

GSTR 2014/3 - Goods and services tax: the GST implications of transactions involving bitcoin

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Goods and Services Tax Ruling

Goods and services tax: the GST implications of transactions involving bitcoin

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling explains the Commissioner's view on the goods and services tax (GST) consequences of transactions involving the use of bitcoin.
2. In particular, this Ruling considers whether bitcoin may involve 'money' as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), and whether it is a 'financial supply' under subsection 40-5(1) of the GST Act.
3. In considering the GST consequences, the Ruling focuses on the requirement that there must be a 'supply for consideration' for there to be a taxable supply. For the purposes of this Ruling, it is assumed that the other requirements in section 9-5 (taxable supplies) and section 11-5 (creditable acquisitions) of the GST Act are satisfied.
4. All references in this Ruling are to the GST Act unless otherwise specified.

Ruling

5. A transfer of bitcoin from one entity to another is a 'supply' for GST purposes.¹ The exclusion from the definition of supply for supplies of money² does not apply to bitcoin because bitcoin is not 'money' for the purposes of the GST Act.³

6. The supply of bitcoin is not a 'financial supply' under section 40-5. Further, it is not an input taxed supply under paragraph 9-30(2)(b).

7. A supply of bitcoin is a taxable supply under section 9-5 if the other requirements in section 9-5 are met, and the supply of bitcoin is not GST-free under Division 38 (for example, as a supply to a non-resident for use outside of Australia).⁴ A supply of bitcoin in exchange for goods or services will be treated as a barter transaction.

8. Bitcoin is not goods and cannot be the subject of a taxable importation under paragraph 13-5(1)(a). However, an offshore supply of bitcoin can be a taxable supply under the 'reverse charge' rules in Division 84.

9. An acquisition of bitcoin will not give rise to input tax credits under Division 66, which allows input tax credits for certain acquisitions of second-hand goods.

10. A supply of bitcoin is not a supply of a voucher under Division 100.

Examples

11. The examples below assume the following:

- As the terms 'bitcoin exchange' and 'bitcoin market' appear to be used interchangeably to describe entities that operate in different ways, the following terms are used in the examples:
 - Bitcoin trader - an entity that buys and/or sells bitcoin.
 - Bitcoin trading platform operator – an entity that provides trading platforms for others to buy and sell bitcoin directly with each other.

¹ Subsection 9-10(1).

² Subsection 9-10(4) excludes a supply of money from the definition of supply except where money is provided as consideration for the supply of money.

³ 'Money' is defined in section 195-1.

⁴ See section 38-190.

- Unless otherwise mentioned, a GST registered entity includes both an entity that is registered or is required to be registered and will be making a taxable supply, and when acquiring bitcoin will be making a creditable acquisition and will be entitled to input tax credits (subject to the supplier of the bitcoin making a taxable supply).
- The supplies made are not GST-free under Division 38, except for Example 8.

Example 1: Consumer selling bitcoin to a bitcoin trader

12. *Liam carries on an online business of buying and selling bitcoin online in Australia charging a 1% commission on his quoted exchange rate. Liam is registered for GST. Liam does not provide a trading platform where his customers can buy and sell bitcoin with each other; Liam's customers must buy from Liam and sell to him.*

13. *David, who is not registered for GST, sells 10 bitcoin to Liam who pays for them in Australian dollars (AUD). Liam's exchange rate for sellers at the time of the transaction is 1 bitcoin = AUD\$500. The commission is \$50. David receives AUD\$4950 for his 10 bitcoin. As David has made no taxable supply of bitcoin to Liam, Liam cannot claim any input tax credits on the acquisition of bitcoin.⁵*

Example 2: Business buying bitcoin from a bitcoin trader

14. *Following on from Example 1, the following day, Karin, who is registered for GST, wishes to purchase 10 bitcoin from Liam for use in acquiring an asset for her business. Liam quotes an exchange rate for buyers of 1 bitcoin = AUD\$550 (\$500+ \$50 GST). Liam supplies 10 bitcoin to Karin for a total price of AUD\$5550 (including \$505 GST. This is calculated as follows: 10 bitcoin x AUD\$550, plus AUD\$55 commission.*

15. *Liam records this transaction with Karin as a taxable supply of bitcoin, and includes the GST payable of \$505 in his business activity statement. Liam issues a tax invoice to Karin.*

16. *As Karin purchased the bitcoin for her business, is registered for GST and holds a tax invoice she claims an input tax credit of \$505 for the GST she paid on the acquisition of the bitcoin in her business activity statement. When Karin later acquires an asset in exchange for the bitcoin, she will record the supply of bitcoin she makes as a taxable supply and an input tax credit may be claimed in respect of her asset acquisition.*

⁵ Division 66 (second-hand goods) does not apply as bitcoin are not goods, even if a paper wallet is used.

Example 3: Consumer buying bitcoin from a bitcoin trader

17. Following on from Example 1, Sai, who is not registered for GST, wants to buy bitcoin from Liam. Liam supplies 0.5 bitcoin to Sai and Sai pays in Australian dollars. Liam makes a taxable supply of bitcoin to Sai and will pay GST on the supply of bitcoin. Sai is not able to claim input tax credits on the bitcoin acquired because she is not registered for GST.

Example 4: Bitcoin trading platform operator

18. CryptoP2P Pty Ltd (CryptoP2P) operates an online bitcoin trading platform. The platform allows bitcoin buyers and sellers to buy and sell directly with each other via the platform. CryptoP2P does not supply or acquire bitcoin; it provides the trading platform to facilitate other entities doing so. CryptoP2P's trading platform website looks similar to a securities exchange with a list of buy and sell orders made available to all customers.

19. CryptoP2P charges a percentage commission to both buyers and sellers for each bitcoin transaction. CryptoP2P is making a taxable supply of brokerage or facilitation services to its customers. CryptoP2P does not make any supplies of bitcoin, nor does it acquire bitcoin that may give rise to input tax credits.

20. Customers of CryptoP2P are supplying and acquiring bitcoin from each other directly and may need to determine if a supply of bitcoin they acquire is a taxable supply. For example, if a GST registered entity uses CryptoP2P to sell bitcoin, that entity will make a taxable supply of bitcoin and GST will be payable.

21. If a GST registered entity is acquiring bitcoin via CryptoP2P, before claiming input tax credits it will need to determine if the seller is making a taxable supply of bitcoin, and may need to obtain a tax invoice from the seller.

Example 5: Business to business transaction - bitcoin exchanged for goods or services

22. Paul owns a computer shop and is registered for GST. He sells a server for a GST-inclusive price of \$7,700 to Ross Co, a building company that is registered for GST.

23. Paul accepts bitcoin as payment and deals both with businesses that are registered for GST and consumers who are not. When Paul accepts bitcoin as payment, he needs to determine whether the supply of bitcoin to him is a taxable supply so that he can claim input tax credits on the bitcoin he acquires.

24. Paul agrees to accept bitcoin from Ross Co in exchange for the server. Ross Co confirms they will be making a taxable supply of bitcoin to Paul and they provide a tax invoice.

25. When Paul lodges his business activity statement, he includes \$7,700 for the taxable supply of the server to Ross Co and claims an input tax credit of \$700 for the acquisition of the bitcoin. When Ross Co lodges its business activity statement, it includes \$7,700 for the GST inclusive market value of the bitcoin, and claims an input tax credit of \$700 for the acquisition of the server.

Example 6: Merchant using an intermediary to accept bitcoin in exchange for goods or services

26. Following on from Example 5, Paul has an agreement with an intermediary acting as his agent to accept bitcoin in exchange for goods and services (or alternatively has an arrangement with the intermediary where Paul receives the bitcoin, but the intermediary agrees to acquire the bitcoin at the rate agreed).

27. When customers provide bitcoin to the intermediary in exchange for goods and services, Paul pays commission to the intermediary equal to 1% of the price. The intermediary agrees to deposit Australian currency (immediately or within one day) into Paul's nominated bank account. There is no agreement between the customer and the intermediary.

28. Two transactions occur here. First, the customer supplies bitcoin in exchange for the supply of goods and services from Paul as a barter transaction. The GST consequences of this are explained in Example 5. Second, Paul supplies bitcoin to the intermediary (through the transfer of bitcoin from the customer) for which the intermediary pays Australian currency, which is a taxable supply by Paul on which GST is payable. The intermediary may claim input tax credits for the acquisition of the bitcoin. The intermediary makes a taxable supply of services to Paul for which the commission is consideration.

Example 7: A business accepts bitcoin from a consumer

29. Lupulin Lounge Inc operates a craft beer bar that accepts bitcoin as payment. Danya, who is not registered for GST, buys a glass of beer that is priced at \$6.60. Danya asks to pay in bitcoin, and Lupulin converts the \$6.60 to an amount of bitcoin using the current bitcoin exchange rate and accepts Danya's bitcoin.

30. Lupulin has a similar arrangement to that described in Example 6 and has arranged to have any bitcoin received converted straight to Australian dollars by an Australian bitcoin seller.

31. Lupulin has made a taxable supply of beer on which GST is payable. Lupulin cannot claim input tax credits on the acquisition of bitcoin because Danya did not make a taxable supply of bitcoin to Lupulin. When Lupulin then converts the bitcoin to Australian dollars they received from Danya they have made a taxable supply of bitcoin on which GST is payable.

Example 8: GST-free supply of bitcoin used to pay an overseas retailer

32. *Ashkir is an Australian resident web developer who is registered for GST. Ashkir purchases a tablet for use in his business from Tablets & Phablets. Tablets & Phablets is a non-resident entity that operates outside Australia and is not in Australia in relation to the transaction. Tablets & Phablets offer bitcoin as a payment option in the checkout areas of its website.*

33. *When Ashkir pays for the tablet with bitcoin, he is making a supply of bitcoin. The supply of bitcoin is connected with Australia because it is made through Ashkir's enterprise that is carried on in Australia. Ashkir determines that Tablets & Phablets is not an Australian resident and is not in Australia in relation to the supply of bitcoin. Therefore, the supply of bitcoin by Ashkir is GST-free under item 2 of the table in subsection 38-190(1).*

Date of effect

34. This Ruling applies both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

35. While the Ruling will have application for tax periods before its date of issue, the Commissioner will not generally apply compliance resources to tax periods that commenced prior to 1 October 2014 in relation to taxpayers who can show that they have made a genuine attempt to determine the tax treatment of bitcoin, and have then adopted a consistent position regarding the tax treatment of bitcoin in those tax periods.

Commissioner of Taxation

17 December 2014

Appendix 1 – Explanation

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

Relevance of the concepts of 'money' and 'currency' in the GST Act

36. Whether bitcoin is or may involve 'money' is relevant for determining whether the transfer of bitcoin from one entity to another is a 'supply' for GST purposes. A supply '...does not include a supply of money unless the money is provided as consideration for a supply that is a supply of money'.⁶

37. The value of a taxable supply is calculated by reference to the price which is made up of consideration which is expressed as an amount of money and the GST inclusive value of any non-monetary consideration.⁷ Further, the value of that taxable supply must be expressed in Australian currency or translated into Australian currency if the consideration is expressed in a foreign currency.⁸ Having regard to these provisions, 'money' is a central concept in determining whether there is a 'supply' for GST purposes, and the calculation of the GST payable on a taxable supply.

38. 'Money' is defined to specifically include, amongst other things, 'currency (whether of Australia or of any other country)'.⁹ The term 'currency' is not defined. The meaning of each of these terms in the context of the GST Act is discussed in detail in the explanation below.

39. Determining whether bitcoin is 'money' or 'currency' for the purposes of the GST Act requires consideration of the characteristics of bitcoin.

What is bitcoin?

40. The *Oxford Dictionary of English*¹⁰ defines bitcoin as:

a type of digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank: *bitcoin has become a hot commodity among speculators | If you want to buy something using bitcoin you need to make sure the seller accepts the cryptocurrency.*

⁶ Subsection 9-10(4).

⁷ Subsection 9-75(1).

⁸ Section 9-85.

⁹ Definition of 'money' in section 195-1.

¹⁰ *Oxford Dictionary of English* [online] 3rd ed. viewed 7 August 2014
www.oxfordreference.com.

41. It is described by commentators as 'a virtual currency that essentially operates as online cash'¹¹ and as a 'crypto-currency, designed to reinvent the way that money works'.¹² Bitcoin operates as a decentralized peer-to-peer payment network whose implementation relies on the use of public-key cryptography to validate transactions involving existing bitcoin and in doing so generates new bitcoin.¹³

42. The bitcoin system is decentralized in that it is not under the control of a central authority.¹⁴ Transactions on the bitcoin network are denominated in bitcoin. The value of bitcoin is 'not derived from gold or government fiat, but from the value that people assign it'.¹⁵

43. The process through which bitcoin are created and enter into circulation is called bitcoin 'mining'. Mining involves a 'miner' using freely downloadable bitcoin software to solve complex cryptographic equations that essentially verify and validate transactions involving the transfer of existing bitcoin between other parties, for example to ensure an existing bitcoin cannot be transferred more than once by the one person. The first 'miner' to successfully solve an equation receives as a reward a specified number of newly created bitcoin to their bitcoin address.

44. The process of 'mining' has been explained as follows:¹⁶

The actual mining of Bitcoins is by a purely mathematical process. A useful analogy is with the search for prime numbers: it used to be fairly easy to find the small ones (Eratosthenes in Ancient Greece produced the first algorithm for finding them). But as they were found it got harder to find the larger ones.

...

For Bitcoins the search is not actually for prime numbers but to find a sequence of data (called a 'block') that produces a particular pattern when the Bitcoin 'hash' algorithm is applied to the data. When a match occurs the miner obtains a bounty of Bitcoins (and also a fee if that block was used to certify a transaction). The size of the bounty reduces as Bitcoins around the world are mined.

The difficulty of the search is also increased so that it becomes computationally more difficult to find a match. These two effects combine to reduce over time the rate at which Bitcoins are produced and mimic the production rate of a commodity like gold. At some point new Bitcoins will not be produced and the only incentive for miners will be transaction fees.

¹¹ Brito, J and Castillo, A 'Bitcoin: A Primer for Policymakers', *Policy*, Summer 2013-2014, vol. 29, no. 4, pp 3-12.

¹² Bradbury, D 'The problem with Bitcoin', *Computer Fraud & Security* November 2013, issue 11, pp 5-8.

¹³ See footnote 12 of this Ruling.

¹⁴ See also Guthrie, N 'The End of Cash? Bitcoin, the Regulators and the Courts' *Banking & Finance Law Review* Apr 2014, vol 29, no. 2, pp 355-367; Moore, T 'The promise and perils of digital currencies' *International Journal of Critical Infrastructure Protection*, 2013, pp 147-149.

¹⁵ See footnote 11 of this Ruling and see also footnote 14 of this Ruling: Guthrie, N at 357 and Moore, T at p 147.

¹⁶ Tindell, K 'Geeks Love the Bitcoin Phenomenon Like They Loved the Internet in 1995' *Business Insider* 5 April 2013. See also footnote 12 of this Ruling.

45. Bitcoin that are already in circulation can be acquired either by exchanging 'national' or 'fiat' currencies¹⁷ for them through an online exchange (or through a bitcoin ATM), or by accepting them as a gift or in exchange for goods and services.

46. Bitcoin are sent and received via bitcoin addresses. A bitcoin address is a long alphanumeric string used by the network as an identifier. The address can be generated at no cost by any user of bitcoin and a person can have any number of bitcoin addresses.¹⁸

47. Bitcoin uses public key cryptography to make and verify digital signatures used in bitcoin transactions.¹⁹ Each user is assigned a 'public/private' keypair which is saved to that person's bitcoin wallet. A bitcoin wallet has been described as something 'that stores the digital credentials for [a person's] bitcoin holdings'.²⁰

48. The public key is an alphanumeric number that mathematically corresponds to the bitcoin address which is publically known. The private key is also an alphanumeric number, however, it is kept secret as it is what allows the bitcoin to be transferred between bitcoin addresses.²¹ The private key is also mathematically related to the bitcoin address. It is designed so that the bitcoin address can be calculated from that private key, but importantly, the same cannot be done in reverse.²²

49. To transfer bitcoin, a person creates a transaction message with the amount of bitcoin to be transferred and signs the transaction with their private key.²³ Those bitcoin are associated with the person's public key. The transaction is then broadcast to the bitcoin network for validation through the bitcoin mining process.²⁴ Once validated they are added to the blockchain, which is a public global ledger of all bitcoin transactions.

50. A bitcoin is only accessible by the person in possession of the private key that relates to the bitcoin address associated with that person's bitcoin holdings. Accordingly, a bitcoin consists not just of the numerical amount (or balance) of bitcoin and the bitcoin address to which they are associated, but also the related private key that allows the holder to do anything with those bitcoin.

¹⁷ For example, Australian dollars, US dollars etcetera. 'Fiat money' is defined as 'Money that a government has declared to be legal tender, although it has no intrinsic value and is not backed by reserves. Most of the world's paper money is now fiat money.': *A Dictionary of Finance and Banking* (Oxford) 4th revised ed.

¹⁸ See footnote 12 of this Ruling.

¹⁹ See footnote 11 of this Ruling.

²⁰ Villasenor, J 'Secure Bitcoin Storage: A Q&A With Three Bitcoin Company CEOs' *Forbes* 26 April 2014.

²¹ See footnote 11 of this Ruling.

²² Wiener, H, Zelnik, J, Tarshish, I, & Rodgers, M 'Chomping at the Bit: U.S. Federal Income Taxation of Bitcoin Transactions' *Journal Of Taxation Of Financial Products* (2013) vol. 11, no. 3, pp. 35-47 at 35.

²³ Kondor D, Posfai M, Csabai I, Vattay G 'Do the Rich Get Richer? An Empirical Analysis of the Bitcoin Transaction Network' (2014) *PLoS ONE* vol. 9, issue 2 pp 1-10 at p 1.

²⁴ See footnote 11 of this Ruling.

Is bitcoin 'money' for GST purposes?

51. For the purposes of the GST Act, the term 'money' is defined in section 195-1 as:

Money includes:

- (a) currency (whether of Australia or any other country); and
- (b) promissory notes and bills of exchange; and
- (c) any negotiable instrument used or circulated, or intended for use or circulation, as currency (whether of Australia or of any other country); and
- (d) postal notes and money orders; and
- (e) whatever is supplied as payment by way of:
 - (i) credit card or debit card; or
 - (ii) crediting or debiting an account; or
 - (iii) creation or transfer of a debt.

However, it does not include:

- (f) a collector's piece; or
- (g) an investment article; or
- (h) an item of numismatic interest; or
- (i) currency the market value of which exceeds its stated value as legal tender in the country of issue.

52. Generally the use of the term 'includes' indicates something broader than what follows in a statutory definition. Determining whether a broader meaning is intended and the content of that meaning is informed by the statutory context in which the term 'money' appears.²⁵ In determining whether bitcoin is 'money' for the purposes of the GST Act, it is necessary to consider each of the specified items in the definition in section 195-1. Should bitcoin be 'money' under any of these items, then further consideration of the ordinary meaning of 'money' is not required.

Is bitcoin 'money' under any item listed in the section 195-1 definition?

Paragraph (a): 'currency (whether of Australia or of any other country)'

53. Paragraph (a) of the definition operates to include:
'currency (whether of Australia or of any other country)'.

²⁵ *ZY Finance Co Pty Ltd v. Cummings* (1964) 109 CLR 395 at 398-399 and *Blacktown Workers' Club Ltd v. O'Shannessy* (2011) 183 LGERA 184 at 190-191.

54. The term 'currency' in paragraph (a) of the definition of 'money' is qualified by 'of Australia' and 'of any other country'. The term 'Australian currency' is interchangeable with the term 'currency of Australia', which is prescribed a meaning under Australian law by virtue of the *Currency Act 1965* (Currency Act).

55. In *Leask v. Commonwealth*²⁶ in finding that subsection 31(1) of the *Financial Transaction Reports Act 1988* was a law with respect to 'currency' within the meaning of paragraph 51(xii) of the Constitution, Brennan CJ stated:²⁷

Currency consists of notes or coins of denominations expressed as units of account of a country and is issued under the laws of that country for use as a medium of exchange of wealth.

56. Gummow J further explained:²⁸

Section 8(1) of the *Currency Act 1965* (Cth) ('the Currency Act') states that the monetary unit, or unit of currency, of Australia is the dollar; s 9(1), so far as is material, requires every transaction, dealing, matter or thing relating to money or involving the payment of, or a liability to pay, money to be made, executed, entered into or done according to the currency of Australia, unless the currency of some other country is used; and s 11(1) requires that every payment, unless made according to the currency of some other country, be made according to the currency of Australia.

...

In *Watson v. Lee* (167), Mason J, with whom Gibbs J agreed, held that s 51(xii) gave the Parliament power 'to control and regulate the receipt and use' in Australia of foreign currency. Barwick CJ and Stephen J (with whom Gibbs J also agreed) spoke to the same effect (168). By parity of reasoning, the power also supports laws to control and regulate the receipt and use of coin and paper money in Australia, being the medium of exchange in Australia.

Stephen J and Mason J also emphasised that, while 'coinage' and 'legal tender' involved quite specific and narrow concepts, the former being concerned with coins as money and the latter with the prescription of that which at any particular time may be a lawful mode of payment, 'currency' was a broader expression. This is exemplified by the provisions of the *Currency Act* to which I have referred earlier in these reasons. They illustrate the proposition that currency is a universal means of exchange, designated by a particular unit of account (169). (footnotes omitted)

²⁶ [1996] HCA 29; (1996) 187 CLR 579.

²⁷ *Leask* at CLR 595.

²⁸ *Leask* at CLR 617-618 and CLR 622.

57. Accordingly, the meaning of the 'currency of Australia' under the Currency Act is the requisite monetary unit of exchange established by that Act as a means of discharging monetary obligations for all transactions and payments in Australia. Conversely, 'the currency of some country other than Australia' – the only other species of 'currency' according to which transactions and payment obligations can be discharged consistent with the Currency Act – must be any monetary unit recognised by another country's laws for the same purposes.

58. It is the legislative recognition of something as a monetary unit of exchange which makes that thing 'currency'. That 'currency' can only exist within a legal framework and as an exercise of sovereignty is an aspect of the State theory of money²⁹ insofar as it is only by 'fiat' of the State that legitimacy is conferred.

59. It is a general principle of statutory interpretation that, where a statute uses words that have acquired a legal meaning, 'it will be taken, *prima facie*, that the legislature has intended to use them with that meaning unless a contrary intention clearly appears from the context'.³⁰

60. In *Gamer's Motors Centre (Newcastle) Pty Ltd v. Natwest Wholesaler Pty Ltd*³¹ Priestley JA said:³²

The object of the approach is not to find the legal as opposed to the 'ordinary' meaning, but to find from the range of legal and ordinary meanings, which in any event will seldom be in watertight compartments, the meanings best suited to the statutory document as a whole.

61. As noted above, the term 'currency' is not defined in the GST Act. It has both an ordinary meaning and a legal meaning. The *Macquarie Dictionary*³³ relevantly defines 'currency' as:

1 that which is current as a medium of exchange; the money in actual use;

.....

5 circulation, as of coin.

²⁹ C. Proctor, *Mann on the Legal Aspect of Money* (Oxford University Press, 6th ed. 2005) at [1.12] – [1.15].

³⁰ *Attorney-General (NSW) v. Brewery Employees Union of New South Wales* (1908) 6 CLR 469 at 531. See also the discussion in Pearce and Geddes, *Statutory Interpretation in Australia* (8th ed. 2014) at 160 [4.13] which considers case authority which has both applied the rule and distinguished it for contextual reasons.

³¹ (1985) 3 NSWLR 475. For an application of this principle see *Johnson v. Native Title Registrar* [2014] FCA 142 at ([29]-[30]).

³² (1985) 3 NSWLR 475 at 484. See also McHugh JA in *Gamer's* (1985) 3 NSWLR 475 at 494.

³³ *The Macquarie Dictionary*, [Online], viewed 23 June 2014, www.macquariedictionary.com.au.

62. The dictionary definition focuses on the function of currency as a medium of exchange. The legal meaning is that taken from the Currency Act. The Currency Act forms part of the broader statutory context in which the GST Act is to be construed. The use of the qualifiers 'of Australia' and 'of any other country' in paragraph (a) of the definition of 'money' are consistent with the concept of 'currency' in the Currency Act.

63. Taking into account that context, the Commissioner is of the view that the concept of 'currency' in the GST Act does not extend to any broader concept of money that is current as a medium of exchange in the community.

64. Rather, in using the term 'currency', Parliament intended that the term take its legal meaning under the Currency Act – namely, a currency recognised as a universal means of exchange, designated by a particular unit of account and form of payment by the law in Australia or in some other country. The qualifiers 'of Australia' and 'of any other country' divide currency into two types: Australian currency and currency that is recognised as a universal means of exchange, designated by a particular unit of account and form of payment by the laws of another sovereign State (that is, foreign currency).

65. There is nothing in the GST Act which indicates an intention to depart from this established legal meaning of 'Australian currency' or the associated concept of 'foreign currency'.

66. Bitcoin is not a legally recognised universal means of exchange and form of payment by the laws of Australia or the laws of any other country. Therefore, it is not 'currency (whether of Australia or of any other country)' under paragraph (a) of the definition of 'money'.

Paragraph (b): promissory notes and bills of exchange

67. In Australia, the *Bills of Exchange Act 1909* (BOE Act) establishes a framework within which the use of specified financial instruments is comprehensively governed. The BOE Act defines the terms 'bills of exchange' and 'promissory note' in sections 8 and 89 respectively. A 'bill of exchange' is defined as:

8(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

8(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

68. A 'promissory note' is defined as:

89(1) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer.

69. It is specifically stated in the BOE Act that common law rules shall continue to apply to bills of exchange and promissory notes unless inconsistent with that statute.³⁴ Therefore, the legal meaning of these terms is also informed by common law authority.

70. Each of the definitions quoted evidence the character of bills of exchange and promissory notes as documentary intangibles in that the rights are transferrable by the document itself. The holder of the document, by reason of that holding alone, is able to enforce those rights against others. The same is not true for a bitcoin holding.

71. Further, the reference to 'a sum certain in money' in the definitions of bill of exchange and promissory note requires payment in either Australian currency or foreign currency. That is, the sum must be denominated in and the rights enforceable by reference to 'fiat' currency. This interpretation is consistent with case law which, for example, has concluded that an instrument which provided for payment in gold dust was not a promissory note.³⁵

72. It follows that a bill of exchange or promissory note which purportedly grants a right denominated in bitcoin does not meet paragraph (b) of the definition of 'money' in the GST Act.

Paragraph (c): negotiable instruments used or circulated as currency

73. Paragraph (c) of the definition of 'money' includes:

any negotiable instrument used or circulated, or intended for use or circulation, as currency (whether of Australia or of any other country).

74. There are two elements to this paragraph – first, whether bitcoin is a negotiable instrument, and second, whether its use or circulation is as currency of Australia or any other country.

75. The term 'negotiable instrument' is not defined. As noted in paragraphs 51 and 52, where words may take a range of meanings, the construction of those words must take into account both the legal and ordinary uses to which they have been put. The meaning best suited to those words is determined by reference to the statutory context as a whole.

76. An examination of the context in which the phrase 'negotiable instrument' appears indicates that it is intended to take on a technical or legal meaning. Much of the case law in this respect focuses on the concept of negotiability rather than offering a definition of a 'negotiable instrument'. For example, in *Commissioner of the State Savings Bank of Victoria v. Permewan Wright & Co Ltd* (1914) 19 CLR 459, Isaacs J said (at 474):

³⁴ Subsection 5(2) of the BOE Act.

³⁵ *McDonald v. Belcher* [1904] AC 429 at 435. See also Guest, AG 2009 *Chalmers and Guest on Bills of exchange, cheques and promissory notes*, 17th ed. Sweet & Maxwell, London, pp. 29-30.

Negotiability in its full sense means capability of being transferred by delivery or indorsement so as to give a good title to the instrument to the transferee, taking *bona fide* and for value, thereby constituting him the true owner, notwithstanding any defect of title in the transferor.

77. The *Encyclopaedic Australian Legal Dictionary*³⁶ defines a 'negotiable instrument' as:

A document recording a chose in action (such as a promise to pay money by one person to another, or a direction by one person to another to pay money to a third person), with the following characteristics: the ability to transfer the property rights recorded on the document by delivery, or by signature (indorsement) and delivery, of the document itself (unless the document, being a bill, is marked non-transferable) and without immediate notice of the transfer to the person against whom the rights are to be enforced — an instrument so transferred is said to be 'negotiated'; the ability to sue on the property rights recorded in the document in the name of the person who currently owns the rights (being the holder of the document); and the transfer not being 'subject to equities', so that a transferee in good faith, for value, prior to the maturity date of the instrument and without notice of prior defects in title (such as fraud or theft) can acquire a better title than previous holders, free of defects in title and personal equities between remote prior parties. *Miller v. Race* (1758) 1 Burr 452; 97 ER 398 per Lord Mansfield LCJ; *Crouch v. Credit Foncier of England Ltd* (1873) LR 8 QB 374 at 381–2 per Blackburn J; *Goodwin v. Roberts* (1875) LR 10 Ex 337 at 346–54 per Lord Cockburn LCJ (affirmed (1876) 1 App Cas 476) ; *Ilich v. R* (1987) 162 CLR 110; 69 ALR 231; 61 ALJR 128 ; [1987] HCA 1.

78. In this context, the term 'instrument' in the phrase 'negotiable instrument' refers to a formal legal document³⁷. Bitcoin, however, is intangible and therefore is not an instrument, and therefore cannot be a negotiable instrument.

79. Further, bitcoin is not for use or circulation as currency of Australia or of any other country for the same reasons as explained above. It follows that bitcoin is not money under paragraph (c) of the definition.

Paragraph (d): postal notes and money orders

80. Neither the term 'postal note' nor 'money order' are defined for the purposes of the GST Act. Those terms therefore take their ordinary meaning subject to context and applicable rules of interpretation.

³⁶ *Encyclopaedic Australian Legal Dictionary* [online] Lexis Nexis, 2011 viewed 23 June 2014 www.lexisnexis.com.

³⁷ *Re Otto Azevedo v. Secretary To the Department of Primary Industries and Energy* [1992] FCA 84 at 39.

81. The *Macquarie Dictionary*³⁸ defines each of these terms as follows:

- 'postal note' (or 'postal order') is 'an order for the payment of ... money, bought from and generally cashed at a post office'; and
- 'money order' is 'an order for the payment of money, as one issued by one post office and payable at another'.

82. Bitcoin is neither a 'postal note' nor a 'money order', at least because no post office action is involved and there is nothing answering the description of an 'order'. Therefore, bitcoin does not meet paragraph (d) of the definition of 'money' in the GST Act.

Paragraph (e): payment supplied by specified means

83. Paragraph (e) of the definition of 'money' states:

whatever is supplied as payment by way of:

- (i) credit card or debit card; or
- (ii) crediting or debiting an account;
- (iii) creation or transfer of a debt.

84. The term 'payment' is not defined and, therefore, takes its ordinary meaning subject to context and applicable rules of interpretation. In particular, statutory context may limit the meaning of a word which would otherwise have a wide connotation.

85. The *Macquarie Dictionary*³⁹ defines 'payment' as '2. That which is paid; compensation; recompense' or '3. requital'. These senses suggest a wide connotation. The question is whether, in the context in which the word 'payment' appears in the definition of 'money', it is intended that the word take a narrower meaning.

86. The Commissioner's view is that, for the purposes of paragraph (e), there will be 'payment' by way of one of the payment mechanisms listed in paragraph (e) if whatever is supplied is denominated in (or sounds in), and the performance or enforcement of the relevant payment is in (or sounds in), fiat currency.⁴⁰

³⁸ *The Macquarie Dictionary*, [Online], viewed 23 June 2014, www.macquariedictionary.com.au.

³⁹ *The Macquarie Dictionary*, [Online], viewed 23 June 2014, www.macquariedictionary.com.au

⁴⁰ The concept of 'payment' may encompass an amount accounted for in notional units that are directly translatable as of right to a particular amount of fiat currency (see GSTR 2003/14 *Goods and services tax: the GST implications of transactions between members of a barter scheme conducted by a trade exchange*).

87. There is a distinction in the GST Act between consideration which finds expression as an amount of money and that which does not. The latter is sometimes called non-monetary consideration or 'in kind' consideration.⁴¹ Bitcoin is not denominated in an amount of fiat currency nor is consideration provided as an amount of bitcoin something which finds expression in money. The other inclusions in paragraphs (a) to (d) of the definition of 'money' in the GST Act itself all involve fiat currency or things that sound in money.

88. The broader statutory context within which the GST Act is to be interpreted includes the provisions of the Currency Act. Under that Act, all **transactions** involving dealings in money are to be made according to either Australian currency (as defined in that Act) or foreign currency.⁴² The same requirement is imposed in respect of every **payment** that is made.⁴³ There is no indication in the GST Act that Parliament intended to recognise as payments of money a category of dealings which plainly fall outside of the Currency Act framework for money transactions.

89. GST payable on a taxable supply is calculated as 10% of the 'value' of a taxable supply,⁴⁴ which is determined by reference to the 'price' of the taxable supply.⁴⁵ The price of a taxable supply is the sum of consideration that is expressed 'as an amount of money' (as defined) and, so far as the consideration is not expressed as an amount of money, the GST inclusive market value of that consideration.⁴⁶ Further, the value of the taxable supply is required to be expressed in terms of Australian currency. Where the value is expressed in a currency other than Australian currency, that is a foreign currency, the amount is to be translated into Australian currency.⁴⁷

90. Taken together, these provisions apply to provide a method for calculating GST payable on taxable supplies where the consideration is 'expressed as an amount of money' only if that amount of money is fiat currency. If the value of a taxable supply were denominated in something other than a fiat currency which was claimed to be 'money', there would be no mechanism in the GST Act for converting it to Australian dollars and calculating the amount of GST as required.

⁴¹ Section 9-75 and GSTR 2001/6 *Goods and services tax: non-monetary consideration* at [32]. See also *Burrill v. Commissioner of Taxation* (1996) 67 FCR 519 at 525 where the Court stated that a promise to pay money was 'not consideration in kind, and although it is not actually money, it sounds in money'.

⁴² Section 9 of the Currency Act.

⁴³ Section 11 of the Currency Act.

⁴⁴ Section 9-70.

⁴⁵ Section 9-75.

⁴⁶ Paragraphs 9-75(1)(a) and (b).

⁴⁷ Section 9-85. The method for translation is provided in Commissioner's Determination *Foreign Exchange Conversion Determination (No 1) 2001* and GSTR 2001/2: *Goods and services tax: foreign exchange conversions*.

91. This analysis strongly suggests that if paragraph (e), specifically the term 'payment' in that paragraph, were construed to include things other than fiat currency, such as bitcoin, this would be inconsistent with the basic scheme for calculating GST.

92. The Commissioner considers that dealings in bitcoin cannot give rise to 'payment by way of' under any of the payment mechanisms listed in subparagraphs (e)(i)-(iii). Even if 'payment' was to take a broader meaning, bitcoin would still not fall within any of the payment mechanisms listed in paragraph (e) of the definition of 'money' in the GST Act. The reasons for this conclusion are as follows.

'Whatever is supplied as payment by way of credit card or debit card'

93. In a credit card or debit card situation, a customer is able to effect payment for goods or services through a series of pre-existing contracts between the customer and the credit or debit card provider, and between the credit or debit card provider (or merchant acquiring entity) and the merchant.⁴⁸ Bitcoin holdings and transactions do not replicate the types of contractual relationships that are necessary in credit and debit card payment systems. Bitcoin does not fall within the scope of subparagraph (e)(i) of the definition of 'money' in the GST Act.

'Whatever is supplied as payment by way of crediting or debiting an account'

94. The term 'account' is not defined and therefore takes its ordinary meaning subject to context and applicable rules of interpretation.

95. The Commissioner considers that, having regard to the context in which the phrase 'crediting or debiting an account' appears, the word 'account' is intended to be used in its legal sense. That is, there must be some chose in action which the account holder can enforce against the account provider. Holding bitcoin, however, creates no right of action against anyone. Where there is a transfer of bitcoin, the person receiving it has no ability, by virtue of that holding or otherwise to compel anyone to do anything. Hence, bitcoin does not satisfy paragraph (e)(ii) in the definition of 'money' in the GST Act.

⁴⁸ See *Re Charge Card Services* [1989] 1 Ch 497 for a detailed discussion of the credit card system and *Commissioner of Taxation v. American Express Wholesale Currency Services Pty Ltd* (2010) 187 FCR 398 at 421-2. See also GSTR 2014/2 *Goods and services tax: treatment of ATM service fees, credit card surcharges, and debit card surcharges*. See diagrams at paragraphs 246B and 246C of GSTR 2004/1 *Goods and services tax: reduced credit acquisitions* for an explanation of these relationships.

'Whatever is supplied as payment by way of creation or transfer of a debt'

96. The term 'debt' is not defined and therefore takes its ordinary meaning subject to context and applicable rules of interpretation.

97. The Commissioner considers that, having regard to the statutory context, the word 'debt' should be given its common legal meaning – that is, 'an obligation to pay a sum of *money* owed'.⁴⁹ The transfer of bitcoin does not involve the creation or transfer of a debt in the sense that there is an obligation to pay money. Hence, bitcoin does not satisfy the terms of paragraph (e)(iii) of the definition of 'money' in the GST Act.

What is the intended scope of the term 'money'

98. As noted, the definition of 'money' in the GST Act is an inclusive definition, something which may indicate that something broader than what follows in that statutory definition. Determining whether a broader meaning is intended and the content of that meaning is informed by the statutory context in which the term 'money' appears.⁵⁰ The Commissioner's view is that there is insufficient indication in the context of the GST Act as a whole, and having regard to the specific terms of the definition of money, that Parliament had intended that the term 'includes' in the definition of 'money' was intended to be exhaustive.

99. As was noted in the discussion on the meaning of the term 'currency', what is required is an examination of the range of meanings a particular word may have, then an identification within that range of the meaning most appropriate in that context. Using this approach, in the Commissioner's view, the use of the term 'money' is intended to prescribe fiat currency and those financial instruments and payment mechanisms which are denominated in, or relate directly to, fiat currency.

100. The meaning of 'money', in the context of determining if banknotes were goods or supplies in relation to rights, was considered in *Travelex Limited v. Commissioner of Taxation*⁵¹ (*Travelex*). There, Emmett J observed:⁵²

Money is any generally accepted medium of exchange for goods and services and for the payment of debts (see *Butterworth's Australian Legal Dictionary* at 759). Currency and legal tender are examples of money. However, a thing can be money and can operate as a generally accepted medium and means of exchange, without being legal tender. Therefore, bank notes have historically been treated as money, notwithstanding that they were not legal

⁴⁹ *A Dictionary of Law* (7th ed.) [online], definitions 1 and 2 of 'debt', viewed 23 July 2014 www.oxfordreference.com.

⁵⁰ *ZY Finance Co Pty Ltd v. Cummings* (1964) 109 CLR 395 at 398-399 and *Blacktown Workers' Club Ltd v. O'Shannessy* (2011) 183 LGERA 184 at 190-191.

⁵¹ [2008] FCA 1961; 2008 ATC 20-087.

⁵² [2008] FCA 1961 at [25]

tender. It is common consent and conduct that gives a thing the character of money (see *Miller v. Race* (1758) 1 Burrow 452 at 457). Money is that which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities, being accepted equally without reference to the character or credit of the person who offers it and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities (see *Moss v. Hancock* [1899] 2 QB 111 at 116).⁵³

101. In *Messenger Press Proprietary Ltd v. Federal Commissioner of Taxation (Messenger Press)*⁵⁴, Perram J considered the test in *Moss v. Hancock*⁵⁵ (*Moss*) as referred to by Emmett J in *Travelex* and applied it to promissory notes denominated in a foreign currency paid in exchange for release of a book debt denominated in Australian currency. In concluding that the promissory notes were not 'money' under the *Moss* concept of money, Perram J noted:⁵⁶

There was no evidence that the promissory notes had taken on the quality of being able to be used throughout the community for the discharge of debts and, if they did have that quality, any reasonable person would certainly make inquiries as to the 'character or credit' of the issuer before accepting such a note.

102. In relation to the *Moss* concept of money, Perram J noted that 'no doubt this definition has its limitations'⁵⁷ and referred to a specific passage in the text '*Mann on the Legal Aspect of Money*'.⁵⁸

103. In that passage, Proctor observes that the formulation in *Moss* reflects a purely functional approach to the idea of money.⁵⁹ In addition to the functional characteristics identified in *Moss*, however, for something to be money in the modern sense it 'must exist within some form of legal framework, because it reflects an exercise of sovereignty by the State in question'.⁶⁰

⁵³ While the High Court reversed this decision, they did not disturb Emmett J's characterisation of banknotes as money and currency, see *Travelex Ltd v. Commissioner of Taxation* [2010] HCA 33 at 15 and 45.

⁵⁴ [2012] FCA 756.

⁵⁵ [1899] 2 QB 111.

⁵⁶ *Messenger Press* at 196.

⁵⁷ *Messenger Press* at 196.

⁵⁸ *Messenger Press* at 196.

⁵⁹ Proctor, C 2005, *Mann on the Legal Aspect of Money*, Oxford University Press, Oxford 6th Ed, at [1.07-1.14]. See also Proctor, C 2012, *Mann on the Legal Aspect of Money*, Oxford University Press, Oxford 7th Ed at [1.07-1.14].

⁶⁰ Proctor, footnote 59 of this Ruling at [1.12]. Proctor, C at [1.12]. The 'State theory of money' in a narrow sense would only treat notes and coins as money, this approach recognises that the State will establish the currency unit and other instruments denominated in that currency will be money if they function as money

104. The statutory context supports the view of the Commissioner that, although the definition of money is not exhaustive, the fact that the inclusions in paragraphs (b) to (e) are each denominated in and reducible to fiat currency by their nature is a strong indication that 'money' generally for GST purposes cannot and does not extend beyond methods of payment that are denominated in and reducible to fiat currency.⁶¹

105. Further, the wider context provided by the Currency Act cannot be ignored and is important. Australia has determined that, where transactions are entered into and their performance is measured in money, it must be money denominated in the fiat currency of Australia or some other country that is contemplated and required.

106. It has been argued that bitcoin satisfies the functional definition of money because it is asserted to serve as a medium of exchange, a unit of account and a store of value. In addition, it is argued that what is asserted as an increasing acceptance within the community as a means of discharging debts and acquiring goods and services has now reached the point that it qualifies as money.

107. The evidence available to the Commissioner informs his view that the current levels of use and acceptance of bitcoin within the community is far short of what may be regarded as sufficient or necessary to satisfy the test in *Moss*.⁶² In determining whether bitcoin is money for GST purposes, however, it is not necessary to come to any conclusion about whether bitcoin satisfies functional requirements referred to in *Moss*.

108. Custom alone, whether it be local or international, cannot make something 'money' in the absence of an 'exercise of monetary sovereignty by the State concerned'. Consistent with the statutory context,⁶³ policy and the wider legislative framework governing Australian currency established by the Currency Act, this is the sense in which the word 'money' is used in the section 195-1 definition.⁶⁴ Bitcoin, therefore, is not 'money' for GST purposes.

⁶¹ This is also supported indirectly by the scheme of the GST Act giving specific treatment to supplies of gold in subdivision 38-L and 40-D. That is, while gold can have some of the functional features of money referred to at paragraph 106, it is not money for the purposes of the GST Act.

⁶² Given the anonymous nature of bitcoin and the fact that a bitcoin user can have, and usually will have, many bitcoin addresses, it is difficult to determine precisely the current number of bitcoin users. Recent estimates are that there are approximately 500,000 bitcoin users worldwide, and that it is likely that fewer than one in ten businesses would currently accept payment in bitcoin even in the United States, where bitcoin is most widely used. These rough figures suggest that bitcoin use at present is far from universal and is rather uncommon. For further consideration of this issue see Bank of England 2014, *Quarterly Bulletin Q3 2014 – The economics of digital currencies*, Bank of England, London, viewed 24 November 2014
<http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2014/qb14q3digitalcurrenciesbitcoin2.pdf>

⁶³ Discussed at paragraph 36 of this Ruling.

⁶⁴ cf *Travellex Ltd v. Commissioner of Taxation* [2008] FCA 1961 (at [26-28]).

Is a supply of bitcoin input taxed?

Financial supplies

109. A financial supply is input taxed under section 40-5.⁶⁵ An entity may make financial supplies in the course of carrying on an enterprise if the entity provides, acquires or disposes of an interest listed in the GST Regulations and certain other requirements for a 'financial supply' are satisfied. No GST is payable on input taxed supplies.

110. A supply is a financial supply only if it is mentioned as a financial supply in regulation 40-5.09 or is an incidental financial supply under regulation 40-5.10.⁶⁶ Regulation 40-5.12 exclude things that otherwise would be a financial supply other than things that are an incidental financial supply.⁶⁷

Item 9: Australian currency or currency of a foreign country

111. The provision, acquisition or disposal of an interest in Australian currency, the currency of a foreign country, or an agreement to buy or sell currency of either kind is a financial supply.⁶⁸ The term 'currency' for the purposes of item 9 has the same meaning as in paragraph (a) of the definition of 'money' in section 195-1 for GST purposes.⁶⁹ As bitcoin is not 'currency' of Australia or any other country for GST purposes, it is not a financial supply.

Item 11: A derivative

112. The term 'derivative' is defined in the GST Regulations as:

An agreement or instrument the value of which depends on, or is derived from, the value of assets or liabilities, an index or rate.

113. Although an entity may enter into an agreement which uses the exchange rate of a bitcoin as a measure of value, bitcoin itself does not satisfy the terms of this definition. Bitcoin is not itself an agreement or instrument, nor is it evidenced or created through an agreement or instrument. While the value of a bitcoin may fluctuate over time, bitcoin itself does not derive its value from any asset or liability, or the movements in an index or rate. Bitcoin is not a derivative as defined in the GST Regulations.

⁶⁵ See GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions* for detailed discussion of the operation of the financial supplies provisions.

⁶⁶ Paragraph 40-5.08(1)(b) of the GST Regulations.

⁶⁷ Regulation 40-5.10 of the GST Regulations.

⁶⁸ Item 9 of the table in subregulation 40-5.09(3) of the GST Regulations.

⁶⁹ Refer to paragraphs 53 to 66 of this Ruling.

Subregulation 40-5.09(4A): ATM services

114. Certain automatic teller machine (ATM) services are input taxed as financial supplies where they involve specified accounts. The term '**account**' is defined in the dictionary to the GST Regulations:

account:

- (a) means an account mentioned in item 1 in the table in regulation 40-5.09; and
- (b) includes an account in relation to which the account holder (the customer) has the right:
 - (i) to have the account maintained by the account provider (the provider); and
 - (ii) to repayment of the amount credited to the account by the provider; and
 - (iii) to require the provider to act on directions by the customer that are in accordance with the arrangements, or any agreement, between the provider and the customer in relation to operation of the account.

115. Use of bitcoin ATMs do not involve transactions from, into or of an 'account' as defined.⁷⁰ Further, bitcoin ATMs are not part of the ATM payment system.⁷¹ Services provided through a bitcoin ATM, therefore, are not financial supplies.

GST-free supplies⁷²

116. The supply of bitcoin from an entity in Australia to a non-resident, including a bitcoin exchange that is outside Australia, may be a GST-free supply under item 2 in the table in subsection 38-190(1).

117. Item 2 refers to supplies made to a non-resident who is not in Australia when the thing supplied is done⁷³ and:

- the supply is neither a supply of work physically performed on goods situated in Australia when the work is done nor a supply directly connected with real property situated in Australia or

⁷⁰ See also discussion at paragraph 95 of this Ruling.

⁷¹ See paragraph 5 of GSTR 2014/2. The term 'ATM' is an automatic teller machine that is used in the payment system designated by the Reserve Bank of Australia (RBA) as the ATM system.

⁷² See more generally GSTR 2000/31 *Goods and services tax: supplies connected with Australia*.

⁷³ See GSTR 2004/7 *Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999*.

- *when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'?*
- *when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?*

- the non-resident acquires the thing in carrying on the non-resident's enterprise, but is not registered or required to be registered.

118. Item 3 in the table in subsection 38-190(1), also may apply to the transfer of bitcoin by a supplier located in Australia to a recipient outside Australia at the time of the supply and where the effective use or enjoyment takes place outside Australia.⁷⁴ Item 3 does not apply to work physically performed on goods situated in Australia at the time of the supply nor to a supply directly connected with real property situated in Australia.

119. Subsection 38-190(2) provides that a supply covered by any of items 1 to 5 in the table in subsection 38-190(1) is not GST-free if it is the supply of a right or option to acquire something the supply of which would be connected with Australia and would not be GST-free.⁷⁵

120. Subsection 38-190(2A) provides that a supply covered by any of items 2 to 4 in the table in subsection 38-190(1) is not GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of real property situated in Australia that would be input taxed under Subdivisions 40-B or 40-C.

121. Under subsection 38-190(3), a supply covered by item 2 in subsection 38-190(1) is not GST-free if:

- (a) it is a supply under an agreement entered into, whether directly or indirectly, with a **non-resident**; and
- (b) the supply is provided, or the agreement requires it to be provided, to another entity in Australia.⁷⁶

122. Further practical guidance regarding what information a supplier may need to determine if a supply is GST-free under section 38-190 is provided in the Electronic Commerce Industry Partnership – issues register on www.ato.gov.au.⁷⁷

⁷⁴ See GSTR 2007/2 *Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?*

⁷⁵ See paragraphs 143-150 of GSTR 2003/8 *Goods and services tax: supply of rights for use outside Australia*.

⁷⁶ See GSTR 2005/6 *Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999*.

⁷⁷ Chapter 1: Consumption outside Australia at https://www.ato.gov.au/Business/Consultation--Business/In-detail/GST-issues-registers/Electronic-Commerce-Industry-Partnership---issues-register/?page=3#Chapter_1__Consumption_outside_Australia

Vouchers & second-hand goods

123. Division 100 of the GST Act sets out special rules that apply to supplies of certain vouchers. Bitcoin is not a voucher as defined in section 100-25 because, for example, bitcoin does not have 'terms' which entitle a holder to receive supplies in accordance with its terms. Therefore, Division 100 does not apply to supplies of bitcoin.

124. Under Division 66, a GST-registered entity that acquires goods from an unregistered entity can, if certain requirements are met, claim input tax credits for the acquisition even though the supply was not a taxable supply.⁷⁸ A supply of goods (including second-hand goods) is a supply of any form of **tangible** personal property. Personal property embraces all forms of property other than land or an interest in land.⁷⁹ 'Tangible' connotes a physical existence and has the effect of excluding things described as intangibles. Goods are any form of personal property that have a physical existence, but do not include intangible personal property such as intellectual property like a copyright.⁸⁰

125. Bitcoin is not **tangible** personal property and is therefore not goods.⁸¹ Division 66 does not apply to allow a GST registered entity acquiring bitcoin from an unregistered entity to claim input tax credits.

Taxable importations and Division 84 reverse charge

126. As bitcoin are not goods, Division 13, which relates to taxable importations of goods into Australia, does not apply to bitcoin.

127. However, Division 84 (which 'reverse charges' GST on offshore supplies) can apply to a supply of a bitcoin as it is a supply of a thing (other than goods or real property). When an entity that is registered (or required to be registered) for GST, acquires bitcoin offshore, the application of Division 84 will need to be considered. A supply of bitcoin may be a taxable supply in this context and the entity acquiring bitcoin may be liable to pay GST, rather than the supplier.⁸²

⁷⁸ Subsection 66-5(1).

⁷⁹ See TD 2014/26 *Income tax: is bitcoin a 'CGT asset' for the purposes of subsection 108-5(1) of the Income Tax Assessment Act 1997?* for discussion of whether bitcoin holding rights are a form of 'property'.

⁸⁰ See further GSTR 2000/31.

⁸¹ Recording the public and private key pair in a paper wallet does not result in the relevant bitcoin being treated as goods.

⁸² Further explanation regarding how Division 84 applies to digital products can be found in the following public ruling: 'Goods and Services Tax Industry Issues - Electronic Commerce Industry Partnership - Application of GST to supplies of digital products made to Australian recipients from non-resident suppliers' available at: <http://law.at0.gov.au/atolaw/view.htm?docid=GII/GSTIIIEC1/NAT/ATO/00001>

Appendix 2 – Detailed contents list

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References

Previous draft:

GSTR 2014/D3

Related Rulings/Determinations:

GSTR 2000/31; GSTR 2001/2;
 GSTR 2001/6; GSTR 2002/2;
 GSTR 2003/8; GSTR 2003/14;
 GSTR 2004/1; GSTR 2004/7;
 GSTR 2005/6; TR 2006/10;
 GSTR 2007/2; GSTR 2014/2

Subject references:

- GST financial supplies
- GST money
- GST non-monetary consideration

Legislative references:

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-10(1)
- ANTS(GST)A 1999 9-10(4)
- ANTS(GST)A 1999 9-30(2)(b)
- ANTS(GST)A 1999 9-70
- ANTS(GST)A 1999 9-75
- ANTS(GST)A 1999 9-75(1)
- ANTS(GST)A 1999 9-75(1)(a)
- ANTS(GST)A 1999 9-75(1)(b)
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