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

We, Taxpayers Australia Ltd, welcome the opportunity to comment on Draft Taxation Determination TD 2014/D12 (the draft TD).

The draft TD expresses the Commissioner's preliminary view that Bitcoin is a 'CGT asset' for the purposes of subs108-5(1) of the ITAA 1997.

We agree with this view.

Paragraph numbers refer to the draft TD unless otherwise stated.

Legislative references are to the ITAA 1997 unless otherwise stated.

### **SUBMISSION**

#### **Ruling**

We agree with the view expressed in the Ruling section of the draft TD (paragraph 1) that Bitcoin is a 'CGT asset' for the purposes of subs108-5(1).

Our view is explained below.

#### **Explanation**

In our submission on TD 2014/D11, we disagree with the Commissioner's preliminary view that Bitcoin is not 'foreign currency' for the purposes of Division 775 and not 'foreign currency' as defined in s995-1.

In that submission, we put forward our preferred alternative view that Bitcoin is 'foreign currency'.

#### **If Bitcoin is 'foreign currency'**

Should the final version of TD 2014/D11 express the view that Bitcoin is 'foreign currency', the view expressed in this draft TD that Bitcoin is a 'CGT asset' remains valid for the reasons provided in the draft TD. In addition, Note 1 to s108-5 specifically states that 'foreign currency' is an example of a CGT asset.



In the event that the Commissioner determines that Bitcoin is 'foreign currency', we request that paragraph 16 is amended. Paragraph 16 discusses the anti-overlap rule in s118-20. We request that it should include a specific reference to s118-20 where part or all of the capital gain is assessable as a foreign currency gain pursuant to Division 775. We also request that an appropriate example be included in the final TD.

### **If Bitcoin is not 'foreign currency'**

Should the final version of TD 2014/D11 express the Commissioner's current view that Bitcoin is not 'foreign currency', we agree with the view expressed in this draft TD that Bitcoin is a 'CGT asset'.

In this event, we request that an appropriate example of the application of s118-20 (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.