

TD 2014/27 - Income tax: is bitcoin trading stock for the purposes of subsection 70-10(1) of the Income Tax Assessment Act 1997 ?

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Taxation Determination

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

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

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.

Ruling

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

Date of effect

2. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

¹ All legislative references in this Determination are to the ITAA 1997 unless otherwise indicated.

TD 2014/27

3. While the ATO view set out in this Determination will have application for periods prior to its publication, the ATO will not generally apply compliance resources to applying this view to income years commencing before 1 July 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 years.

Commissioner of Taxation

17 December 2014

Appendix 1 – Explanation

① *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.*

What is bitcoin?

4. This Determination is part of a suite of Rulings² issued by the Commissioner on Bitcoin. Accordingly, a detailed description of Bitcoin is contained in TD 2014/25.

5. In accordance with TD 2014/26, bitcoin is considered property for tax purposes.

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

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

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

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

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

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

10. In *Federal Commissioner of Taxation v. Suttons Motors (Chullora) Wholesale Pty Ltd*³ (*Sutton Motors*), the majority of the High Court noted that shares and land had both been held to be capable of being trading stock and the term's central denotation was '...of goods held by a trader in such goods for sale or exchange in the ordinary course of his trade.'

11. The High Court in *John v. Federal Commissioner of Taxation*⁴ (*John*) stated that the definition of trading stock 'presupposes that the person by whom [goods] are produced, manufactured, acquired or purchased is or will be engaged in trade in those goods.'

² See Taxation Determinations TD 2014/25 *Income tax: is bitcoin a 'foreign currency' for the purposes of Division 775 of the Income Tax Assessment Act 1997?*; 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?*; TD 2014/28 *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?* and Goods and Services Tax Ruling GSTR 2014/3 *Goods and services tax: the GST implications of transactions involving bitcoin.*

³ (1985) 157 CLR 277; 85 ATC 4398; (1985) 16 ATR 567.

⁴ (1989) 166 CLR 417; 89 ATC 4101; (1989) 20 ATR 1.

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

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

14. Bitcoin held by a taxpayer carrying on a business of mining and selling bitcoin, or a taxpayer carrying on a Bitcoin exchange business will be considered to be trading stock. Further bitcoin received as a method of payment by any business that sells goods will also be considered to be trading stock of that business where the bitcoin is held for the purposes of sale or exchange in the ordinary course of the business.

References

Previous draft:

TD 2014/D13

Related Rulings/Determinations:

TR 2006/10; TD 2014/25; TD 2014/26;
TD 2014/28; GSTR 2014/3

Subject references:

- foreign currency
- trading stock

Legislative references:

- ITAA 1997
- ITAA 1997 Div 70
- ITAA 1997 70-10(1)

- TAA 1953

Case references:

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

Other references:

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

ATO references

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