



**Date: 22 September 2014**

**Author: Letty Tsoi**

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

We, Taxpayers Australia Ltd, welcome the opportunity to comment on Draft Taxation Determination TD 2014/D13 (the draft TD).

The draft TD expresses the Commissioner's preliminary view that Bitcoin is 'trading stock' for the purposes of subs70-10(1) of the ITAA 1997 when it is held for the purpose of sale or exchange in the ordinary course of business.

We comment on this view below.

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, when held for the purpose of sale or exchange in the ordinary course of a business, is trading stock for the purposes of subs70-10(1) – with possible qualifications.

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'.

Should the Commissioner agree with our position and amend TD 2014/D11 to express a view that Bitcoin is 'foreign currency', the Ruling section of the draft TD should include a comment to the effect that to the extent that an amount that is assessable or deductible under Division 70 is also assessable or deductible under Division 775, then Division 775 has primacy.

#### **Explanation**

##### **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 can be 'trading stock' remains valid for the reasons provided in the draft TD. Section 70-10 does not exclude foreign currency from the definition of trading stock.



In the event that the Commissioner determines that Bitcoin is 'foreign currency', we request that the Ruling and Explanation sections of the draft TD be amended.

We request that the TD should discuss subs775-15(4), 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 a Division 70), Division 775 takes priority (and the gain would not be assessable under the trading stock rules).

Similarly, we request that the TD should discuss subs775-30(4), 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 a Division 70), Division 775 takes priority (and the loss would not be deductible under the trading stock rules).

We also request that appropriate examples 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 views expressed in this draft TD.