the same sense that a person consumes (drinks) wine. A person who purchases bitcoin, holds onto them for ten years and then uses them to purchase goods and services would typically be considered to have held the bitcoin for profit making purposes and accordingly they will not be considered personal use assets. An example has been added to the TD to provide guidance on this issue. 2. A taxpayer who purchases bitcoin with the intention of holding onto them for a number of years so that they appreciate in value and the profit can be spent in their retirement, is using the bitcoin for investment or profit making purposes and the bitcoin is not a personal use asset. 3. If a taxpayer purchases bitcoin to buy a house, the issue of whether the bitcoin is a personal use asset will depend on how long the taxpayer held the bitcoin for before they used it. If the taxpayer made the purchase of the house not long after purchasing the bitcoin this demonstrates the bitcoin was used as a medium of exchange as opposed to holding it for profit making purposes. Whether the use of the bitcoin in these circumstances is such that the bitcoin will be a personal use asset will depend on the intended use of the house. On

		the other hand, if the taxpayer held onto the bitcoin for a period of time with the intention of waiting until the value of the bitcoin increased before using them to purchase a house, the circumstances may be such that the taxpayer holds the bitcoin for profit making purposes rather than potentially as a personal use asset. 4. The relevant facts to consider in determining whether bitcoin are a personal use asset are those that relate to a taxpayer's purchase and use of the bitcoin (that is, why did they acquire the bitcoin? To later transfer for a profit or as a medium of exchange? If as a medium of exchange, what did the taxpayer purchase with the bitcoin? If they acquired the bitcoin as a medium of exchange, and used them to purchase an investment asset, the bitcoin is not a personal use asset. See *Favaro*). If bitcoin are acquired as a medium of exchange, but instead sold for Australian dollars, the use to which the taxpayer puts that Australian currency, for example buying a house, may be relevant if acquiring the house is the reason the taxpayer disposed of the bitcoin. 5. There is no one year deadline for the personal use asset test. All the relevant facts and circumstances will be taken into account by the Commissioner in order to determine whether a taxpayer held bitcoin as a personal use asset.
11	**Clarification sought on when bitcoin will be a personal use asset** TR 92/3 does not appear to provide adequate guidance with respect to bitcoin due to the nature and divisibility of bitcoin, especially the 'personal use' aspect of bitcoin. It creates greater uncertainty as to how the ATO intends to tax bitcoin spending. For example: 1. If I purchased a dozen bottles of wine for $1,000 and they appreciated to $20,000 each. I can apply	Whilst any assessment of whether or not an asset is a personal use asset will depend on a consideration of all the relevant facts and circumstances, it would seem that based on the limited information in each of the scenarios set out, that the outcome would likely be as follows: 1. The personal use asset exemption would apply to each bottle of wine, unless (1) they are part of a set, (2) would ordinarily be disposed of as a set and (3) you dispose of them in more than one transaction for the purpose of trying to obtain the personal use asset exemption in section118-10 (see section 108-25 of the ITAA 1997). This principle also applies to bitcoin, that is, each bitcoin is considered a separate

	the personal use exemption on each bottle of wine (is that correct?). Does this principle also apply to bitcoins if each bitcoins is held for 'personal use'? That is, does the ATO count the cost base of each bitcoin? How does the personal use exemption actually apply to bitcoin – per bitcoin unit or per spending event or one $10k cost base exemption over the financial year? 2. The examples in TR 92/3, whilst providing some general guidelines appears unclear to me as it applies to bitcoin. The complication is the 'personal use' aspect of bitcoin. Specifically, under what circumstances would the ATO consider holding bitcoins for 'personal use' reasons as opposed to 'investment'? If I spent some of my bitcoins on living expenses but also some on buying assets – technically, I 'personally used' bitcoin in both situations. That is, I used bitcoin as a currency in both instances. I did not speculate on the value of bitcoins. No one could have seen the large increase in bitcoin value over the last two years. 3. Let's say I bought 5,000 bitcoins three years ago. Some have been spent on investments in bitcoin companies, some have been gambled away, some have been spent on daily living expenses. Will the ATO characterise the entire 5,000 bitcoins as having one purpose or will the ATO segregate each instance of bitcoin spending? In other words, does the purpose change according to how the bitcoins are spent? Preliminary reading of TR 92/3 indicates that the purpose changes on	CGT asset. Bitcoin acquired together are not part of a set for the purposes of section 108-25 and therefore the relevant cost base for the personal use asset test is the money or market value of the property given in order to acquire the individual bitcoin. 2. The TD has been amended to provide further clarification in relation to when a taxpayer will be considered to hold a bitcoin for personal use as opposed to being held for investment purposes. A discussion of the inherent nature of bitcoin has been added along with two examples of clear and typical situations. In the scenario provided in the submission, the taxpayer uses the bitcoin on living expenses and purchasing assets. In this case the taxpayer is using the bitcoin as a medium of exchange and has not held onto the bitcoin for a period of time with the intention of disposing of it for a profit when the market for bitcoin increases. Accordingly, whether or not the bitcoin are personal use assets depends on the nature of the assets for which they were used as a medium of exchange to acquire. If the assets acquired are investment assets, the likely result is that so much of the bitcoin as are used to pay for living expenses would be personal use assets, and those used to acquire income producing assets would not be personal use assets. 3. All of the facts and circumstances regarding the acquisition, use and disposal of the bitcoin are relevant to determining whether the bitcoin are a personal use asset. If the taxpayer acquired the 5000 bitcoin to realise for a profit, which, when they increase in value are later used to invest, gamble and for living expenses, those disposed of bitcoin would not be personal use assets despite how they were spent. In such an example, those bitcoin had been successfully used to generate a profit. If they had instead been acquired as a mode of exchange, the classification of those bitcoin 'spent' as intended will each be determined separately, with regard to how they were actually used. Note that bitcoin so utilised are considered separately to any remaining bitcoin that may continue to be held by the taxpayer for different purposes. For example, the taxpayer may have an intention

	each spending event, but it is unclear. 4. If I purchased 5,000 bitcoins for personal use or hobby reasons (non-investment reasons) and spent some (let's say 500 bitcoins) but now decide that there is some possibility that bitcoin may increase in value in the future, do the remaining 4,500 bitcoins lose its 'personal use' status and become 'investments'? 5. Using the facts of question 4, what if the remaining 4,500 bitcoins are spent over the next 9 years and only ever to cover living expenses? 6. As bitcoins are a highly volatile asset, will the ATO recognise capital losses if I bought 5,000 bitcoins at the start of 2014 at $1,000 each and then sold them for $500 each 6 months later? What if I spent 5,000 bitcoins on personal use (for example daily living expenses) at a rate of $500 each? Will the capital loss be disregarded for 'personal use' reasons? 7. Is there some concept of First In First Out recognised in relation to bitcoins or are taxpayers allowed to apportion which bitcoins have been spent, in accordance with the normal rules on inventory management?	to keep the balance for profit making purposes (and they thus would not be personal use assets). See further example 4 following. 4. Yes, as explained above, the remaining bitcoin that a taxpayer keeps and holds for the purposes of profit making will not be considered personal use assets. 5. If the remaining bitcoin are regularly disposed of in order to pay for living expenses, it seems more likely that the taxpayer is using the bitcoin as a medium of exchange to purchase items for personal use rather than holding the bitcoin for profit making purposes. However, the period over which the disposal/s occur, if lengthy could indicate that the bitcoin is held for investment purposes. The actual outcome will depend on the facts and circumstances of each case. 6. If the 5000 bitcoin are personal use assets, any capital loss a taxpayer makes is disregarded under subsection 108-20(1) of the ITAA 1997. 7. If a taxpayer is regularly acquiring bitcoin and disposing of them for their personal use, for example for online purchases of personal items, there will be no need to keep track of their transactions for income tax purposes. Where, however, a taxpayer is acquiring and selling bitcoin for profit making purposes or as part of their business, they are required to maintain records of the transaction that is, the date of the transactions, the amount in Australian dollars, what the transaction was for, who the other party was), and identify which bitcoin are being used in the relevant exchange.
12	**Personal use asset** How does the personal use asset exception work in a case where for example you acquired bitcoin for $9,000, held them for more than 12 months and then sell them for $45,000?	The facts provided for this example are limited, for example, the intention of the taxpayer when they purchased the bitcoin is not provided. However, on the facts available, it suggests that the taxpayer did not purchase the bitcoin to use as a medium of exchange as no purchases were made with it until disposal over 12 months later. Because of the length of time the bitcoin was held, it is likely that the taxpayer held the bitcoin for the purpose of making a profit. In such a case, the bitcoin would not be a personal use asset.

TD 2014/D13 (Finalised as TD 2014/27)		
13	**Bitcoin held by a business trading in goods should also be trading stock** The submission agreed that bitcoin, when held for the purpose of sale or exchange in the ordinary course of a business, is capable of being trading stock that can be held, for the purposes of the trading stock rules in Division 70 of the ITAA 1997. The ATO's Bitcoin guidance paper considers that trading stock treatment would generally apply to bitcoin exchange transactions and also for bitcoin mining businesses. However, TD 2014/D13 does not mention those or any other alternative examples where trading stock treatment may apply. It merely considers the technical issue of whether bitcoin may qualify as trading stock for income tax purposes. The trading stock position for business (trading) taxpayers that acquire bitcoin to facilitate purchases or sales in the course of carrying on business should be expressly considered in the final TD.	The Guidance Paper, in stating that bitcoin will be trading stock of a bitcoin mining business or a bitcoin exchange business, is making a straightforward application of the law. These two examples have been added to the TD. Clarification has also been included to explain that where a business receives bitcoin as payment for its goods as part of the ordinary course of its business it will be holding the bitcoin as trading stock.
14	**Discuss anti-overlap rule in Division 775** Should the ATO change its view in relation to whether bitcoin is 'foreign currency', the Ruling and Explanation sections of the final TD in relation to trading stock should be amended. The TD should also discuss subsection775-15(4) of the ITAA 1997, which provides an anti-overlap rule to the extent that if a gain is both assessable as a forex realisation gain and assessable under another provision (including Division 70 of the	The ATO is not proposing to change its view that bitcoin is not foreign currency, so the requested change is not necessary.

	ITAA 1997), Division 775 of the ITAA 1997 takes priority (and the gain would not be assessable under the trading stock rules). Similarly, the TD should discuss subsection 775-30(4) of the ITAA 1997, which provides an anti-overlap rule to the extent that if a loss is both deductible as a forex realisation loss and deductible under another provision (including Division 70), Division 775 takes priority (and the loss would not be deductible under the trading stock rules). Appropriate examples should also be included in the final TD.	
TD 2014/D14 (Finalised as TD 2014/28)		
15	**If Bitcoin was money it would be subject to PAYG withholding not FBT treatment** The ATO view in TD 2014/D14 that bitcoin is a property fringe benefit is based on the interpretation that a payment of bitcoin is a 'non-cash benefit' within the section 995-1 of the ITAA 1997 definition. While the submission acknowledged that this will be the case in some circumstances, this is not in fact the case in all circumstances when an employer provides bitcoin to an employee. It was submitted that bitcoin meets the ordinary meaning of 'money', and accordingly is not a non-cash benefit within the section 995-1 definition. Depending on the context in which money is provided to an employee, they note that money can be regarded as property for FBT purposes. ATO ID 2010/151 confirms the ATO view that money is intangible property for the purposes of the FBTAA and can therefore be a property fringe benefit when provided to an employee	The ATO is not proposing to change its view that bitcoin does not satisfy the ordinary meaning of money including for the purposes of the FBTAA. Accordingly bitcoin remains a 'non-cash benefit' that falls for consideration under the FBTAA. The view in the draft TD that bitcoin is a property fringe benefit is based on the situation where an employer agrees to provide bitcoin to their employee in respect of their employment. As the bitcoin is a 'non-cash benefit' it is expressly taken out of the PAYG withholding provisions by section 12-10 of Schedule 1 of the *Tax Administration Act 1953.* The normal FBT rules operate, including those that may apply to the treatment of a gift or prize provided to an employee, for example, as explained in ATO ID 2011/60. The key technical issue that is addressed by the draft TD is whether bitcoin is money in order to determine whether FBT or PAYG provisions apply. At paragraph 9 of the draft TD, it is stated that bitcoin is not 'tangible property' for the purposes of the FBTAA. Accordingly bitcoin cannot be considered an 'in-house property fringe benefit' under subsection 136(1) of the FBTAA as the property provided is not 'tangible property'. A note will be added to the final TD at paragraph 17 to highlight this point.

	other than as salary or wages. Bitcoin may be provided in substitution for an Australian dollar cash payment of salary or wages to an employee in respect of their employment. Therefore, in this circumstance, the bitcoin is being provided as salary or wages. When bitcoin is provided as a reward for services, it should be subject to PAYG withholding. However, there will also be some limited circumstances where it would be more appropriate to treat the provision of bitcoin by an employer to an employee as a property fringe benefit. Such circumstances would arise only where the provision of the Bitcoin is not provided as a reward for services (that is, is provided other than as salary or wages). It was suggested that other circumstances where the provision of bitcoin by an employer to an employee may be regarded as a property fringe benefit may include provision of a gift or prize, for example a gift provided to an employee facing particular hardship. In addition, for employers who undertake bitcoin mining or trading activities, the question arises whether the provision of the bitcoin amounts to the provision of an in-house property fringe benefit. The submission sought clarification on this issue. *Valuation* Where the provision of bitcoin is subject to the PAYG withholding regime, the value of the Bitcoin for the purposes of the regime should be based on the fair exchange value of Bitcoin to Australian Dollars at the time of provision giving a relatively straightforward outcome for taxpayers. Where the provision of Bitcoin is an external property	The provision of bitcoin to an employee in respect of their employment will be subject to the normal valuation rules that apply to the provision of property in determining the taxable value. As noted in the issues raised, that will require a consideration of section 43 of the FBTAA. The ATO does not consider specific guidance on section 43 is required in the final TD.

	fringe benefit, the value in Australian dollars will depend on the time at which it is provided (whether at or about the time the employer acquired it or if there is some delay – refer section 43 of the FBTAA). Given the volatility in the value of bitcoin, in some circumstances, anomalies could also arise in calculating the taxable value of the property fringe benefit, which will depend on the cost and timing of the employer's acquisition of the bitcoin. In particular, the meaning of 'at or about the time' may need to be explored. The volatility of bitcoin's value may mean that this time period is interpreted as much shorter than for other types of property. If the bitcoin were an in-house fringe benefit, a different set of rules will apply, with the value generally being the lesser of the acquisition cost and notional (market type) value – refer section 42 of the FBTAA. Such anomalies would not arise where the provision of bitcoin amounts to salary and wages. The submission recommended appropriate guidance on these valuation issues be included in the final TD.	
Additional Binding Guidance requested		
16	**Binding guidance on tax treatment of economic gains and losses** The submission identified a gap in binding guidance relating particularly to the treatment of bitcoin exchange transactions other than for a bitcoin miner, relating to changes in bitcoin value. Consider, for example, a dealer in other products (for example computer software or games) which accepts bitcoin as the sale proceeds for the sale of the	The TDs seek to clarify the classification issues with respect to bitcoin. TD 2014/D13 now explains that a business that receives bitcoin as method of payment for the sale of its goods (as per the example provided by the submission) will hold that bitcoin as trading stock. Accordingly, the economic gains and losses referred to in the example will be assessed on revenue account in accordance with the trading stock provisions. IT 2668 provides guidance on the income, deductions and CGT consequences of a barter transaction as well as the valuation issues involved. The legislative references were updated in 2008 through an

	products, at a particular bitcoin exchange rate value and receives bitcoin worth say $1,000 on the day of acceptance, in exchange for the supply of computer software. Assume that the software dealer, after three weeks, exchanges the bitcoin to purchase products for resale, or alternatively to purchase a laptop for business use, and the bitcoin value on that subsequent day has: a) grown to be worth, say, $1,500 – a $500 economic gain, or b) has fallen to say $700 - an economic loss of $300. These issues are not clearly considered in the materials. Nor are they considered in the ATO barter transactions ruling IT 2668. The submission also suggested that IT 2668 might merit a refresh and reissue.	Addendum to the IT – Addendum IT 2668A. In relation to the suggested update of IT 2668, the ATO does not commit resources to updating such products where a provision is re-enacted or remade and the new law expresses the same ideas as the old law (as per Taxation Ruling TR 2006/10).
17	**Guidance on ordinary income and deductions consequences** The ATO's Draft TDs provide little guidance on the ordinary income and general deduction implications where businesses transact with bitcoin. Guidance is required in respect of the revenue (and trading stock) or capital characterisation of bitcoin dealings, in a more comprehensive manner than the Bitcoin guidance paper. There is no clear consideration of the outcome if the bitcoin recipient exchanges bitcoin (previously received as proceeds of a business transaction on revenue account) for $A and (because of favourable bitcoin:$A 'exchange rate' movements) receives a greater or	TD 2014/D13 now explains that a taxpayer who receives bitcoin as proceeds of a business transactions (for example they sell goods online and accept bitcoin as payment) is holding the bitcoin as trading stock. Accordingly, the gross outgoings and earnings on disposal of the bitcoin will be assessed under the ordinary income and deduction provisions in accordance with the trading stock provisions. An addition has been made to TD 2014/D11 to explain the income tax consequences of bitcoin not being considered to be foreign currency. Valuation issues are outside the scope of this TD. IT 2668 provides guidance on valuation issues in relation to barter transactions. If a taxpayer requires further clarification, they can seek a PBR. In *Tagget v. FCof T* [2010] FCAFC 109, at issue was whether ordinary income was derived when the taxpayer obtained a contingent equitable interest in a proposed parcel of land under a deed in 1988 or whether

	lesser value of bitcoin at conversion time than at original bitcoin receipt time. Such exchange rate movements are able to be treated on revenue account as income adjustments or as deductions not of a capital nature, in the above conventional business scenario. The Bitcoin Guidance Paper explanation regarding recording the Australian dollar value of bitcoin received by a business as ordinary income in the same way that a barter transaction is recorded may be appropriate for a business operating under a cash basis. However, the position for an accruals basis taxpayer should also be considered, as part of any examples that may be included in the final TDs, and in particular the impact of changes in the value of the relevant bitcoin after receipt.	derivation occurred when the land was transferred to the taxpayer in 2005. The Full Federal Court held that when an item received on revenue account is property other than money, recourse is necessary to the valuation provisions of the legislation. In this case, subsection 21(1) of the ITAA 1936 looked to the occasion upon which the consideration was 'paid or given', and required the money value of the consideration to be determined. Although the land received by the taxpayer was received as consideration for services performed by him many years previously, the land was 'paid or given' in 2005, and the money value of it should be determined as at that time.
General Comments		
18	**Appropriate, practical, technically supportable and reconcilable advice** The submission encouraged the ATO to fully explore the potential to develop tax treatments (GST, FBT and income tax) that are appropriate, practical, minimise compliance burdens on taxpayers, technically supportable and able to be reconciled.	The ATO considers the views across the TDs and the GSTR are consistent, appropriate and technically correct in light of the relevant case law and the legislative context and purpose of the provisions under consideration.
19	**Status of Guidance Paper** It was submitted that the status of the Bitcoin Guidance Paper should be expressly confirmed. Given the relatively limited previous guidance and judicial consideration of the Bitcoin interaction issues, the ATO	In issuing the Guidance Paper the ATO was seeking to provide additional guidance to complement the more technical TDs and GSTR with practical guidance expressed in a more simplified manner for typical bitcoin scenarios. The ATO considers that the TDs now include a view in relation to all the

	guidance should provide additional certainty for taxpayers that rely on the ATO guidance. Secondly, the submission expressed a preference for substantive ATO positions on various technical issues to be incorporated into the appropriate public binding product/s.	substantive issues expressed in the guidance paper.
20	**Separate or combined products** The submission agreed that GST and FBT issues should be covered in their own separate guidance. There were no strong concerns with the ATO's proposed approach of issuing tax determinations on particular income tax topics.	The ATO proposes to continue with the current approach of a separate TD for each issue.
21	**Valuation issues** ATO guidance should also deal with valuation issues given the value of bitcoin (its exchange rate to Australian dollars) is volatile. It would be useful for the guidance products to confirm the acceptable source(s) of bitcoin value at any given point in time, and ideally that provided a consistent source of the value is used then the taxpayer might use the sources most readily available to and appropriate for the taxpayer. Practical guidance and certainty on acceptable valuation approaches is important.	The ATO considers the Guidance Paper is the most appropriate place for this type of guidance. The Guidance Paper states that the Australian dollar value of bitcoin can be taken from a reputable bitcoin exchange. Given that there is no specific legislative guidance on this issue, the Commissioner cannot require anything more specific than this type of reasonable approach.
22	**Date of effect** It was submitted that the ATO should consider taking a more accommodating approach to compliance and provide for: • default retrospective application (which will	We consider that the current date of effect provides certainty for entities that have made a genuine attempt to understand and satisfy their tax obligations in a consistent manner in respect of their bitcoin dealings.

	protect those taxpayers that have taken positions consistent with the rulings), or • optional prospective application (from the date of the final ruling/s) for taxpayers that have taken legitimate positions in the past, which should be appropriately protected. The ATO's proposed 'no compliance action' approach is not sufficient protection for taxpayers, as there still remains a potentially higher penalty exposure for taxpayers that have taken positions contrary to a public ruling.	
23	**Publish Solicitor-General's advice** The submission requested that the ATO consider publishing the Solicitor-General's advice.	The ATO will not be publishing the Solicitor-General's advice.