

Toolkit for the Evaluation of Crypto Tax Risks (Risks 1 and 2)

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Snapshot

What are crypto-assets?

The term ‘crypto-assets’ is generally used to refer to digital financial assets which are based on distributed ledger technology. Crypto-assets allow trust free interactions between trading parties at a high speed without the use of the traditional banking system. Cryptocurrencies, a sub-category of crypto-assets, are cryptographically secured digital representations of value that can be transferred, stored or traded electronically. The most known examples are Bitcoin or Ethereum.

As of February 2024, more than 23,000 different cryptocurrencies are available in the market with a market capitalization of about USD \$2 Trillion. An estimated 425 million people around the world hold some form of cryptocurrency.

More detailed information on crypto-assets and the underlying technology can be found in the Appendix.

Why did the UN Tax Committee develop this Toolkit?

Crypto-assets can pose significant risks to tax systems. These risks have the potential to erode countries’ tax bases unless governments take steps to adapt their tax systems to take crypto-assets into consideration.

This issue is exacerbated by the presence of limited tax reporting and information gathering systems and mechanisms, in contrast to the pseudonymity, i.e. the record of crypto asset transactions is available in the public domain but it is not possible to identify the (legal) persons behind the ‘wallets’. This inherently poses the risk of tax evasion, both premeditated and incidental. The Toolkit looks at crypto reporting and tax crimes as Risk 1.

The volatile nature of crypto-assets can very easily lead to the incurrence of massive losses by a whole range of investors and businesses. Without proper safeguards to ‘ringfence’ these crypto losses, taxpayers may use them to offset income from other sources, eroding the tax base. The cost to the tax system may be felt in the forgone revenue. The Toolkit looks a crypto losses and deduction risks as Risk 2.

In many situations, transactions involving crypto-assets that are designed to be ‘functionally equivalent’ to their traditional counterparts will also attract the same tax treatment. In such cases, a government who does not tax crypto-assets and transactions will risk losing tax revenue from traditional transactions that have been foregone as a result of the adoption of crypto transactions. The use of crypto-assets may also create an incentive for tax arbitrage. The Toolkit looks at crypto functional substitutes risks as Risk 3 [not yet finalized and not included in this document].

An overview of the crypto tax risks that this Toolkit seeks to address can be found in section 2.2 (Map of Crypto Tax Risks). Further information on the challenges which digital assets pose for tax systems can be found [here](#).

How should the Toolkit be used and who is it addressed to?

This Toolkit seeks to provide a practical, structured framework for the identification and assessment of crypto tax risks. It is meant to aid its user in identifying tax risks from crypto through the use of a questionnaire. Context is provided through a commentary that provides further insights and background information to complement the user's existing knowledge and expertise and to aid in accurately identifying the crypto tax risks facing their domestic tax systems.

The Toolkit can be used by anybody seeking to explore the risks that a particular tax system is facing. In practice this could be policy makers situated in Ministries of Finance as well as those administering taxes. In the Toolkit reference is made to "users" of this Toolkit and is meant to encompass those using the Toolkit. The use of the Toolkit requires some knowledge of the respective domestic tax system under analysis.

Further information is contained in section 2 (Guide on How to Use This Toolkit). In particular, section 2.3 contains a worked example to provide insights into the approach and structure of the Toolkit.

1. Introduction

As of February 2024, the global cryptocurrency market capitalization stands at about USD \$2 Trillion.¹ An estimated 425 million people around the world hold some form of crypto asset.² The size of the global cryptocurrency market and scale of adoption have made it important for countries to actively assess how their tax systems will respond crypto activities by taxpayers. Nonetheless, most tax laws and systems were designed without crypto-assets³ and transactions in mind, raising the possibility of ‘crypto tax risks’ that may result in the erosion of the tax base. This issue is exacerbated by the presence of limited tax reporting and information gathering systems and mechanisms, if any are in place, in contrast to the pseudonymity which prominently characterizes the crypto market.

This Toolkit seeks to provide a practical, structured framework for the identification and assessment of crypto tax risks.⁴ It has three main parts. Firstly, an introduction to the Toolkit and how it should be used. Secondly, a series of questionnaires to complete. Thirdly, a commentary to provide additional context and details on each part of the Toolkit and its application. As users go through the questionnaires, they can rely on the Commentary to complement their existing knowledge and expertise to accurately identify the crypto tax risks facing their domestic tax systems.

Those interested in a more detailed analysis and discussion of crypto tax risks are encouraged to consult the Report on the Challenges which Digital Assets Pose for Tax Systems with a Special Focus on Developing Countries (the ‘**Report**’) which can be found [here](#).

While this Toolkit is recommended for all countries, those which exhibit one or more of the following characteristics may especially consider using it: 1) countries with a high ranking on the Chainalysis Global Crypto Adoption Index,⁵ 2) countries with a high percentage of residents using the internet,⁶ 3) countries with a less developed traditional banking sector, 4) countries with economic instability as mirrored in high inflation and / or volatile exchange rates, and 5) countries with less developed crypto regulations and / or resources for enforcement. These factors make it more likely for a country to have higher rates of crypto adoption.

The risks listed in this Toolkit may have differing levels of relevance for users depending on the characteristics of their tax systems. A jurisdiction with a large number of taxpayers currently

¹ Forbes, ‘Crypto Prices’ (2024) <<https://www.forbes.com/digital-assets/crypto-prices/>> accessed February 25, 2024.

² Henley & Partners, ‘The Crypto Wealth Report’ (2023) <<https://www.henleyglobal.com/publications/crypto-wealth-report>> accessed February 25, 2024.

³ The term ‘crypto-assets’ is generally used to refer to digital financial assets (also known as digital tokens) based on distributed ledger technology (see Jean Bacon, *et. al.*, ‘Blockchain Demystified: A Technical and Legal Introduction to Distributed and Centralised Ledgers’ (2018) 25(1) Richmond Journal Law & Technology 1).

⁴ More background information can be found in the Toolkit for the Evaluation of Crypto Tax Risks (Outline) <<https://financing.desa.un.org/sites/default/files/2023-10/CRP.28%20Taxation%20of%20Crypto-assets%20with%20appendix.pdf>> accessed February 25, 2024 (‘**Toolkit Outline**’).

⁵ Chainalysis Team, ‘The 2022 Global Crypto Adoption Index: Emerging Markets Lead in Grassroots Adoption, China Remains Active Despite Ban, and Crypto Fundamentals Appear Healthy’ (September 14, 2022) <<https://blog.chainalysis.com/reports/2022-global-crypto-adoption-index/>> accessed February 25, 2024.

⁶ World Bank, ‘Individuals Using the Internet (% of Population)’ <<https://data.worldbank.org/indicator/IT.NET.USER.ZS>> accessed February 25, 2024.

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reporting their crypto-assets and transactions (and thus, being assessed on crypto income and attempting to deduct crypto losses) would find Risk 2.1: Losses and Risk 3: Crypto Functional Substitutes Risks to be highly relevant to their situation. Conversely, a jurisdiction which has banned the holding and transfer of crypto-assets may not find these risks as relevant but might instead focus on Risk 1.5: Taxation of Illegal Transactions.

Regardless of the state of crypto adoption in a jurisdiction, users may wish to ensure that Risk 2.1: Losses is comprehensively analyzed, and safeguards are put in place to protect the tax base.

It is also important for jurisdictions to consider whether crypto reporting frameworks would be beneficial for them. Strong reporting and information exchange mechanisms can help users make further policy decisions on crypto taxation.

Given the breadth of this Toolkit and the desire to make it as accessible as possible for all users, there are several highly technical areas which it will not cover in detail, including the accounting treatment of crypto-assets and their implications for taxation, transfer pricing issues relating to crypto-assets,⁷ and the valuation of crypto-assets.⁸ Users may wish to consult some of the referenced materials should they wish to learn more about these areas.

⁷ See Fabian Peters, Amanda Pletz and Mark Berenblut, 'Transfer Pricing Considerations for Intercompany Cryptocurrency' in Robert Danon *et. al.* (Eds.), *Applying the Arm's Length Principle to Intra Group Financial Transactions: A Reference Guide* (Kluwer) (2023); and Vincent Ooi and Ilka Ritter, 'Crypto Assets: What Issues do they Pose for Transfer Pricing?', in *Transfer Pricing Developments Around the World 2023*, Michael Lang and Raffaele Petruzzi (Eds.) (Wolters Kluwer) (2023).

⁸ See IRS, IRS Valuation Guidance for Cryptocurrencies Notice 2014-21, 2014-16 IRB 938. Also see the commentary on 'Risk 2.2: Donations', below.

2. Guide on How To Use this Toolkit

2.1. Overview

As a starting point, a user of the Toolkit should read the introduction to understand how the Toolkit should be used and should then read the Worked Example contained in section 2.3. The introduction gives background information on crypto-assets and provides initial instructions as to how to use the Toolkit. The Worked Example would then further illustrate how the Toolkit should be used in practice.

Following this, the user should select the risk which they wish to analyze from the Map of Crypto Tax Risks and proceed to (1) read the corresponding section of the Commentary to gain an understanding of the risk at and then (2) complete the relevant questionnaire for that risk.

The questionnaires break the issues involved in that particular crypto tax risk into three separate steps. Firstly, identifying the relevant tax principles. Secondly, identifying any differences which arise if crypto-assets or transactions are involved. Thirdly, assessing whether there should be any difference in the tax treatment if crypto-assets or transactions are involved. Each of the three main steps will have a set of questions for the user to complete, the results of which should (together with the Commentary) assess the level of risk faced by a tax system.

2.2. Map of Crypto Tax Risks

This Toolkit identifies three main categories of crypto tax risks to identify: 1) Crypto Reporting and Tax Crime Risks, 2) Crypto Losses and Deductions Risks, and 3) Crypto Functional Substitutes Risks. These main categories are then further subdivided into specific tax risks, creating a 'Map of Crypto Tax Risks' (the Map) which may practically be used to systematically identify these risks. The Map reflects extensive literature review to determine the areas identified by international organizations, academics, non-governmental organizations and industry as those most likely to raise uncertainties as to the proper tax position, raise opportunities for tax avoidance or arbitrage, or generally pose risks to the tax base.

The Map is not intended to be a comprehensive listing of all potentially applicable risks but a selection of those risks that are particularly detrimental to the tax base. The Map also focuses on domestic tax rather than international tax risks as the former are likely to produce the most pressing concerns.

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The Map of Crypto Tax Risks is listed as follows:

1. Crypto Reporting and Tax Crimes Risks	2. Crypto Losses and Deductions Risks
1.1. Direct Reporting and Returns 1.2. Intermediaries Reporting 1.2.1. Centralized Crypto Exchanges 1.2.2. Decentralized Crypto Exchanges 1.2.3. Traditional Intermediaries 1.3. Investigative Powers 1.4. International Exchange of Information 1.5. Taxation of Illegal Transactions	2.1. Losses 2.1.1. Losses from Investment or Speculation (Non-Business) 2.1.2. Losses from Trading in Crypto-assets 2.1.3. Losses from Crypto Dealings as Part of a Broader Non-Crypto Business 2.2. Donations 2.2.1. Donations of Payment Tokens 2.2.2. Donations of Non-Payment Tokens
3. Crypto Functional Substitutes Risks	
3.1. Issues of Source and Situs 3.1.1. Determining Source for Decentralized Transactions 3.1.2. Determining Situs of Decentralized Assets 3.1.3. Decentralized Autonomous Organizations (' DAOs ') 3.1.4. Place of Supply and other VAT Issues 3.2. Financial Markets and Instruments 3.2.1. Equity Instruments 3.2.2. Debt Instruments 3.2.3. Hybrid Instruments 3.2.4. Derivatives 3.2.5. Forex 3.2.6. Decentralized Finance (' DeFi ') 3.2.7. Redeemable Tokens 3.2.8. Non-Redeemable Asset-Backed Tokens 3.2.9. Stablecoins 3.2.10. VAT Exemptions (Financial Services)	3.3. Cryptocurrency as a Medium of Exchange 3.3.1. Exchange of Cryptocurrency for Fiat Currency 3.3.2. Exchange of Cryptocurrency for Other Crypto-assets 3.3.3. Exchange of Cryptocurrency for Goods and Services 3.3.4. Payment of Cryptocurrency as Wages 3.3.5. VAT Exemptions (When Used as Medium of Exchange) 3.4. Business Using Crypto-Assets 3.4.1. Crypto Used as Vouchers 3.4.2. Crypto as a Product Component 3.4.3. VAT Input Tax Claims

2.3. Worked Example: Losses from Trading in Crypto-assets

In the following, a worked example is meant to illustrate (1) how the Toolkit should be used and (2) provide insights into the approach and structure of the Toolkit.

2.3.1. Selecting the Risk to be Analyzed

The process begins with the user going through the 'Map of Crypto Tax Risks' and identifying which particular risk they wish to analyze. The user may have a particular risk in mind as part of an existing policy agenda or simply go through the Map as part of a broader exercise of identifying and managing crypto tax risks. This worked example covers 'Losses from Trading in Crypto-assets', which is a sub-risk of the broader category of 'Crypto Losses and Deductions Risks'.

2.3.2. Reading the Background Provided by the Commentary

The user will be asked to consult the relevant part of the Commentary related to this tax risk. For this particular sub-risk, the Commentary would explain that the crypto markets can display considerable volatility, posing the risk of large losses being generated in a short period of time. The key risk to the tax base here is that of the losses being deducted against income from other profitable sources, reducing the net amount of revenue which can be collected from these sources and eroding the tax base.

Apart from the mere fact that it may not be desirable for such large amounts of losses to be deductible in the tax system, there are two other additional situations where it may be particularly objectionable to allow such 'crypto losses' to be deducted. Firstly, where the crypto losses are deducted against other sources of income that are not related to crypto (or are insufficiently connected). Secondly, where the crypto losses are 'shifted around' in a manner which a tax authority may consider to be distortionary. This may be where the losses are 'carried back' (potentially offset against income generated even before any crypto activities took place), 'carried forward' (potentially offset against income generated long after any crypto activities have ceased) or shifted to other domestic companies (through a process such as group or consortium relief).

2.3.3. Completing the Questionnaire

After the user has read the Commentary, they would be asked to go through the questionnaire, which breaks that particular crypto tax risk into three separate steps. Firstly, identifying the relevant tax principles. Secondly, identifying any differences which arise if crypto-assets or transactions are involved. Thirdly, assessing whether there should be any difference in the tax treatment if crypto-assets or transactions are involved. Each of the three main steps will have relevant questions for the user to complete, the results of which should (together with the Commentary) assess the level of risk faced by a tax system.

Step 1: Identifying the Relevant Tax Principles

Issue A: Does the Existing Tax System Distinguish Between Different Kinds of Losses?

Q1.	Does the existing tax system distinguish between a revenue (ordinary) and a capital loss? If so, how would this affect the deductibility of losses?
Q2.	Does the existing tax system distinguish between losses by source of income? If so, how would this affect the deductibility of losses?

The Commentary would state that while many tax systems will distinguish between losses incurred from the carrying on of a trade or business and other general losses, there will be other tax systems which do not draw such a distinction. The following (or a hybrid of) categories are common: 1) strict source-by-source matching of each loss with income from the same source; 2) general matching of losses to income of the same general type (most prominent under a schedular system); 3) a general matching of losses to income of the same general type, but with the exception of certain types of losses such as those from a trade or business, which can be set off against all types of income; 4) no requirements of matching of losses to income, restricted only in that capital losses may only be set off against capital gains and vice versa; 5) no requirements of matching losses to gains at all (which would lead to unconditional deductibility and should be very rare).

The user is tasked with looking at the various categories listed in the Commentary and identifying which one their existing tax system falls under. The more generous the rules for the deduction of losses are in a tax system, the greater the crypto tax risks.

Sample Answer:

A.	<p>The existing tax system is a schedular system which distinguishes between business revenue and capital losses. The latter cannot be deducted against business income.</p> <p>It also generally requires the matching of losses by source of income. Losses from one source generally cannot be deducted from income from another source.</p> <p>The exception is that losses from a trade or business can be deducted against income from other sources.</p>
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Issue B: What are the Tests for Distinguishing Between Different Kinds of Losses?

Q1.	What tests do the existing tax system apply to determine if there is a trade or business?
Q3.	What are the tax implications of a finding that there is a trade or business?

The question of what legal test a tax system applies to determine if there is a trade or business and how losses are attributed is likely to be a familiar question. The Commentary would highlight a

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range of commonly used tests. For example, the badges of trade test is commonly used to determine if a trade is being carried on and would be explained in the Commentary. The test for a business might be whether there are activities which are commercially undertaken habitually and systematically. A user will be able to select from a range of common tests and tax features and match their system to a tax system it is most similar to.

Sample Answer:

A.	<p>The existing tax system applies a variety of tests to determine if a loss relates to business revenue or to capital in nature. There is a list of factors that may be indicative such as whether the asset disposed of was a personal use asset or whether the intention of the taxpayer was to make a profit (for example, the length of the holding period).</p> <p>The existing tax system applies a very strict process of source matching, with only dealings in the same kind of asset being considered to be related. The exception is where a trade or business can be established.</p> <p>To establish whether there is a trade, the badges of trade test will be applied. To establish whether there is a business, the question is whether there are activities which are commercially undertaken habitually and systematically.</p>
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Step 2: Identifying Any Differences Which Arise if Crypto-assets or Transactions are Involved

Issue A: Do the Tests for Distinguishing Between Different Kinds of Losses Differ if Crypto-assets or Transactions are Involved?

Q2.	Does the test to determine if there is a trade or business differ if crypto-assets or transactions are involved?
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The Commentary would explain that the fact that a crypto asset is involved will affect the application of the badges of trade test in the following ways. Firstly, crypto-assets are not generally of a kind considered to be used for investment, but rather for trading. Secondly, the period of ownership to constitute a trade will generally be shorter. Thirdly, the frequency of trading might be greater for crypto-assets. Fourthly, dealing with crypto-assets with volatile values may more readily constitute gambling and thus, not a trade.

Sample Answer:

A.	<p>Where crypto-assets are dealt with, the rules for determining if losses are from the same source are similar to those for shares.</p> <p>Several indicia of the badges of trade will tend to present differently where crypto-assets are involved. The net result is that dealings in crypto-assets will generally not constitute a trade or business.</p>
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Step 3: Assessing Whether there Should be Any Difference in the Tax Treatment if Crypto-assets or Transactions are Involved

Q4.	Are there any tax policy reasons for treating crypto-related trades or businesses differently from other, traditional trades or businesses?
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The Commentary will explain that it may be beneficial to treat crypto-assets and transactions differently from their traditional counterparts for tax purposes due to certain policy reasons. For example, the deductibility of crypto losses may be more restricted due to the high volatility of crypto asset values.

Sample Answer:

A.	<p>The fact that dealings with crypto-assets are less likely to be considered capable of establishing a trade or business is in line with the policy decision to manage the risks of large crypto losses being deducted against other sources of income.</p> <p>In fact, for the most part, crypto losses are treated in a similar way to non-crypto losses. This does not reflect the higher risks of crypto losses to the tax system and further restrictions should be placed on the deductibility of crypto losses.</p>
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Through this process, the Toolkit will help users identify potential crypto tax risks and the extents to which they may pose a problem for the existing tax system. As the Toolkit is drafted in broad terms, it relies heavily on the existing expertise of the user in determining what the tax position would be under their domestic tax systems. This process should assist in determining whether a particular crypto tax risk is one which warrants management and/or mitigation. The role of the Toolkit is not to prescribe, but to provide a framework for analysis and also describe policy options for consideration.

3. Questionnaires

Each crypto tax risk (as listed in the Map in 2.2) has its own separate questionnaire. Users can choose to go through all of the questionnaires in a single exercise or complete particular questionnaires for the individual risks that they wish to assess. Some sub-risks share similar issues and thus, there may be ‘Preliminary Questions’ that apply to a group of sub-risks. Users completing the questionnaires for individual risks may be guided to answer some of these ‘Preliminary Questions’ before going on to complete the particular questionnaire for their selected risks.

Users may read the questionnaires first to get an overview of the questions but should then read the relevant commentaries before starting the questionnaires. The commentaries are meant to be referenced constantly when completing the questionnaires, in particular at three points: 1) before starting the questionnaires (to understand the background of the sub-risk in question); 2) before answering each individual question (to understand the rationale for that question and for technical details); and 3) after answering each individual question (for information on best practices).

Risk 1: Crypto Reporting and Tax Crimes Risks

Crypto Reporting Questionnaire (Preliminary Questions for Risks 1.1 – 1.4)	
Definition	
Q1.	Does the existing tax system provide a definition of ‘crypto-assets’ for tax purposes?
Q2.	If so, how does the existing tax system define ‘crypto-assets’ for tax purposes? Does it refer to any international standard?
Standardized Framework	
Q3.	Does the existing tax system provide a standardized framework for the information on crypto-assets and transactions to be collected and reported?
Q4.	If not, would implementing another standard be feasible?
Processing of Information	
Q5.	Is there a mechanism to reconcile the acquired information with information from other sources (for example, the existing returns filed by taxpayers, information received from other jurisdictions, or other government agencies)?

Risk 1.1: Direct Reporting and Returns

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions.	
Filing the Tax Return	
Q1.	What percentage of individual taxpayers and companies within the current jurisdiction file tax returns each tax year, respectively?
Q2.	Does the existing tax system specifically require taxpayers to provide information on crypto income, assets and transactions in their tax returns? If so, what kind of information is required?
Q3.	Would the taxpayers be required to provide information relating to the most recent basis period (generally, the last tax year) only or the past few basis periods?
Q4.	Does the existing tax system require taxpayers to provide information in their tax returns on common crypto activities relating to them (such as mining, forging, airdrops, and forks)?

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Voluntary Reporting	
Q5.	If the existing tax system does not require crypto information to be provided when filing tax returns, does it have a mechanism that allows taxpayers to provide such information voluntarily?
Whistleblowing Mechanisms	
Q6.	Does the existing tax system have a formal whistleblowing mechanism that could also apply to reporting crypto information?

Risk 1.2: Intermediaries Reporting

Intermediaries Reporting Questionnaire (Preliminary Questions for Risks 1.2.1 – 1.2.3)	
Standardized Framework	
Q1.	Is the jurisdiction likely to have a significant proportion of its residents using the services of intermediaries?
Q2.	Are most of the intermediaries based within the jurisdiction or in other jurisdictions?
Q3.	Does the existing tax system have a standardized framework for intermediaries reporting?
Q4.	If the jurisdiction has decided to proceed with an international exchange of crypto information mechanism (such as the Crypto-Asset Reporting Framework (“ CARF ”)), has the domestic legislation been amended to require intermediaries to provide crypto information?

Risk 1.2.1: Centralized Crypto Exchanges

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions. Refer to ‘Intermediaries Reporting Questionnaire’ for the next four questions.	
Q1.	Does the existing tax system have a definition of a ‘centralized crypto exchange’?
Q2.	If so, what information does a centralized crypto exchange need to report?

Risk 1.2.2: Decentralized Crypto Exchanges

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions. Refer to ‘Intermediaries Reporting Questionnaire’ for the next four questions.	
Q1.	Does the jurisdiction have a definition of a ‘decentralized crypto exchange’?
Q2.	If so, what information does a decentralized crypto exchange need to report?

Risk 1.2.3: Traditional Intermediaries

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions. Refer to ‘Intermediaries Reporting Questionnaire’ for the next four questions.	
Q1.	Does the existing tax system have any mechanisms in place to collect information from traditional intermediaries (including those applying international standards such as the Common Reporting Standard (“ CRS ”))?
Q2.	If so, are the existing mechanisms effective in collecting taxpayer information?
Q3.	Do the current reporting obligations of traditional intermediaries assist the authorities in obtaining information regarding crypto asset transactions?

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Risk 1.3: Investigative Powers

Refer to 'Crypto Reporting Questionnaire' for the first five questions.	
Documents and Information from Taxpayers	
Q1.	Do tax authorities currently possess any powers to demand documents and ask for additional information from taxpayers (during the processing of tax returns and during an audit)?
Document and Information from Third Parties	
Q2.	Do tax authorities currently possess any powers to demand documents and ask for additional information from third parties (e.g. banks)?
Compelling Attendance in Investigations	
Q3.	Do tax authorities currently possess any powers to compel the attendance of any taxpayers to be interviewed in an investigation or for a court hearing?
Raids and Seizing Equipment and Documents	
Q4.	Do tax authorities currently possess any powers to conduct raids?
Q5.	Do tax authorities currently possess any powers (and technical knowledge) to enter taxpayers' premises and seize equipment (e.g. hard drives)?

Risk 1.4: International Exchange of Information

For Domestic Information Reporting and Collection, refer to the Questionnaires for Risks 1.1-1.3 Refer to 'Crypto Reporting Questionnaire' for the first five questions.	
Q1.	Has the jurisdiction ratified any international instruments to facilitate the international exchange of information? Or does the jurisdiction rely on double taxation treaties?
Q2.	Has the jurisdiction passed new legislation or is there a need to pass additional legislation to implement the exchange of information?
Q3.	Has the jurisdiction ratified CARF?

Risk 1.5: Taxation of Illegal Transactions

Legal Nature of Crypto-assets	
Q1.	Is the mere holding of crypto-assets prohibited in the jurisdiction?
Q2.	Are there any restrictions pertaining to crypto-assets in the jurisdiction?
Q3.	Are transactions of crypto-assets prohibited unless conducted through authorized crypto exchanges?
Q4.	Are overseas transactions of crypto-assets prohibited?
Tax Rules Relating to Illegal Transactions	
Q5.	If crypto-assets or transactions are illegal, would any income generated from them be taxable in the jurisdiction?
Q6.	If so, would the existing tax system allow taxpayers to offset or deduct properly incurred expenses?

Risk 2. Crypto Losses and Deductions Risks

Risk 2.1: Losses

Losses Questionnaire (Preliminary Questions for Risks 2.1.1 – 2.1.3)	
General Features of the Existing Tax System	
Q1.	Does the existing tax system distinguish between a revenue (ordinary) and a capital loss? If so, how would this affect the deductibility of losses?
Q2.	Does the existing tax system distinguish between losses by source of income? If so, how would this affect the deductibility of losses?
General Safeguards	
Q3.	Does the existing tax system have any mechanisms for the carrying forward or carrying back of losses? If so, are there any restrictions on these mechanisms?
Q4.	Does the existing tax system have any mechanisms for the group relief of losses? If so, are there any restrictions on these mechanisms?
Q5.	Are the safeguards of the existing tax system sufficient to manage the risk of base-eroding crypto losses?

Risk 2.1.1: Losses from Investment or Speculation (Non-Business)

Refer to 'Losses Questionnaire' for the first five questions.	
Q1.	If the existing tax system does distinguish between a revenue (ordinary) or capital loss, what tests are applied to make this determination?
Q2.	If the existing tax system does distinguish between losses by source of income, what tests are applied to determine if losses are from the same source?
Q3.	Is the existing tax system likely to allow for crypto losses from investment or speculation to be generally deducted against income from other (non-crypto) sources?

Risk 2.1.2: Losses from Trading in Crypto-assets

Refer to 'Losses Questionnaire' for the first five questions.	
Q1.	What tests do the existing tax system apply to determine if there is a trade or business?
Q2.	Does the test to determine if there is a trade or business differ if crypto-assets or transactions are involved?
Q3.	What are the tax implications of a finding that there is a trade or business?
Q4.	Are there any tax policy reasons for treating crypto-related trades or businesses differently from other, traditional trades or businesses?

Risk 2.1.3: Losses from Crypto Dealings as Part of a Broader Non-Crypto Business

Refer to 'Losses Questionnaire' for the first five questions.	
Q1.	Does the existing tax system prohibit the deduction of losses simply because they are linked to crypto-assets in any way?
Q2.	Should the tax system prohibit the deduction of crypto losses against income unless they have a sufficient connection to the source of income?

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Risk 2.2: Donations

Donations Questionnaire (Preliminary Questions for Risks 2.2.1- 2.2.2)	
Donations and Tax Deductions	
Q1.	Does the tax system allow for tax deductions for donations-in-kind? If so, are donations of crypto-assets tax deductible?
Valuation	
Q2.	Is there a framework or guidelines to value crypto-assets, and is it based on fair market value or another method?
Deemed Realization Rule	
Q3.	Is there a deemed realization rule (assets are deemed to have been sold at a market value)?

Risk 2.2.1: Donations of Payment Tokens

Refer to 'Donations Questionnaire' for the first three questions.	
Policy Considerations	
Q1.	Does the existing tax system distinguish between donations of payment tokens and non-payment tokens?
Q2.	Does the existing tax system distinguish between donations of less-frequently traded payment tokens and actively traded payment tokens?

Risk 2.2.2: Donations of Non-Payment Tokens

Refer to 'Donations Questionnaire' for the first three questions.	
Policy Considerations	
Q1.	Are donations of non-payment tokens tax deductible in the jurisdiction?

4. Commentaries

These commentaries aim to provide the users of the Toolkit with the relevant background on the technical details of crypto-assets and transactions, the crypto tax risks and potential best practices. It should be read in conjunction with the questionnaires, with the user alternating between the two sections as appropriate. The commentaries are divided into three main parts. Firstly, a section laying out the general background of the relevant risks. This section follows the statement of the crypto tax risks and is intended to provide the user with a broad overview of the issues and relevant technical knowledge. Secondly, each question in the questionnaires will be followed by a section explaining the rationale for that question and providing technical details. Thirdly, each question will also be followed by another section to be read after the question has been answered, to provide information on best practices.

Risk 1: Crypto Reporting and Tax Crimes Risks

The first risk has to do with the gathering, exchange and use of crypto tax information by governments, and other broad issues such as the underlying definitions and technology and dealing with illegal crypto activities. The issue of ensuring that governments have adequate information on crypto-assets and transactions is a particularly important one because there are several features of crypto that make it difficult to gather accurate information on crypto activities and the relevant parties engaged in such activities. The main issue is one of pseudonymity, where it is generally possible to track which ‘wallets’ are involved in crypto holdings and transactions, but considerably more difficult to identify the individuals or entities behind those ‘wallets’. It is only when a reasonably clear picture of the taxpayer’s crypto and traditional asset holdings and transactions is available that a decision can be made whether to commence an audit and further investigations.⁹ The commentaries on crypto reporting attempt to address the issue of how to tap on existing and new mechanisms to maximizing their information gathering, exchange and use capabilities.¹⁰

Crypto Reporting Questionnaire
(Preliminary Questions for Risks 1.1 – 1.4)

Background and Rationale

Given that Risks 1.1 – 1.4 all concern the broad issue of the gathering, exchange and use of crypto information, there is a common set of questions: the ‘Crypto Reporting Questionnaire’ that should be answered when considering any of those risks. These questions set the background for examining more specific situations when considering the various crypto tax risks later.

⁹ See the Report, Section 2.5.2: Tax Evasion.

¹⁰ See the Report, Section 2.5.1: Problems of Pseudonymity and Reporting and Section A1.2.3: ‘Wallets’ and the Issue of Pseudonymity; and the Toolkit Outline, Section A.3: Crypto Reporting and Tax Crimes Risks.

Definition	
Q1.	Does the existing tax system provide a definition of ‘crypto-assets’ for tax purposes?

Background and Rationale

A basic prerequisite for the gathering, exchange and use of crypto information is a definition of what a ‘crypto asset’ is for tax purposes. With such a definition, laws providing for the gathering of crypto information can then be drafted and internal processes can be designed to handle such information.

Best Practices

Many jurisdictions will not currently have any express definition of ‘crypto-assets’ in their tax laws. It is noted that a jurisdiction which has implemented or is in the process of implementing the CARF¹¹ (more information on the CARF can be found in Appendix A1.3) or a similar international exchange of crypto information standard into their domestic law would have a definition of ‘crypto-assets’ in their tax system (see the commentary for the next question).

A definition of ‘crypto-assets’ need not necessarily apply across all areas of tax law. It is possible, for example, for a certain definition to apply exclusively for the purposes of exchange of information, but not for other areas of tax law. This would be the case for a jurisdiction which has implemented an international exchange of crypto information standard but not made any other crypto tax amendments to its tax statutes.

As the area of crypto taxation is still developing, to prevent unintended consequences, most jurisdictions which do have a definition of ‘crypto-assets’ currently only apply such a definition in the exchange of information context and do not have a general definition that would apply across the entirety of tax law in that jurisdiction. Such a definition would have effects on procedural matters (exchange of information) but not substantive tax law (i.e. not apply to affect the determination of tax liability).

Q2.	If so, how does the existing tax system define ‘crypto-assets’ for tax purposes? Does it refer to any international standard?
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Background and Rationale

Building on the previous question, this question encourages the users to consider if a definition of ‘crypto-assets’ would be helpful in tackling crypto tax risks. If a jurisdiction has a definition, the user should check their current definition against other international standards.

¹¹ OECD, *Crypto-Asset Reporting Framework and 2023 Update to the Common Reporting Standard* (OECD) (2023) <<https://www.oecd.org/tax/international-standards-for-automatic-exchange-of-information-in-tax-matters-896d79d1-en.htm>> accessed February 25, 2024 (‘CARF’).

Best Practices

Some jurisdictions have introduced a definition of the term ‘crypto assets’, although there is no universal consensus on its definition at the moment. Guidance may be taken from the definitions offered by several leading international exchange of information initiatives. The Organization for Economic Cooperation and Development (‘**OECD**’)s CARF defines ‘crypto-assets’ as ‘a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.’¹² The European Commission’s Markets in Crypto-Assets Regulation (‘**MiCA**’) defines them as ‘a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology’.¹³

For completeness, users may also wish to consider the Financial Action Taskforce (‘**FATF**’)s definition of ‘virtual assets’, as ‘a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.’¹⁴ This is a broader concept than ‘crypto-assets’ and may be used if a jurisdiction wishes to widen the scope of the applicable tax laws.

Further information can be found in Appendix A.1.

Standardized Framework	
Q3.	Does the existing tax system provide a standardized framework for the information on crypto-assets and transactions to be collected and reported?

Background and Rationale

Due to the potentially large amounts of data that may be collected and exchanged, it is important for the information to be standardized, so that it can be readily used for data analysis. This may allow the creation of systems which ‘flag’ taxpayers for audits or further investigations. It is desirable to be able to match taxpayer data to the correct taxpayer identification number (‘**TIN**’), allowing for the retrieval of all relevant information about a particular taxpayer when making administrative decisions. Other important data points include the ‘wallets’ which are controlled by a taxpayer, total value of crypto holdings of a taxpayer, actual crypto holdings, and various crypto transactions made (see the commentary for the next question).

¹² CARF (n 11), Section IV(A)(1) of the CARF Rules, 22.

¹³ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, and Amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, Title I, Article 3. Also see the European Commission, Council Directive (EU) 2023/2226 of 17 October 2023 Amending Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation (‘**DAC8**’).

¹⁴ FATF, *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers* (2021), Glossary, 109.

Best Practices

Most countries will not yet have such a standardized framework. But given the increasingly widespread adoption of international exchange of crypto information mechanisms like the CARF, which do prescribe such a framework, it is expected that more countries will build their standardized framework based on these mechanisms (see the commentary for the next question). More information on the CARF can be found in Appendix A1.3.

Q4.	If not, would implementing another standard be feasible?
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Background and Rationale

There are several advantages to adopting a framework prescribed by one of the international exchange of crypto information mechanisms like the CARF. Making use of the same framework would greatly facilitate the eventual sending of crypto information to other jurisdictions under the mechanism should the jurisdiction choose to ratify and implement it. There would be similar advantages when receiving crypto information from other jurisdictions. Adopting an existing framework would save a jurisdiction from having to come up with one from scratch. Jurisdictions may choose to build on the existing framework and add some data points.

Best Practices

Under the CARF, some key items of information to be reported include: 1) the taxpayer’s jurisdiction of residence; 2) its Tax Identification Number; 3) the full name of the relevant crypto-assets; 4) any acquisitions and disposals of the crypto-assets (whether exchanged for fiat currency or other crypto-assets); 5) retail payment transactions; and 6) other transfers of crypto-assets. The fair market value of the crypto-assets must be reported (net of any transaction fees).¹⁵ An extensible mark-up language (‘XML’) schema is currently being developed to facilitate the reporting and exchange of crypto information.¹⁶ Adoption of the CARF may establish good starting points for information collection. Jurisdictions which wish to go further can evaluate requiring the reporting of any ‘wallet’ addresses controlled by the taxpayer. However, it should be noted that adopting a mechanism such as CARF comes with challenges, especially with respect to administrability and the technology needed and developing countries will need to analyze their tax policy options and priorities in respect of this undertaking. More information on the CARF can be found in Appendix A1.3.

Processing of Information	
Q5.	Is there a mechanism to reconcile the acquired information with information from other sources (for example, the existing returns filed by taxpayers, information received from other

¹⁵ CARF (n 11), 31-35. Issues of valuation are addressed in CARF (n 11), 36-38.

¹⁶ CARF (n 11), 3.

jurisdictions, or other government agencies)?

Background and Rationale

As information can come from a variety of sources, such as tax returns filed by taxpayers, information received from other jurisdictions or other government agencies, it is highly recommended that the information be standardized in a uniform format, so that it can easily be analyzed (whether by tax officers or with the aid of an automated system). Depending on domestic legislation, it may be possible to obtain relevant information from other governmental agencies such as financial regulators and/or central banks that may collect it. However, it is necessary to check the domestic legislation to ensure that information from such other governmental agencies may be legally transferred to the tax authority.

Best Practices

It is recommended that, regardless of the source of the information reported, it must always include a TIN, to ensure that it is associated with the correct taxpayer.

A more sophisticated reporting system could be one which has procedures in place to flag potential issues of interest for further analysis and investigation. Such procedures could be automated or manually done by tax officers. Examples include cases where there is a large volume of crypto transactions, where information from the various sources do not tally, or where transactions are made with suspicious counterparties.

Risk 1.1: Direct Reporting and Returns

While collecting information from intermediaries is a good way of ensuring that taxpayers have made full and frank disclosure in their tax returns, in many jurisdictions, particularly for taxpayers who are entities, the primary way of gathering taxpayer information is through direct reporting by taxpayers, when they file their returns. The importance of this primary mechanism is enhanced by the fact that with crypto-assets and transactions, quite often it may not be technically necessary to go through any intermediary at all to access the crypto market, given its decentralized nature. Tokens can be freely transferred between individuals (peer-to-peer) without having to go through any intermediaries. As such, there could be some ‘wallets’ which were never registered with intermediaries, making it impossible to identify their owners.¹⁷ As such, it may not be sufficient to gather information on taxpayers and transactions from intermediaries alone. There also need to be systems in place that can help taxpayers to effectively and accurately make reports and returns to the tax authorities by themselves.

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions.

¹⁷ Also see the Report, Section 4.2.4: Domestic Collection of Information.

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Please complete the five questions listed in the ‘Crypto Reporting Questionnaire’ above before proceeding with the following questions, as they are crucial to set the necessary context for discussing direct reporting and returns.

Filing the Tax Return	
Q1.	What percentage of individual taxpayers and companies within the current jurisdiction file tax returns each tax year, respectively?

Background and Rationale

Other than in specific (and rarer) cases where taxpayers report information through a separate voluntary procedure or through whistleblowing, almost all direct reporting by taxpayers will come in the form of the filing of tax returns. While taxpayers which are entities will almost always be required to file their tax returns annually, the same cannot be said about individual taxpayers. In many jurisdictions, individuals who are employees may be subjected to a different administrative regime, ranging from cases where they do not need to file tax returns at all (the assumption being that their employer would have provided the necessary information to the tax authority), to cases where the tax returns are largely pre-filled and taxpayers merely have to confirm that the information is accurate, and yet other cases where information on employment income may be pre-filled, but taxpayers have to complete the other sections in the tax returns.

If a large proportion of taxpayers within a jurisdiction do not file tax returns, or, more generally, are not used to providing additional information in their tax returns, the amount of information that can be gathered by the tax authority through direct reporting and returns may be limited, even if legislation is passed to require taxpayers to provide crypto information directly. Taxpayers who are not used to providing such information may not be readily inclined to comply.

Best Practices

In a jurisdiction where a large proportion of taxpayers are not used to filing tax returns or providing additional information in their tax returns, additional mechanisms such as a special penalty regime, voluntary disclosures and/or whistleblowing may be needed, but the tax authority will probably have to rely heavily on information from intermediaries instead.

Q2.	Does the existing tax system specifically require taxpayers to provide information on crypto income, assets and transactions in their tax returns? If so, what kind of information is required?
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Toolkit for the Evaluation of Crypto Tax Risks (Risks 1 and 2)

Background and Rationale

An easy way for tax authorities to gather crucial crypto information is to require taxpayers to provide such information in their tax returns. Such information should include their crypto income, holdings and transactions at the minimum. Ideally, it would include all categories of information established by the CARF (more information on the CARF can be found in Appendix A1.3).

Best Practices

Most jurisdictions will not presently require taxpayers to provide all the abovementioned categories of information. In many jurisdictions, taxpayers will at most be required to report information on the income derived from crypto activities, and even then, such information may be reported together with income from other sources and not specifically indicated to be income from crypto activities.

It is suggested that jurisdictions include a section in their tax filing forms or an annexure requiring taxpayers (who are entities at least, even if individual taxpayers are not included) to specifically report crypto information. Such information is to be provided in addition to reporting crypto income in the regular form.

Q3.	Would the taxpayers be required to provide information relating to the most recent basis period (generally, the last tax year) only or the past few basis periods?
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Background and Rationale

Generally, taxpayers will only be required to file returns based on information relating to the most recent basis period. However, a tax authority will likely have information from preceding basis periods due to the obligation on taxpayers to file returns on a recurrent basis. Given that any crypto information reporting requirements are likely to be newly introduced, during the first period of implementation tax authorities will likely not have any information from preceding basis periods, raising the question of whether (at least for the first such filing by taxpayers) they should require taxpayers to include information relating to the past three to five years.

Best Practices

It is likely that requiring taxpayers to file their returns based on information relating to more than the most recent basis period would impose a considerable administrative burden on taxpayers and may face legal restrictions. As most jurisdictions would already require taxpayers to keep records for a number of years, perhaps the requirement would be to file for the most recent basis period, but to reserve the right to ask for more information should it be required.

Q4.	Does the existing tax system require taxpayers to provide information in their tax returns on common crypto activities relating to them (such as mining, forging, airdrops, and forks)?
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Background and Rationale

There are a number of common crypto activities which the tax authorities may wish to obtain specific information on. Mining and forging can simplistically be viewed as processes which support the underlying infrastructure of particular crypto-assets and those providing such services are rewarded with tokens accordingly.¹⁸ Airdrops refer to the distribution of digital tokens for free. This generally is undertaken as a marketing tool to increase awareness of a new token and to increase liquidity in the early stages of issuance.¹⁹ Hard forks are also known as ‘permanent chain splits’, where a new version of tokens is created, with both old and new tokens co-existing.²⁰

By requiring taxpayers to specifically provide information in their returns on common crypto activities, the tax authority can get a better picture of the scale of such activities in their jurisdiction, which may inform further policy decisions.

Best Practices

If taxpayers are already required to provide information on their crypto income, asset holdings and transactions, there may not be a need to require them to specifically provide information on common crypto activities, since it should technically be possible to derive information about the latter from the former. The specific requirement to provide information on common crypto activities can give rise to a data point that can be used to check whether taxpayers have accurately computed and reported their crypto income, though this benefit will have to be weighed against the additional administrative burden which this may impose on taxpayers.

Voluntary Reporting	
Q5.	If the existing tax system does not require crypto information to be provided when filing tax returns, does it have a mechanism that allows taxpayers to provide such information voluntarily?

Background and Rationale

Especially in jurisdictions where individual taxpayers do not tend to file tax returns, a separate mechanism might be put in place to allow taxpayers to provide information to the tax authority specifically on their crypto income, assets and transactions. The underlying idea is that there may be taxpayers who have no intention to evade taxes but lack the technical knowledge to be able to accurately understand the tax consequences of their crypto asset holdings and transactions.

¹⁸ For more details, see the Report, Section A.1.2: The Underlying Technology.

¹⁹ See OECD, *Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues* (2020) (**‘OECD 2020’**), 13; and Vincent Ooi, ‘Administrative Concessions and the Efficient Taxation of Digital Tokens in Singapore’ (2023) 39(2) *Banking & Finance Law Review* 219, 230.

²⁰ See OECD (2020) (n 19), 15; and Ooi (2023) (n 19), 230-231.

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As an incentive for voluntarily providing such information, a taxpayer who has accurately provided the required information can be assured that no penalties for wrongly omitting or computing crypto income crypto-assets will be applied. This would allow the tax authority to still assess and collect the correct amount of tax due on such holdings and transactions, but would allow the taxpayers peace of mind in that they will not be held to be engaged in tax evasion or negligence should they make use of this mechanism.

Best Practices

This mechanism may be analogized to the ‘voluntary disclosure programs’ which are quite common in a variety of jurisdictions. The International Monetary Fund (IMF) notes that the potential success of such voluntary programs hinges on increased detection capabilities by the tax authorities, and a firm commitment to take follow on action against taxpayers who do not participate in such programs and choose to hide their assets.²¹ There would appear to be few drawbacks in offering such a mechanism to individuals, and possibly small and medium sized enterprises, , but may enhance the sources of information for the tax authority. This mechanism will have to be supplemented with other sources and there needs to be the credible prospect of crypto audits for it to be successful.

Whistleblowing Mechanisms	
Q6.	Does the existing tax system have a formal whistleblowing mechanism that could also apply to reporting crypto asset-related information?

Background and Rationale

One potential source of information for the tax authority is a whistleblowing mechanism that would allow users to provide information if they believe that someone else is evading tax. Such users could be given some kind of reward for their efforts, that might be proportionate to the amount of tax recovered by the tax authority. While many jurisdictions already have some kind of similar scheme, this might be particularly useful in the context of crypto taxation, especially if the information provided helps to identify the ultimate users behind certain ‘wallets’. The United States Internal Revenue Service has found that it may be more cost effective to operate a whistleblowing mechanism than attempt to use other methods of selecting returns for audits.²²

²¹ Dora Benedek *et. al.*, ‘Voluntary Disclosure Programs – Design, Principles and Implementation Considerations’ (2022) IMF Technical Notes and Manuals, 7.

²² Michelle Kwon, ‘Whistling Dixie about the IRS Whistleblower Program Thanks to the IRC Confidentiality Restrictions’ (2010) 29(3) Virginia Tax Review 447, 448-449.

Best Practices

Researchers have been debating new whistleblowing mechanism, whereby the tax authority would periodically publicize lists of Bitcoin payment addresses for which it seeks the identities of the ultimate owners.²³

Risk 1.2: Intermediaries Reporting

As noted above, due to the inherent decentralized design of the blockchain, technically, users can hold crypto-assets and engage in crypto transactions without having to rely on intermediaries at all, by engaging in peer-to-peer (P2P) transfers using their own ‘wallets’. However, at the present moment, at least, the proportion of crypto holders who are technologically savvy enough to navigate the holding and transfer of crypto-assets themselves, without the need for intermediaries, is rather low. The vast majority of crypto holders still need to use intermediaries and thus the existing tax legislation should be reviewed to ensure that the tax authorities can compel intermediaries to collect and remit such information.²⁴ Apart from crypto intermediaries, traditional intermediaries such as banks and financial institutions may also be able to provide valuable information to the tax authority because the traditional intermediaries are often involved in crypto transactions, particularly where crypto-assets are converted to fiat currency.

<p><u>Intermediaries Reporting Questionnaire</u> <u>(Preliminary Questions for Risks 1.2.1 – 1.2.3)</u></p>

Given that Risks 1.2.1 – 1.2.3 all concern the broad issue of the reporting obligations of intermediaries and the gathering of crypto information from those sources, there is a common set of questions: the ‘Intermediaries Reporting Questionnaire’ that should be answered when considering any of those risks. These questions set the background for examining more specific situations when considering the various crypto tax risks later.

Standardized Framework	
Q1.	Is the jurisdiction likely to have a significant proportion of its residents using the services of intermediaries?

Background and Rationale

The proportion of residents using the services of traditional intermediaries may vary depending on how developed the domestic banking and financial sector is. As most crypto users are unlikely to be technologically savvy enough to hold and transact in crypto-assets without the assistance of

²³ Arvind Sabu, ‘Reframing Bitcoin and Tax Compliance’ (2020) 64 Saint Louis University Law Journal 181, 214.

²⁴ Also see the Report, Section 4.2.4: Domestic Collection of Information.

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a crypto intermediary, a high crypto adoption rate in the jurisdiction is likely to correlate with a significant proportion of residents using the services of crypto intermediaries. The proportion of residents using the services of the various kinds of intermediaries will give some indication of the potential success of attempts by the tax authority to obtain a comprehensive picture of taxpayer crypto holdings and transactions from intermediaries.

Best Practices

Depending on the prevalence of intermediaries which residents in a jurisdiction tend to engage with (be it crypto or traditional intermediaries, domestically or overseas based), the tax authority may vary its focus accordingly.

Q2.	Are most of the intermediaries based within the jurisdiction or in other jurisdictions?
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Background and Rationale

It may be difficult to bring certain intermediaries (particularly crypto intermediaries) within the jurisdiction of the relevant authorities, especially where they are based overseas but cater to residents in another jurisdiction. In such cases, it may be necessary to obtain crypto information through the international exchange of crypto information mechanisms instead (discussed in the commentary for Risk 1.4). It is noted that under the CARF, there is a ‘hierarchy of nexus rules’ designed to operate in situations where it may be possible for a ‘relevant crypto asset service provider (‘**RCASP**’)’ to be subject to CARF obligations in two or more jurisdictions.²⁵ More information on the CARF can be found in Appendix A1.3.

Best Practices

A jurisdiction where most of the intermediaries providing services to the residents are based overseas will probably face difficulties compelling such intermediaries to comply with requests for crypto information (unless they voluntarily accede to such requests). As such, the tax authority would likely have to rely more on information from other foreign tax authorities through an exchange of crypto information mechanism. Such a jurisdiction should consider ratifying and implementing the relevant international instruments and have in place systems that would allow it to effectively use such information.

Q3.	Does the existing tax system have a standardized framework for intermediaries reporting?
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²⁵ CARF (n 11), 29-30.

Toolkit for the Evaluation of Crypto Tax Risks (Risks 1 and 2)

Background and Rationale

In order for the information from the intermediaries to be easily analyzed and used by the tax authority, it is ideal for the information to be received in a standardized format that is compatible with the information already held by the tax authority and also information that may be received from other sources.

Best Practices

As noted above, adopting one of the formats prescribed by an international exchange of crypto information mechanism such as the CARF can be helpful for jurisdictions.²⁶

Q4.	If the jurisdiction has decided to proceed with an international exchange of crypto information mechanism (such as the Crypto-Asset Reporting Framework (“ CARF ”)), has the domestic legislation been amended to require intermediaries to provide crypto information?
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Background and Rationale

Although jurisdictions may adopt standardized frameworks such as the CARF, such rules do not necessarily become law immediately in a dualist legal system, which requires international agreements to be incorporated into domestic law through amendments in legislation before they can have legal effect within the state. Legislatures must therefore ensure the relevant amendments have been made so that international obligations signed by the executive branches of government are incorporated into domestic law. Otherwise, any requirements imposed on intermediaries to collect and report information to the tax authority will not be strictly legally enforceable.

Risk 1.2.1: Centralized Crypto Exchanges

Crypto exchanges can broadly be divided into two categories: centralized exchanges and decentralized exchanges.²⁷ Centralized crypto exchanges are those which directly facilitate crypto transactions for crypto holders; the transfers are done on the exchanges themselves. In many cases, centralized exchanges may operate on a custodial model, where the crypto-assets are held by the exchange and not by the specific ‘wallets’ controlled by the transacting parties themselves.²⁸

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions. Refer to ‘Intermediaries Reporting Questionnaire’ for the next four questions.

²⁶ See the commentary on the ‘Crypto Reporting Questionnaire’, above. Also see, CARF (n 11), 31-35.

²⁷ Henri Arslanian, *The Book of Crypto* (Springer) (2022), 335.

²⁸ Arslanian (n 27), 347.

Toolkit for the Evaluation of Crypto Tax Risks (Risks 1 and 2)

Please complete the five questions listed in the ‘Crypto Reporting Questionnaire’ above and the four questions listed in the ‘Intermediaries Reporting Questionnaire’ above, before proceeding with the following questions, as they are crucial to set the necessary context for discussing the various specific kinds of intermediaries.

Q1.	Does the existing tax system have a definition of a ‘centralized crypto exchange’?
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Background and Rationale

It is expected that the majority of crypto users in a jurisdiction will hold and transfer their crypto-assets through the use of centralized crypto exchanges, since this will often be the easiest way for them, requiring little to no technical knowledge of crypto-assets and transactions. However, few jurisdictions or international mechanisms currently use the express term ‘centralized crypto exchange’ in their legislation or frameworks. The distinction between ‘centralized’ and ‘decentralized’ crypto exchanges in these commentaries is to provide background information and highlight the fact that many decentralized crypto exchanges may not be subject to the same reporting standards as centralized crypto exchanges rather than to encourage jurisdictions to specifically define ‘centralized crypto exchanges’.

The CARF refers to RCASPs rather than ‘centralized crypto exchanges’. RCASPs are defined as ‘any individual or Entity that, as a business, provides as service effectuating Exchange Transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such Exchange Transactions, or by making available trading platform’.²⁹ These main categories of transactions are discussed in the commentary for the following question.

Best Practices

It is expected that the majority of crypto exchanges providing services to the users in a jurisdiction will probably be centralized crypto exchanges which fall within the definition of RCASPs under the CARF framework. Jurisdictions who wish to implement reporting obligations for intermediaries who are centralized crypto exchanges in their domestic legislation may consider adopting the definitions laid out in the CARF for this purpose.

Q2.	If so, what information does a centralized crypto exchange need to report?
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Background and Rationale

There are three main types of transactions which RCASPs are required to report: 1) exchanges between Relevant Crypto-Assets and Fiat Currencies; 2) exchanges between one or more forms of

²⁹ CARF (n 11), 19.

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Relevant Crypto-Assets; and 3) transfers (including Reportable Retail Payment Transactions) of Relevant Crypto-Assets.³⁰ RCASPs must provide the following information about the relevant reportable persons: 1) the persons' name, 2) address, 3) jurisdiction of tax residence, 4) TIN, and 5) date and place of birth.³¹

Other information about the relevant transactions must also be provided such as: 1) the full name of the relevant crypto-assets; 2) any acquisitions and disposals of the crypto-assets (whether exchanged for fiat currency or other crypto-assets); 3) retail payment transactions; and 4) other transfers of crypto-assets.³² The reporting is to be done on an aggregate basis by type of transactions, distinguishing between: 1) outward and inward transactions, 2) crypto-to-crypto transactions, and 3) transfer types. The reporting should be done in a fiat currency. If fiat currency were not used in the transaction, the reportable value should be based on the market value of the relevant asset at the time of the relevant transaction.³³

Best Practices

Jurisdictions who wish to implement reporting obligations for centralized crypto exchanges can consider adopting the framework laid out in the CARF for this purpose.

Risk 1.2.2: Decentralized Crypto Exchanges

Not all situations where crypto holders use crypto exchanges will result in transactions occurring on the exchange itself. Decentralized crypto exchanges operate differently from centralized crypto exchanges in that they are designed to eliminate the involvement of any third parties in the actual crypto transactions themselves. Decentralized crypto exchanges facilitate the matching of parties who wish to enter into a transaction, while leaving the actual transfer to the parties themselves to execute (in a peer-to-peer transfer).³⁴

Refer to 'Crypto Reporting Questionnaire' for the first five questions.
Refer to 'Intermediaries Reporting Questionnaire' for the next four questions.

Please complete the five questions listed in the 'Crypto Reporting Questionnaire' above and the four questions listed in the 'Intermediaries Reporting Questionnaire' above, before proceeding

³⁰ CARF (n 11), 14, 22-23, and 31-36.

³¹ CARF (n 11), Section II(A) of the CARF Rules, 18-19.

³² See the commentary on the 'Crypto Reporting Questionnaire', above. Also see, CARF (n 11), 31-35.

³³ Noam Noked, 'Ending the Crypto Tax Haven' (2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4618310> accessed February 25, 2024, 16-17. CARF 2023, 18-19. Issues of valuation are addressed in CARF 2023, 36-38.

³⁴ Iwa Salami, 'Decentralised Finance: The Case for a Holistic Approach to Regulating the Crypto Industry' (2022) 35(7) Journal of International Banking and Financial Law 496, 497.

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with the following questions, as they are crucial to set the necessary context for discussing the various specific kinds of intermediaries.

Q1.	Does the jurisdiction have a definition of a ‘decentralized crypto exchange’?
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Background and Rationale

The use of decentralized crypto exchanges requires more technical knowledge of crypto-assets and transactions on the part of the users. Thus, their use is unlikely to be as widespread as centralized crypto exchanges. As noted above,³⁵ few jurisdictions or international mechanisms currently use the term ‘decentralized crypto exchange’ in their legislation or frameworks. The distinction between ‘centralized’ and ‘decentralized’ crypto exchanges in these commentaries is to provide background and highlight the fact that many decentralized crypto exchanges may not be subject to the same reporting standards as centralized crypto exchanges.

Decentralized crypto exchanges are less likely to fall within the definition of RCASPs under the CARF, for example, because they may not, as a business, provide services effectuating exchange transactions.³⁶ They may, for example, merely act as a ‘bulletin board’ for Transacting Parties to post buy, sell, or conversion prices of their crypto-assets.³⁷

Best Practices

There are considerable difficulties with regulating decentralized crypto exchanges at the moment, with international exchange of crypto information mechanisms unlikely to impose reporting obligations on them. Jurisdictions, especially those with limited resources, may wish to focus on centralized crypto exchanges as a first step and monitor further developments internationally with respect to decentralized crypto exchanges.

Q2.	If so, what information does a decentralized crypto exchange need to report?
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Background and Rationale

As noted above, it is unlikely that most jurisdictions will have a specific definition for ‘centralized crypto exchange’. Such exchanges which do not fall within the definition of RCASPs under the CARF will not be subjected to reporting obligations under the CARF.

³⁵ In the commentary for Risk 1.2.1: Centralized Crypto Exchanges.

³⁶ CARF (n 11), 19.

³⁷ Noked (n 33), 37.

Best Practices

While it may appear to be a problem that many decentralized crypto exchanges will not be subject to reporting obligations under a framework such as the CARF, it is noted that due to the differences in how they operate as compared to centralized crypto exchanges, regulating both in the same way may not be appropriate.³⁸ It is likely that as this area develops, new frameworks may be developed for imposing reporting obligations on decentralized crypto exchanges. But until then, jurisdictions may wish to focus on centralized crypto exchanges, particularly as the number of users utilizing the services of decentralized crypto exchanges is likely to be low.

Risk 1.2.3: Traditional Intermediaries

Crypto-assets are fundamentally useless if they cannot be traded for fiat currency or real-world goods or services. In many cases, at some point, crypto-assets must interface with the traditional banking system to be worth anything. Thus, information from traditional intermediaries from banks and other financial institutions can play a crucial role in enabling tax authorities to administer crypto taxation. Tax authorities should look out for and carefully monitor sudden inexplicable inflows of funds, which could suggest that crypto-assets have been exchanged for fiat currency.³⁹ One particular challenge is noted, in that crypto adoption amongst residents tends to be high in jurisdictions with less developed traditional banking systems.⁴⁰ Such jurisdictions may have difficulties obtaining taxpayer information from traditional intermediaries.

Refer to ‘Crypto Reporting Questionnaire’ for the first five questions.
Refer to ‘Intermediaries Reporting Questionnaire’ for the next four questions.

Please complete the five questions listed in the ‘Crypto Reporting Questionnaire’ above and the four questions listed in the ‘Intermediaries Reporting Questionnaire’ above, before proceeding with the following questions, as they are crucial to set the necessary context for discussing the various specific kinds of intermediaries.

Q1.	Does the existing tax system have any mechanisms in place to collect information from traditional intermediaries (including those applying international standards such as the Common Reporting Standard (‘CRS’))?
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³⁸ Jack Solowey and Jennifer Schulp, ‘Regulatory Clarity for Crypto Marketplaces Part I, Decentralised Exchanges’, (2023) CATO Briefing Paper 154, 3.

³⁹ Also see the Report, Section 4.2.4: Domestic Collection of Information.

⁴⁰ Dimitris Drakopoulos, *et. al.*, ‘Crypto Boom Poses New Challenges to Financial Stability’ (International Monetary Fund Blog) (October 1, 2021) <<https://www.imf.org/en/Blogs/Articles/2021/10/01/blog-gfsr-ch2-crypto-boom-poses-new-challenges-to-financial-stability>> accessed February 25, 2024.

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Background and Rationale

Many jurisdictions have implemented the CRS standards⁴¹ into their domestic legislation, enabling them to gather information from traditional intermediaries. There is also the possibility of other forms of domestic legislation which are not directly based on the CRS standards that require traditional intermediaries to share taxpayer information with the tax authorities.

Best Practices

As additional reporting requirements imposed on traditional intermediaries can result in considerable compliance costs, jurisdictions may consider simply implementing the CRS standards in their domestic legislation. The benefits of implementing parallel systems of reporting for traditional intermediaries may not be worth the costs of doing so.

Q2.	If so, are the existing mechanisms effective in collecting taxpayer information?
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Background and Rationale

While many jurisdictions have ratified the CRS, the enactment of the CRS framework into domestic legislation and its successful operation are a different question. This requires a considerable amount of resources to be invested, so that vast amounts of data can be collected, processed and exchanged. Some jurisdictions may not have the necessary infrastructure in place to require traditional intermediaries to report taxpayer information to the tax authorities and/or collect and process such information.⁴²

Best Practices

While different jurisdictions are at different stages of implementing mechanisms that facilitate reporting by traditional intermediaries, this is an area that has the potential to promote better tax administration across the entire tax system and not just for crypto taxation alone. A jurisdiction which has low capacity to collect and use information from traditional intermediaries will generally be restricted to relying on taxpayer-filed returns for information and may find conducting audits difficult. Such a jurisdiction need not necessarily implement the full CRS framework for collecting information from traditional intermediaries, but could take steps to gradually build infrastructure in this area.

Q3.	Do the current reporting obligations of traditional intermediaries assist the authorities in
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⁴¹ OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters (2nd Ed) (OECD) (2017) <available at <https://www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm>> accessed February 25, 2024 ('CRS').

⁴² Paul Millen and Peter Cotorceanu, 'Old Tricks for New Dogs: The OECD's Cryptoasset Reporting Framework' (2023) 112 Tax Notes International 345, 359.

	obtaining information regarding crypto asset transactions?
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Background and Rationale

Most current mechanisms of traditional intermediaries reporting (of domestic or international origin) tend to not catch the reporting of many categories of crypto-assets and transactions. They were likely to have been drafted before the widespread use of such assets and transactions. As such, the primary function of the reporting obligations of traditional intermediaries in the context of crypto taxation is to highlight points where crypto-assets interface with the traditional banking system. Traditional intermediaries reporting by itself is unlikely to give tax authorities direct information on crypto-assets and transactions.

Best Practices

Jurisdictions should use information from traditional intermediaries as an additional source of information to form a comprehensive picture of a taxpayer's holdings and activities. It can be particularly useful when processed in a system which can 'flag' taxpayers for further audits.

Risk 1.3: Investigative Powers

Information from intermediaries can be a great way for tax authorities to build up a comprehensive picture of a taxpayer's holdings and activities. However, to fully benefit from such information, it should not be used by itself, but instead serve as a starting point for tax authorities, since such information can be analyzed and used to identify potential opportunities for further investigations and audits. Thus, it is important to ensure that a tax authority in a jurisdiction has strong enough investigative powers to further probe taxpayers which are 'flagged' based on the information provided by direct reporting and intermediaries. In jurisdictions where intermediaries reporting is likely to have mixed success, the investigative powers of the tax authority become even more important.

The OECD Fighting Tax Crime Report lists four main models of investigating tax crimes, sorted based on the relevant officials tasked with conducting investigations: where 1) the tax administration directs and conducts investigations; 2) the tax administration conducts investigations, directed by the prosecutor; 3) a specialist agency outside the tax administration conducts tax offence investigations, which may involve public prosecutors; and 4) the police or public prosecutors conduct investigations.⁴³ While this Toolkit refers to the tax authorities in general, readers can refer to the models mentioned by the OECD for discussion on investigative powers related to the relevant officials under any of the four models.

⁴³ OECD, *Fighting Tax Crime – The Ten Global Principles* (2nd Ed) (OECD) (2021) <<https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles-second-edition-006a6512-en.htm>> accessed February 25, 2024 ('**OECD Tax Crime**'), para 41.

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Refer to ‘Crypto Reporting Questionnaire’ for the first five questions.

Please complete the five questions listed in the ‘Crypto Reporting Questionnaire’ above before proceeding with the following questions, as they set the necessary context for discussing investigative powers.

Documents and Information from Taxpayers

Q1.	Do tax authorities currently possess any powers to demand documents and ask for additional information from taxpayers (during the processing of tax returns and during an audit)?
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Background and Rationale

Tax authorities should have the investigative powers necessary to build a clear picture of a taxpayer’s affairs. This would include the powers to demand additional documents and information, which should be expressly provided for in domestic legislation. Taxpayers who do not comply with such requests should be subject to deterring penalties unless they can show ‘reasonable excuse’ for their non-compliance. If the tax authorities do not have such powers, it may be necessary to work with other law enforcement agencies which may have such powers.⁴⁴

Best Practices

It is generally recommended for tax authorities to be given investigative powers as they tend to have the best understanding of tax law and have the most information on taxpayers. In any jurisdiction where the investigating officials are not the tax authority (which may be justified if the former has specialized expertise and is generally better placed to conduct investigations), systems can be put in place for the two government agencies to work closely with each other. In any case, at least one of the relevant investigating agencies should have statutory powers to require taxpayers to hand over documents and additional information.

Document and Information from Third Parties

Q2.	Do tax authorities currently possess any powers to demand documents and ask for additional information from third parties (e.g. banks)?
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Background and Rationale

Apart from statutory powers to require taxpayers themselves to hand over documents and additional information, countries may consider whether it may be helpful that a tax authority have the power to demand the same from third parties who are likely to have such information, such as

⁴⁴ OECD Tax Crime (n 43), para 44.

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banks. Whether or not this is something that countries would promote will depend on a countries' history and preferences.

In case a country is interested in the tax authority having broad power, these would generally be separate from and in addition to legislation which provides for automatic reporting of taxpayer information by intermediaries.⁴⁵ Legislation requiring third parties to hand over documents and additional information would generally be bound by confidentiality restrictions otherwise. The power to obtain third-party documentary information is particularly appropriate where the information sought is not readily available in a physical form (e.g. banks which do not maintain paper copies of a customer's bank statements or telecommunications providers' data) since this power allows the third party time to collect the demanded material.⁴⁶ These powers can take the form of a subpoena, production order, or other powers to demand or compel the handing over of documentary information.⁴⁷

Best Practices

The OECD Fighting Tax Crime Report indicates that the vast majority of jurisdictions surveyed authorize the agency responsible for tax crimes investigation to exercise these powers themselves, with some jurisdictions requiring the agency to seek the assistance of other agencies to exercise the power on its behalf.⁴⁸ In any case, a jurisdiction should consider empowering the authorities to require third parties to hand over documents and additional information.

Compelling Attendance in Investigations	
Q3.	Do tax authorities currently possess any powers to compel the attendance of any taxpayers to be interviewed in an investigation or for a court hearing?

Background and Rationale

In many situations, an investigation into tax crimes would be greatly aided by going beyond requiring a taxpayer to produce documents and information and requiring taxpayers, their employees or their representatives to appear in person to be interviewed by the investigating authority or to appear in court as witnesses. It would not be ideal if an investigating authority had to rely on voluntary compliance. It is noted that particularly for taxpayers who may be suspected of tax crimes, the power to require a taxpayer to appear for an interview or before a court is generally a power to initiate an interview rather than a power to compel the person to speak or provide information during that interview. This is due to the fact that many jurisdictions will have a right against self-incrimination.⁴⁹

⁴⁵ See the commentaries for Risk 1.2: Intermediaries Reporting, above.

⁴⁶ OECD Tax Crime (n 43), para 46.

⁴⁷ OECD Tax Crime (n 43), para 46.

⁴⁸ OECD Tax Crime (n 43), para 46.

⁴⁹ OECD Tax Crime (n 43), para 59.

Best Practices

The OECD Fighting Tax Crime Report indicates that the vast majority of jurisdictions surveyed authorize the agency responsible for tax crimes investigation to exercise these powers themselves, with some jurisdictions requiring the agency to seek the assistance of other agencies to exercise the power on its behalf.⁵⁰ It is suggested that jurisdictions consider adopting legislation expressly empowering the investigating authorities to require taxpayers to present themselves for interviewing by the authorities and to appear in court when summoned. Such legislation should ideally be drafted with separate provisions applying to taxpayers, and also for different situations such as being interviewed by the authorities and for court appearances.

Raids and Seizing Equipment and Documents	
Q4.	Do tax authorities currently possess any powers to conduct raids?

Background and Rationale

Powers to conduct searches and raids can be useful to the investigating authorities in two main situations. They can serve as a follow-up action when demands to hand over documents or information within a specific period of time are not met.⁵¹ They can also be used in situations where the parties being raided are not given any advance notice (i.e. a ‘surprise raid’), which can be useful in situations where there is a risk that the party being raided may seek to destroy relevant evidence if tipped off beforehand. The power to conduct searches and raids may sometimes be subject to certain legal constraints on the part of the investigating authorities. For example, a warrant or some form of court sanction may be required before the search or raid may legally be performed.

Best Practices

The OECD Fighting Tax Crime Report indicates that a majority of jurisdictions surveyed authorize the agency responsible for tax crimes investigation to exercise these powers themselves, with some jurisdictions requiring the agency to seek the assistance of other agencies to exercise the power on its behalf.⁵² In any case, a jurisdiction should consider ensuring that statutory powers should be in place to empower the authorities to conduct searches or raids. There may be jurisdictions where the courts will carefully scrutinize any attempts of the authorities to exercise such powers without having to go through the courts first. In such situations, it may not be advisable to legislate to allow the authorities to exercise such powers without a warrant or other court sanction.

⁵⁰ OECD Tax Crime (n 43), para 59.

⁵¹ OECD Tax Crime (n 43), para 46.

⁵² OECD Tax Crime (n 43), para 49.

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Q5.	Do tax authorities currently possess any powers (and technical knowledge) to enter taxpayers' premises and seize equipment (e.g. hard drives)?
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Background and Rationale

In the context of crypto taxation, relevant equipment may include hard drives and other forms of digital devices. There will be a strong emphasis on digital evidence such as electronic documents and banking records that may be held within computer hardware or software, tablets, cell phones, or any number of electronic storage media including storage in the cloud.⁵³ To ensure effectiveness, the investigating authorities must not only have the powers to access such devices, but also the expertise to be able to examine them and extract the necessary information for investigations.

Best Practices

The OECD Fighting Tax Crime Report indicates that a majority of jurisdictions surveyed authorize the agency responsible for tax crimes investigation to exercise these powers themselves, with some jurisdictions requiring the agency to seek the assistance of other agencies to exercise the power on its behalf.⁵⁴ Where necessary, the investigating agencies should consider appropriate training or capacity development to prepare them for these tasks.

Risk 1.4: International Exchange of Information

Apart from domestic sources of information, there are a range of international initiatives in place to facilitate international exchange of information which aid tax authorities in getting a clearer picture of the natural persons behind structures and transactions.⁵⁵ International exchange of information initiatives can be divided into two main categories: those which involve the exchange of traditional (non-crypto) tax information and those which involve the exchange of crypto tax information. The received information can be used by a jurisdiction's tax authority in crypto tax administration.

For Domestic Information Reporting and Collection, refer to the Questionnaires for Risks 1.1-1.3 Refer to 'Crypto Reporting Questionnaire' for the first five questions.

Please complete the five questions listed in the 'Crypto Reporting Questionnaire' above before proceeding with the following questions, as they are crucial to set the necessary context for discussing international exchange of information.

⁵³ OECD Tax Crime (n 43), para 52.

⁵⁴ OECD Tax Crime (n 43), para 52.

⁵⁵ See the Report, Section 4.2.5: Exchange of Information.

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Q1.	Has the jurisdiction ratified any international instruments to facilitate the international exchange of information? Or does the jurisdiction rely on double taxation treaties?
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Background and Rationale

For the exchange of traditional (non-crypto) tax information on financial assets, the main international initiative is that of the CRS (discussed above).⁵⁶ For the exchange of crypto tax information, the three main international initiatives are the OECD's CARF, European Commission's Directive on Administrative Cooperation ('**DAC8**') and Financial Action Taskforce ('**FATF**') guidance on Virtual Asset Service Providers.⁵⁷ In terms of international instruments, adoption of the CRS is most commonly done through a Multilateral Competent Authority Agreement (CRS MCAA).⁵⁸ As for CARF, it can be adopted through the CARF MCAA.⁵⁹ It is also possible for jurisdictions to enter into double taxation treaties as the basis of international exchange of information instead.

Best Practices

Jurisdictions which seek to benefit from international exchange of information (traditional or crypto) should consider adopting the leading CRS and CARF standards by entering into MCAAs accordingly. This decision will need to take the resourcing and priorities of countries into account as implementing the CRS and CARF require human resources and technology to be able to benefit from them.

Q2.	Has the jurisdiction passed new legislation or is there a need to pass additional legislation to implement the exchange of information?
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Background and Rationale

Ratifying international exchange of information instruments does not typically render them effective in domestic law immediately in a dualist legal system.⁶⁰ Domestic legislation must generally be amended to incorporate those provisions if they are to have legal effect.

Best Practices

Jurisdictions who have a dualist legal system should ensure that any international exchange of information instruments that they have ratified are separately enshrined in domestic legislation.

⁵⁶ CRS (n 41). See the commentaries on Risk 1.2.3: Traditional Intermediaries, above.

⁵⁷ See Section A1.1.1 of the Appendix.

⁵⁸ Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information ('**MCAA**') (see OECD, Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (OECD) (2014) <<https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf>> accessed February 25, 2024).

⁵⁹ CARF (n 11), 76.

⁶⁰ See the commentary for the 'Intermediaries Reporting Questionnaire', above.

Q3.	Has the jurisdiction ratified CARF?
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Background and Rationale

48 countries and jurisdictions have issued a joint statement indicating that they will implement the CARF.⁶¹

Best Practices

The CARF is currently the most prominent international exchange of crypto information mechanism and jurisdictions may consider ratifying it if they find that they have the necessary resources and a cost-benefit analysis shows that the benefits of more information on crypto assets held abroad outweigh its costs

Risk 1.5: Taxation of Illegal Transactions

The taxation of illegal transactions is an area that requires special consideration by jurisdictions. Just because a transaction is illegal does not mean that it will have to be disregarded by the tax system. In many cases, income derived from illegal transactions will nevertheless be taxable. That said, tax authorities should consider framing any guidance in this area carefully so as not to accidentally give the impression that they are in any way condoning or sanctioning illegal activity. As crypto-assets and transactions are sometimes subject to special regulations or even outright bans, a jurisdiction will need to consider what approach it wishes to take with respect to the taxation of such assets and transactions.

Legal Nature of Crypto-assets	
Q1.	Is the mere holding of crypto-assets prohibited in the jurisdiction?

Background and Rationale

Some jurisdictions have imposed a blanket ban on crypto-assets, where the holding of crypto-assets is prohibited. Examples include Algeria, Egypt, Iraq, Qatar, Oman, Morocco, Tunisia, Bangladesh, and China.⁶² Whether to make the holding of crypto-assets illegal is a policy decision on the part of each jurisdiction. Jurisdictions that take this position are unlikely to receive any

⁶¹ OECD, 'OECD Secretary-General Mathias Cormann Welcomes Pledge by 48 Countries to Implement Global Tax Transparency Standard for Crypto-assets by 2027' (2023) <<https://www.oecd.org/newsroom/secretary-general-mathias-cormann-welcomes-pledge-by-48-countries-to-implement-global-tax-transparency-standard-for-crypto-assets.htm>> accessed February 25, 2024.

⁶² Marco Quiroz-Gutierrez, 'Crypto is Fully Banned in China and 8 Other Countries' (Fortune) (2022) <<https://fortune.com/2022/01/04/crypto-banned-china-other-countries/>> accessed February 25, 2024.

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crypto tax information from direct reporting or from crypto intermediaries. Instead, such jurisdictions would need to obtain their information from other sources such as traditional intermediaries and use such information as a starting point for further investigations into a taxpayer's affairs.

Best Practices

Jurisdictions which impose a ban on the holding of crypto-assets will have to focus their resources on gathering information from traditional intermediaries.

Q2.	Are there any restrictions pertaining to crypto-assets in the jurisdiction?
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Background and Rationale

In contrast to other jurisdictions that have banned crypto-assets entirely, some have instead prohibited specific activities that can be part of the crypto asset's life cycle, such as banning the purchase and sale of virtual currencies, or its use as a means of payment. Forty-two countries, including Algeria, Bahrain, Bangladesh, and Bolivia, have implicitly banned digital currencies by putting restrictions on the ability for banks to deal with crypto, or prohibiting cryptocurrency exchanges.⁶³ Depending on the precise nature of the restrictions on crypto-assets, a jurisdiction with such restrictions may accordingly be unable to rely on certain potential sources of information. For example, prohibiting cryptocurrency exchanges likely means that no information would be forthcoming from crypto intermediaries.

Best Practices

As noted above, depending on the scope of restrictions on crypto-assets, a jurisdiction may need to focus their resources on gathering information from traditional intermediaries.

Q3.	Are transactions of crypto-assets prohibited unless conducted through authorized crypto exchanges?
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Background and Rationale

Several jurisdictions have considered legislation which prohibits transactions of crypto-assets unless they are conducted through authorized crypto exchanges. Notably, under the newly introduced MiCA regulations in the EU, any company seeking to offer crypto services within the EU – whether custody, trading, portfolio management or advice – will need to be authorised by one of the EU's national financial regulators.⁶⁴ Provided that the relevant authorities are able to

⁶³ Quiroz-Gutierrez (n 62).

⁶⁴ MiCA (n 13).

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effectively ensure that transactions involving crypto-assets are (at least mostly) conducted through authorised entities, this may assist the tax authorities in minimising tax evasion through crypto-assets. Since authorised entities are compelled to maintain sufficient information about their customers and their transactions as part of their due diligence obligations under applicable regulations to detect any potentially illegal transactions, tax authorities may be able to access information more effectively on the ownership of certain crypto-assets which are maintained by authorised entities.⁶⁵

Best Practices

Jurisdictions should consider legislation that would require crypto users to conduct their transactions through authorized crypto exchanges. Whether or not there can be an exception from peer-to-peer transactions is a matter of policy for the jurisdictions to decide, but it is certainly possible to take a position that all transactions (without exceptions) must be conducted through authorized crypto exchanges. Such exchanges would be regulated and only maintain their authorized status if they comply with requirements such as the need to collect and hand over crypto tax information to the tax authority.

Q4.	Are overseas transactions of crypto-assets prohibited?
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Background and Rationale

Given that crypto-assets are very mobile and that transactions are conducted easily over the internet, it is possible for crypto transactions to be done across borders or even outside the geographical boundaries of a jurisdiction. This can make it difficult for a jurisdiction to effectively regulate any intermediaries who are operating outside the jurisdiction to facilitate such transfers. Allowing for overseas transactions of crypto-assets might also make it difficult to carefully monitor such transfers for not just tax purposes but also anti-money laundering purposes. As such, some jurisdictions might seek to deal with this potential problem by completely prohibiting any overseas transactions of crypto-assets.

Best Practices

This is ultimately a policy decision for jurisdictions, but they may wish to consider whether overseas transactions may be permitted if done through an authorized exchange, which would go some way to resolve the difficulties in collecting information about such transactions (see the commentary on this for the question immediately above).

⁶⁵ See ‘Council adopts directive to boost cooperation between national taxation authorities (DAC8)’ (Council of the European Union, 17 October 2023) <<https://www.consilium.europa.eu/en/press/press-releases/2023/10/17/council-adopts-directive-to-boost-cooperation-between-national-taxation-authorities-dac8/>> accessed February 25, 2024.

Tax Rules Relating to Illegal Transactions	
Q5.	If crypto-assets or transactions are illegal, would any income generated from them be taxable in the jurisdiction?

Background and Rationale

Different positions can be taken on the taxability of income from illegal transactions. The mere fact that income is derived from illegal activity does not mean that it will inevitably lie outside the ambit of the tax system. Instead, in most jurisdictions, such income will remain taxable. This is the case in many Commonwealth jurisdictions.⁶⁶ In the United States of America, the Internal Revenue Service has also made explicitly stated that income from illegal sources (eg bribes, dealing in illegal drugs etc.) will need to be reported as income for taxation purposes.⁶⁷

However, a distinction has sometimes been raised between acts that are, in the broader sense, illegal, and acts that are criminal in nature, with the latter plausibly being exempt from tax. For example, in the European Court of Justice case of *Witzemann v Hauptzollamt München-Mitte*, it was said that ‘a line must be drawn between [...] transactions that lie so clearly outside the sphere of legitimate economic activity that, instead of being taxed, they can only be the subject of criminal prosecution, and, on the other hand, transactions which though unlawful must nonetheless be taxed, if only for ensuring in the name of fiscal neutrality, that the criminal is not treated more favourably than the legitimate trader.’⁶⁸

It is noted that in some cases, illegally obtained assets may be confiscated by the government under domestic laws. Thus, the issue of taxing income from illegal transactions may not arise at all.⁶⁹

Best Practices

Jurisdictions should review their tax laws to determine whether income from illegal assets or transactions are nevertheless taxable. In line with the position that most jurisdictions would find that income would still be taxable, a jurisdiction where this is not the case may wish to evaluate amending its legislation to provide for this. However, it would be essential for tax authorities who wish to avoid giving the impression that the taxation of certain crypto transactions indicates that banned crypto transactions will be legalized to emphasize that taxation of such crypto transactions does not indicate the condoning of such transactions.

⁶⁶ See *Mann v Nash* [1932] 1 KB 752; *Minister of Finance v Smith* [1927] AC 193; *Lindsay, Woodward and Hiscox v Commissioners of Inland Revenue* (1932) 18 TC 43; Mohsin Hingun and Olaitan Nafiu, ‘The Scope of Taxation of Income from Illegal Activities in Selected Common Law Jurisdictions’ (2015) 23(3) IIUMLJ 385; Mary Mulholland and Roger Cockfield, ‘The implications of illegal trading’ [1995] 6 British Tax Review, 572.

⁶⁷ Internal Revenue Service, ‘Publication 17 (2023), Your Federal Income Tax’ (IRS) (2023) <<https://www.irs.gov/publications/p17>> accessed February 25, 2024.

⁶⁸ *Witzemann v Hauptzollamt München-Mitte* C-343/89, para 10.

⁶⁹ See International Centre for Asset Recovery, *Tracing Illegal Assets - A Practitioner's Guide* (Basel Institute on Governance) (2015), Chapter 5.

Q6.	If so, would the existing tax system allow taxpayers to offset or deduct properly incurred expenses?
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Background and Rationale

In most Commonwealth countries, expenses incurred from illegal transactions are deductible if such expenses would normally be incurred in the production of income. This is because to deny the deduction of properly incurred expenses would have the effect of unfairly penalizing the taxpayer. Denying the deduction of properly incurred expenses would be in effect to use tax law to punish the offender, which should be the function of criminal law and not tax law.⁷⁰

However, in some cases, some jurisdictions have nonetheless implemented legislation that provides that properly incurred expenses are not deductible from illegally obtained income. The legislature may choose to do this for several reasons, including to discourage or penalize a particular activity for public policy reasons.⁷¹ One example of an exception to the rule that properly incurred expenses are not deductible from illegally obtained income is in cases whereby income is obtained from bribery, obviously with the policy objective of discouraging corruption.⁷²

Further, an additional factor a jurisdiction may want to take into consideration when deciding if income from illegal transactions is taxable is the effect on the country's tax base. If deductibility for properly incurred expenses is denied on illegal transactions, this would also potentially increase the country's tax base.

Best Practices

The majority of jurisdictions which do tax income from illegal transactions would generally allow for expenses incurred in the production of income to be deducted. It is noted that there may be other potential legal issues if the courts in a jurisdiction take the view that denying such deductions amounts to a further (unconstitutional) penalty on the taxpayer.

Risk 2. Crypto Losses and Deductions Risks

Risk 2.1: Losses

In order to accurately compute the amount of income derived by taxpayers and tax it accordingly, tax systems will generally have some form of mechanism allowing losses from one source to be

⁷⁰ See Hingun and Nafiu (n 66), 397; and Siska Lund, 'Deductions Arising from Illegal Activities' (2003) *Revenue Law Journal*, 121.

⁷¹ Lee Burns and Richard Krever, 'Taxation of Income from Business and Investment' in Victor Thuronyi (Gen Ed.), *Tax Law Design and Drafting* (IMF) (1996), 582.

⁷² See OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transaction (OECD) (1997) <<https://www.oecd.org/daf/anti-bribery/oecd-anti-bribery-convention-booklet.pdf>> accessed February 25, 2024.

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deducted against income from another source, or income from the same source for a different basis period. However, there are several reasons for being more cautious about allowing crypto losses to be deducted in the same way,⁷³ most notably that of the potentially massive fluctuations in the value of crypto-assets that can lead to large and unpredictable losses being claimed.

The key risk to the tax base is that the crypto losses deducted against income from other profitable sources may reduce the net amount of revenue which can be collected from these sources and thus erode the tax base. This can be seen as a form of ‘cross-subsidy’ of crypto losses by other non-crypto related sources of income. It is noted that in most tax systems, the rules are different for individuals and companies, with a tendency for individual taxpayers to have stricter rules.

Losses Questionnaire

(Preliminary Questions for Risks 2.1.1 – 2.1.3)

Given that Risks 2.1.1 – 2.1.3 all concern the broad issue of the deduction of crypto losses in different circumstances, there is a common set of questions: the ‘Losses Questionnaire’ that should be answered when considering any of those risks. These questions set the background for examining more specific situations when considering the various crypto tax risks later.

General Features of the Existing Tax System

Q1.	Does the existing tax system distinguish between a revenue (ordinary) or capital loss? If so, how would this affect the deductibility of losses?
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Background and Rationale

Many jurisdictions distinguish between a revenue loss (also called ‘ordinary loss’) and capital loss, for example, the United States of America, the United Kingdom, Canada and Australia. Such distinction is important because it affects how the losses are used to offset taxable income. Capital losses cannot typically be deducted against revenue losses.

Q2.	Does the existing tax system distinguish between losses by source of income? If so, how would this affect the deductibility of losses?
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Background and Rationale

While many tax systems will distinguish between losses incurred from the carrying on of a trade or business and other general losses, there will be other tax systems which do not draw such a

⁷³ See Report, Section 2.3: Deduction of Tax Losses Against Traditional Income Sources.

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distinction. The following (or a hybrid of) categories are common: 1) strict source-by-source matching of each loss with income from the same source; 2) general matching of losses to income of the same general type (most prominent under a schedular system); 3) a general matching of losses to income of the same general type, but with the exception of certain types of losses such as those from a trade or business, which can be set off against all types of income; 4) no requirements of matching of losses to income, restricted only in that capital losses may only be set off against capital gains and vice versa; 5) no requirements of matching losses to gains at all (which should be very rare).⁷⁴ The more generous the rules for the deduction of the losses are in a tax system, the greater the tax risks.⁷⁵

General Safeguards	
Q3.	Does the existing tax system have any mechanisms for the carrying forward or carrying back of losses? If so, are there any restrictions on these mechanisms?

Background and Rationale

Income tax is generally paid on the assessable income earned over a year. The starting point is that income must be assessed in the time period when it accrues or is received and cannot be ‘shifted’ from year to year. However, many systems provide for losses to be ‘carried forward’ or ‘carried back’ if certain conditions are met. Allowing for losses to be carried forward or carried back has the potential to adversely affect revenue collection. The former may decrease future revenues, as they can be used to absorb future income, including income from other (non-crypto related) sources. The latter can absorb income from other sources which may have been generated even before the taxpayer started crypto investments. One particular situation that tax systems should watch out for is the use of companies which have incurred a large amount of crypto losses (which are carried forward) to run otherwise profitable businesses and using the crypto losses to offset income from the businesses.

Best Practices

There are a range of possible safeguards which can be applied. For example, a ‘shareholding test’ can be applied, requiring that the shareholders of the company remain substantially the same on the last day of the year in which the loss was incurred and the first day of the year of assessment (‘YA’) in which the loss would be deductible. Generally, this means that not less than 50% of the total number of the issued shares of the company must be held by or on behalf of the same shareholders on both dates. There may also be caps on the amount of unabsorbed losses than can be ‘shifted’.⁷⁶

⁷⁴ See the Toolkit Outline (n 4), 7.

⁷⁵ See the Toolkit Outline (n 4), 7.

⁷⁶ See Vincent Ooi, ‘The Case for Stronger Scrutiny of the Deductibility of Crypto Losses’ (2024) Journal of Tax Administration (Forthcoming).

Q4.	Does the existing tax system have any mechanisms for the group relief of losses? If so, are there any restrictions on these mechanisms?
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Background and Rationale

Many countries have the concept of a fiscal unity, where companies that are considered as sufficiently linked are treated as one entity.⁷⁷ This can also be achieved through the granting of group relief, where losses may be transferred to and utilized by companies in a group that are related by substantially sharing the same shareholders. A company may join the group after the losses were incurred, raising the possibility of the potential ‘sale of losses’, where a company may be purchased in order to utilize its losses. As this is a classic tax avoidance technique, many tax systems will already guard against this. In the absence of any safeguards, one might expect companies which have incurred considerable crypto losses to be acquired for the purpose of utilizing those losses.

Best Practices

Many tax systems will already have some kind of safeguard against the sale of losses, for this is a classic tax avoidance technique. There may be a need to establish that the two companies are members of the same group (for example, one company may need to own at least 75% of the shares of the other company, or there has to be the same percentage of common ownership by a third company). There may also be a need to pro-rate the amount of losses that can be transferred based on the duration for which these conditions are met.⁷⁸

Q5.	Are the safeguards of the existing tax system sufficient to manage the risk of crypto losses?
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Background and Rationale

Crypto losses are of particular concern because crypto asset values are extremely volatile and can result in a large amount of losses being incurred in a very short span of time. Further, there is the possibility that such losses may be ‘shifted around’ in a manner which a government may consider to be unfair. This may be where the losses are ‘carried back’ (potentially offset against income generated even before any crypto activities took place), ‘carried forward’ (potentially offset against income generated long after any crypto activities have ceased), or shifted to other companies (through a process such as group or consortium relief). There is a need for jurisdictions to ensure that there are safeguards in place to protect the tax base at two levels: 1) the general deductibility

⁷⁷ Jurgen Bachle, ‘Tax Unity - Shaping International Business Activities’ (Artax) (2021) <<https://www.artax.com/en/tax-unity-for-the-organization-of-international-business-activity/>> accessed February 25, 2024.

⁷⁸ See Ooi (2024) (n 76).

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of losses across different sources of income; and 2) the deductibility of losses through ‘shifting mechanisms’ such as the carrying forwards or back of losses and group relief.

Best Practices

A jurisdiction which allows for the ‘shifting’ of losses, may consider introducing tests (such as ‘shareholding tests’) to ensure that crypto losses cannot readily be ‘sold’ or deducted against other sources of income that had nothing to do with the crypto source from which the losses were generated.

Risk 2.1.1: Losses from Investment or Speculation (Non-Business)

Many tax systems may distinguish between losses which are incurred in the course of a trade or business and those from general non-trade or business activities (such as investment or speculation). For such tax systems, there may be a more generous tax treatment for losses incurred in the course of a trade or business.

Refer to ‘Losses Questionnaire’ for the first five questions.

Please complete the five questions listed in the ‘Losses Questionnaire’ above before proceeding with the following questions, as they are crucial to set the necessary context for discussing the deduction of crypto losses.

Q1.	If the existing tax system does distinguish between a revenue (ordinary) or capital loss, what tests are applied to make this determination?
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Background and Rationale

The question of what legal tests a tax system applies to determine if a loss is revenue or capital in nature is likely to be a familiar question within the expertise of any tax administration. There may be a list of factors that may be indicative such as whether the asset disposed of was a personal use asset or whether the intention of the taxpayer was to make a profit. However, whether a loss is a capital or revenue loss is fact-intensive in each jurisdiction and requires detailed examination of the taxpayers’ activities. Common tests that are applied are those to determine whether there is a trade or business (see the commentary for Risk 2.1.2: Losses from Trading in Crypto-assets). Losses arising from regular business operations are generally considered revenue losses whereas losses from the sale or disposal of capital assets are typically considered capital losses.

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Q2.	If the existing tax system does distinguish between losses by source of income, what tests are applied to determine if losses are from the same source?
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Background and Rationale

The tests to determine if losses are from the same source typically involve examining the nature of the income-generating activities or transactions in particular circumstances. Some jurisdictions may treat all losses flowing from the same broad business activity to be from the same source, regardless of what particular kinds of businesses a taxpayer is engaged in. For example, a business selling shoes and one selling food may still be viewed as parts of the same source. Other jurisdictions may consider dividend income from Share A to be of a different source than Share B.

Q3.	Is the existing tax system likely to allow for crypto losses from investment or speculation to be generally deducted against income from other (non-crypto) sources?
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Background and Rationale

Crypto losses from investment or speculation are likely to be particularly objectionable from a policy perspective and jurisdictions may wish to be very cautious about allowing them to be freely deductible against income from other sources. As noted above, such losses are potentially large and volatile and there are fundamental questions on the fairness of allowing them to be deducted against other non-crypto income.

This assessment has to be made by considering how generous the rules for the deduction of the losses are in a tax system. As noted above, a system which applies a source-by-source matching of each loss with income from the same source is less likely to be at risk that one which generously allows losses from any source to be deducted against income from any other source.

Best Practices

Jurisdictions may wish to consider that for crypto losses from investment or speculation, any such deductions will have to be made under a strict source-by-source matching framework. As such, such crypto losses will only be deductible against income from other crypto sources and not non-crypto sources.

Risk 2.1.2: Losses from Trading in Crypto-assets

For many tax systems, there may be a more generous tax treatment for losses incurred in the course of a trade or business. This makes the tests for establishing a trade or business and attributing a loss to a trade or business important ones. In particular, as many tax systems provide that gambling

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will not be considered to be a trade or business except in very exceptional circumstances, the test for whether crypto dealing will be considered to be gambling is a very important one.

Refer to 'Losses Questionnaire' for the first five questions.

Please complete the five questions listed in the 'Losses Questionnaire' above before proceeding with the following questions, as they are crucial to set the necessary context for discussing the deduction of crypto losses.

Q1.	What test does the existing tax system apply to determine if there is a trade or business?
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Background and Rationale

In many Commonwealth jurisdictions, the 'Badges of Trade' will generally be used to determine the existence of a trade of buying and selling of crypto-assets. The 'Badges of Trade' are a set of indicia used as a guide in the determination of whether a taxpayer has engaged in a trade. The traditional six 'Badges of Trade' laid out in the original Report of the Royal Commission are: 1) the subject-matter of the realization; 2) the length of period of ownership; 3) the frequency or number of similar transactions by the same person; 4) supplementary work on or in connection with the property realized; 5) the circumstances that were responsible for the realization; and 6) motive. However, the set of indicia has never been thought to be exhaustive and some other indicia considered in later cases include: the 7) accounting treatment of assets; 8) objects in memorandum of association; 9) separate legal personality of company and lifting the corporate veil; 10) formation and/or winding up of the company; and 11) method of financing.⁷⁹

To determine whether there is a business, the common law test is generally whether there is a 'wide group of activities that are not purely recreational, that are commercially undertaken and usually, but not necessarily, for profit', and whether this business is 'carried on' in the sense of 'habitual and systematic operation, a continuity or repetition of acts or similar operations'.

Q2.	Does the test to determine if there is a trade or business differ if crypto-assets or transactions are involved?
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⁷⁹ See Vincent Ooi, 'The Taxation of Cryptocurrency Gains ' (2021) 75(7) Bulletin for International Taxation 323, 325, citing Teo Keang Sood, Badges of Trade Revisited (1996) Singapore Journal of Legal Studies, 43.

Background and Rationale

Several indicia of the badges of trade will tend to present differently where crypto-assets are involved. Firstly, crypto-assets are not generally of a kind considered to be used for investment, but rather for trading. Secondly, the period of ownership to constitute a trade will generally be shorter. Thirdly, the frequency of trading might be greater for crypto-assets.

Further, due to the volatile nature of the value of crypto-assets, the determination of whether there is a trade or business must also take into consideration whether the taxpayer can be said to be engaging in gambling activities, as that may negate the finding of a trade or business.⁸⁰ Thus, in addition to the base tests for determining whether there is a trade or business, a further test must be applied, considering: 1) whether the outcome is affected by chance or skill; 2) the level of skill of the taxpayer; 3) the level of organization; and 4) the nature of the entity.⁸¹ The net result is that it may be more difficult for dealings in crypto-assets to be found to constitute a trade or business.

Q3.	What are the tax implications of a finding that there is a trade or business?
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Background and Rationale

For many tax systems, there may be a more generous tax treatment for losses incurred in the course of a trade or business. For example, even if the tax system generally requires a matching of losses to income of the same general type, there tends to be an exception, where losses from trades or businesses can generally be set off against all other types of income.

Q4.	Are there any tax policy reasons for treating crypto-related trades or businesses differently from other, traditional trades or businesses?
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Background and Rationale

As noted above, crypto losses are of particular concern because crypto-assets are extremely volatile and can result in a large amount of losses being incurred in a very short span of time. Further, there is the possibility that such losses may be ‘shifted around’ in a manner which a government may consider to be distortionary.

The fact that dealings with crypto-assets are less likely to be considered capable of establishing a trade or business is in line with the policy decision to manage the risks of large crypto losses being deducted against other sources of income. In fact, for the most part, crypto losses are treated in a

⁸⁰ Ooi (2021) (n 79), 327-330.

⁸¹ Ooi (2021) (n 79), 327-330.

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similar way to non-crypto losses. This does not reflect the higher risks of crypto losses to the tax system and further restrictions on the deductibility of crypto losses may be considered.

Best Practices

Countries may consider it beneficial to treat crypto assets and transactions differently from their traditional counterparts for tax purposes due to certain policy reasons, such as the high volatility of crypto asset values.

Risk 2.1.3: Losses from Crypto Dealings as Part of a Broader Non-Crypto Business

In some cases, a taxpayer may deal with crypto-assets as part of a broader non-crypto business. In such cases, there may be a need for special rules to determine to what extent any crypto losses may reasonably be deductible against income from the broader business. Such situations should arguably be treated differently from those where a taxpayer deals in crypto-assets and nothing else as the risks to the taxpayer may be different.

Refer to 'Losses Questionnaire' for the first five questions.

Please complete the five questions listed in the 'Losses Questionnaire' above before proceeding with the following questions, as they are crucial to set the necessary context for discussing the deduction of crypto losses.

Q1.	Does the existing tax system prohibit the deduction of losses simply because they are linked to crypto-assets in any way?
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Background and Rationale

In jurisdictions where crypto-assets are completely banned, it is arguable that any losses from activities linked to crypto-assets in any way should not be deductible against income from other sources. However, in the absence of a ban on crypto-assets or other specific rules, the deduction of losses may be allowed even if they are linked to crypto-assets. This may pose significant risks to the tax base for the abovementioned reasons. However, imposing a blanket ban on the deduction of losses merely because they are linked to crypto-assets may produce unintended consequences. In any case, it may be difficult to define the crucial term 'linked to crypto-assets'. Failing to do so may result in unexpected consequences. Consider, for example, scenarios where an individual works for a crypto company, receives crypto-assets as part of remuneration, or invests in a bank with exposure to crypto.

Best Practices

A blanket ban on deductions of losses merely because they are linked to crypto-assets may produce unexpected consequences. As such, other measures might be considered instead (see the commentary for the following question).

Q2.	Should the tax system prohibit the deduction of crypto losses against income unless they have a sufficient connection to the source of income?
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Background and Rationale

To safeguard and restrict the deduction of losses from trading in crypto-assets against income from other sources, a potential idea that the jurisdiction may consider is to restrict the deductibility of losses from one source against the income from another source unless both sources carry on a broadly similar trade or business or have some kind of nexus with each other. Another potential idea might be to enact legislation specifically dealing with crypto losses and restricting their deduction against other (non-crypto related) sources of income.⁸²

Jurisdictions that decide to prohibit the deduction of losses have a variety of policy options available to them. One example is that the jurisdiction could list the specific crypto-linked activities where the deduction of losses is disallowed.

Best Practices

Rather than a blanket ban on deductions of losses merely because they are linked to crypto-assets, jurisdictions may wish to consider allowing deductions only if there is a sufficient nexus between a crypto-linked source and other non-crypto linked sources. They may also wish to consider prohibiting the deduction of losses from specific crypto-linked activities such as speculation.

Risk 2.2: Donations

There have been an increasing number of donations made in crypto-assets and charities have also increasingly been prepared to accept donations in crypto-assets. However, there may be potential opportunities for tax avoidance or fraud due to the general difficulties in valuing various kinds of crypto-assets. The closest analogies are probably with donations of artworks, given that these are donations in kind (rather than money) and may sometimes pose difficulties in determining the values of such gifts. Existing tax laws may not have expressly contemplated such donations, making it necessary to consider if they are fit for purpose.⁸³

⁸² See the Report, 22.

⁸³ See the Toolkit Outline (n 4), 14.

Donations Questionnaire (Preliminary Questions for Risks 2.2.1- 2.2.2)

Given that Risks 2.2.1- 2.2.2 all concern the broad issue of the deduction of donations, there is a common set of questions: the ‘Donations Questionnaire’ that should be answered when considering any of those risks. These questions set the background for examining more specific situations when considering the various kinds of crypto donations later.

Donations and Tax Deductions	
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Q1.	Does the tax system allow for tax deductions for donations-in-kind? If so, are donations of crypto-assets tax deductible?
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Background and Rationale

Donations-in-kind represent non-cash philanthropic contributions in form of direct and indirect donations of products or services of all kinds.⁸⁴ While most tax systems will generally allow monetary donations to be tax deductible (sometimes offering additional incentives for such donations), not all tax systems will accord the same treatment to donations made in kind. It is not uncommon for a tax system to prescribe that even where donations-in-kind may be tax deductible, that the categories of such donations are restricted.

Best Practices

Jurisdictions should review their existing laws to determine whether donations of crypto-assets would be tax deductible. If the provisions are broadly drafted to include all types of in-kind donations, then donations of crypto-assets are likely to be included as well. It would be less clear if prescribed categories of goods or services are laid out in the legislation. Unless crypto-assets would be able to fit within existing categories, they would be unlikely to qualify for tax deductions when donated.

Valuation	
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Q2.	Is there a framework or guidelines to value crypto-assets, and is it based on fair market value or another method?
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⁸⁴ Sandra Stötzer and Katharina Kaltenbrunner, ‘In-Kind Donations – Peculiarities and Challenges of Product Philanthropy’ (2023) International Review on Public and Nonprofit Marketing 1.

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Background and Rationale

As crypto-assets do not have the status of fiat currency in the vast majority of jurisdictions, any donations of crypto-assets are likely to be considered to be donations in-kind, making it necessary to fairly value these donations. Highly liquid crypto-assets such as Bitcoin will probably not raise issues with regards to their valuation since there will be a readily ascertainable market value derived from the quoted prices on leading crypto exchanges.⁸⁵ Some tax authorities have indicated that they will generally accept valuations of tokens based on an exchange rate that is verifiable (i.e., listed on an established crypto exchange) and consistently applied.⁸⁶

However, where the crypto-assets donated are not commonly traded and do not have readily-available values, it may be necessary to seek the opinions of professional valuers.⁸⁷ For instance, in the United States of America, if the donor is claiming a charitable contribution deduction for donations of crypto-assets totaling over \$5,000, additional appraisal requirements generally will apply.⁸⁸ In this case, a donor is required to obtain a qualified appraisal, which must be signed and dated by a qualified appraiser. The requirement to obtain a qualified appraisal may raise practical issues, since the IRS requires that the appraiser possess ‘verifiable education and experience in valuing the type of property being appraised.’⁸⁹

Best Practices

Jurisdictions may take as a starting point the prices listed on leading crypto exchanges and possibly accept the opinions of professional valuers in the absence of such information. However, it may also well decide to limit the tax deductibility of donations of crypto-assets to those which can readily be valued (see the commentary for Risks 2.2.1 and 2.2.2, below).

Deemed Realization Rule	
Q3.	Is there a deemed realization rule (assets are deemed to have been sold at a market value)?

Background and Rationale

Where crypto-assets are donated and a tax deduction is allowed, the tax authorities should consider having rules in place under which the assets are deemed to have been sold at market value.⁹⁰ In such a case, the taxpayer would be able to claim the market value of the crypto asset as a deduction when the asset is donated, but must also pay tax based on the deemed appreciation of the value of the asset since they acquired it. To do otherwise would risk an argument by taxpayers that there is

⁸⁵ Ooi and Ritter (n 7), 208.

⁸⁶ See IRS (n 8); and IRAS, IRAS e-Tax Guide: Income Tax Treatment of Digital Tokens (9 October 2020), paras 5.4-5.5.

⁸⁷ See Ooi and Ritter (n 7), 210-211.

⁸⁸ Lisa Zarlenga, Elinor Ramey and John Cobb, ‘Cryptocurrency: Tax Benefits and Other Considerations for Donors and Charities’, (Steptoe) (2020) <<https://www.steptoe.com/en/news-publications/charitable-contributions-of-cryptocurrency-tax-benefits-and-other-considerations-for-donors-and-charities.html>> accessed February 25, 2024.

⁸⁹ Zarlenga *et. al.*, (n 88).

⁹⁰ See the Toolkit Outline (n 4), 14.

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no ‘realization event’ and that they are not liable to tax on their gains from the assets, which being able to deduct the full value of the assets through their donations. The United States of America has taken a different position. While it does not have a deemed realization rule in this context, it will only allow taxpayers to claim a deduction on their charitable donations equivalent to what the donor has paid for the crypto asset in some situations.⁹¹

Best Practices

As noted above, there are two main policy choices available to jurisdictions. They can have a deemed realization rule or only allow taxpayers to deduct the acquisition cost of the crypto asset which they have donated. To allow for the deduction of the full market value but not tax the appreciation of the value of the asset may be generous to taxpayers.

Risk 2.2.1: Donations of Payment Tokens

Refer to ‘Donations Questionnaire’ for the first three questions.

Please complete the six questions listed in the ‘Donations Questionnaire’ above before proceeding with the following questions, as they are crucial to set the necessary context for discussing the deduction of crypto donations.

Policy Considerations	
Q1.	Does the existing tax system distinguish between donations of payment tokens and non-payment tokens?

Background and Rationale

As donations of payment tokens are more likely to be akin to fiat currencies and thus, the case for treating donations of payment tokens as such is stronger. They are far more likely to have readily ascertainable values on leading crypto exchanges rather than, for example, utility tokens.

Best Practices

Most tax systems do not currently distinguish between donations of payment tokens and non-payment tokens at the moment. It is arguable that tax authorities should instead scrutinize donations of non-payment tokens much more carefully, even if the technical treatment of both might be the same.

⁹¹ IRS, FAQ, <<https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>> accessed February 25, 2024, Question 35.

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Q2.	Does the existing tax system distinguish between donations of less-frequently traded payment tokens and actively traded payment tokens?
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Background and Rationale

Frequently traded crypto-assets like Bitcoin, Ethereum, and others have a readily ascertainable market value because they are frequently traded on various exchanges, and their prices are updated in real time.⁹² This high liquidity and volume provide a clear and immediate picture of what the market is willing to pay for these assets at any given time. However, this may not necessarily be the case for less-frequently traded payment tokens. These less-liquid assets, often associated with newer or smaller projects, may not be listed on major exchanges, or they may have low trading volumes. This can make it difficult to determine a fair market value for these assets, as there may not be enough recent transaction data to reference.

Best Practices

Again, most tax systems do not currently distinguish between donations of less-frequently traded payment tokens and actively traded payment tokens. Tax authorities may consider scrutinizing donations of the former much more carefully, rather than draw a legal difference between the two.

Risk 2.2.2: Donations of Non-Payment Tokens

Refer to 'Donations Questionnaire' for the first three questions.

Please complete the six questions listed in the 'Donations Questionnaire' above before proceeding with the following questions, as they are crucial to set the necessary context for discussing the deduction of crypto donations.

Policy Considerations	
Q1.	Are donations of non-payment tokens tax deductible in the jurisdiction?

Background and Rationale

The preliminary question to be asked is whether non-payment tokens are suitable for charitable contributions. This is due to the fact that, typically, only those cryptocurrencies that are convertible into a fiat currency are of value to charities. Those charities that are able to accept cryptocurrency generally convert crypto to fiat currency as soon as possible.⁹³ Notably, assets which are non-convertible into currency, may present challenges for charities to liquidate and thus may not be

⁹² For example, CoinDesk <<https://www.coindesk.com/price/ethereum/>> accessed February 25, 2024; Bitcoin.com <<https://markets.bitcoin.com/crypto/ETH>> accessed February 25, 2024.

⁹³ Andrea Kramer, *A Primer on Charitable Contributions of Virtual Currency* (2021) <<https://www.mwe.com/pdf/a-primer-on-charitable-contributions-of-virtual-currency>> accessed February 25, 2024.

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accepted by the charitable organizations. Further, donations of non-payment tokens are likely to be more difficult to accurately value and a policy decision will have to be made as to whether tax deductions should be granted in the first place.

Best Practices

Whether to allow donations of non-payment tokens to be tax deductible is a policy decision by each jurisdiction that should take into account whether it is worth the additional risks of tax avoidance and evasion and the administrative burden of ensuring that reports by professional valuers are credible. Jurisdictions which may not have extensive resources to do this should consider only allowing donations of payment tokens to be deductible.

Appendices

A1. Background to Digital Assets

The focus of this Toolkit is on the risks which crypto-assets pose for tax systems. A lengthy discussion on the background of crypto-assets could thus be distracting. However, the taxation of crypto-assets is a highly technical field, focusing on key features of these assets in to understand the nature of crypto transactions and how orthodox tax rules apply to them could be helpful. To this end, this Annex will cover (1) the various technical terms used throughout the Toolkit and (2) the underlying technology that is used through crypto-assets.

A1.1. Definitions

A1.1.1. ‘Crypto-Assets’

Crypto-assets are a subset of digital assets. The term ‘crypto-assets’ is generally used to refer to digital financial assets (also known as digital tokens) which are based on distributed ledger technology,⁹⁴ though there is no universally accepted definition at the moment. Guidance may be taken from the definitions offered by several leading international exchange of information initiatives. The Organization for Economic Cooperation and Development (‘**OECD**’)’s Crypto-Asset Reporting Framework (‘**CARF**’) defines ‘crypto-assets’ as ‘a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.’⁹⁵ The European Commission’s MiCA defines them as ‘a digital representation of a value or of a right, which is able to be transferred and stored electronically, using distributed ledger technology or similar technology’.⁹⁶ Finally, the Financial Action Taskforce (‘**FATF**’) uses the term ‘virtual assets’ instead, defining them as ‘a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.’⁹⁷ It is noted that all three definitions are broadly framed and not restricted to representations of value using distributed ledger technology specifically. The CARF and MiCA definitions refer to ‘similar technology’, while the FATF Recommendations do not refer to any specific technology at all.

A1.1.2. ‘Digital Tokens’

Technically a subset of ‘crypto-assets’, ‘digital tokens’ are generally synonymous with the former in most cases. ‘Cryptocurrencies’ are a subset of digital tokens which are intended to be used as a medium of exchange and thus, are also known as ‘payment tokens’. These ‘payment tokens’ are one of three main classes of digital tokens, with ‘utility tokens’ and ‘security tokens’ being the other two main classes. The terms, as used above, are consistent with the general understanding of the

⁹⁴ Bacon, *et. al.*, (n 3).

⁹⁵ CARF (n 11), Section IV(A)(1).

⁹⁶ MiCA (n 13).

⁹⁷ Glossary of the FATF Recommendations. See FATF, (n 14), 109.

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concepts for the purposes of securities regulation and guidance issued by tax authorities. However, in a strict technical sense, the ways the terms are used in these two contexts are not exactly correct.

A ‘token’ is technically a form of digital asset that is built on the infrastructure of an existing blockchain (using what is colloquially known as ‘smart contracts’), while a ‘coin’ is a form of digital currency that often has its own blockchain (the term in common usage is ‘native to a blockchain’). Given these highly technical definitions, ‘digital tokens’ are arguably much more restrictive in their scope as compared to ‘crypto-assets’. Further, most cryptocurrencies are actually ‘coins’ rather than ‘tokens’, making the label ‘payment token’, strictly speaking, inaccurate. That said, this Toolkit approaches the issue from a policy and pragmatic standpoint rather than a strict technical one. As much of the existing regulatory frameworks⁹⁸ (in securities regulation) and guidance from tax authorities⁹⁹ does not draw a hard distinction between coins and tokens,¹⁰⁰ this Toolkit will also not maintain that hard distinction. It is noted that some jurisdictions (such as Singapore) have even defined the term ‘digital payment token’ in their tax legislation to clearly include cryptocurrencies.¹⁰¹

⁹⁸ Swiss Financial Market Supervisory Authority (‘**FINMA**’), Press Release: FINMA Publishes ICO Guidelines (16 February 2018), 2.

⁹⁹ See, for example, OECD (2020) (n 19); NZIRD, ‘Cryptoassets’ <<https://www.ird.govt.nz/cryptoassets>> accessed February 25, 2024; HMRC, ‘Cryptoassets Manual’, <<https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual>> accessed February 25, 2024.

¹⁰⁰ The ATO does expressly note that ‘a token is a unit of value on a blockchain that usually has some other value proposition besides just a transfer of value’. See ATO, ‘Crypto-assets Glossary’, <<https://www.ato.gov.au/general/gen/tax-treatment-of-crypto-currencies-in-australia---specifically-bitcoin/>> accessed February 25, 2024.

¹⁰¹ See Singapore Goods and Services Tax Act 1993, s 2A.

A1.2. The Underlying Technology

A1.2.1. Distributed Ledger Technology

Crypto-assets rely on DLT, which involve a network of connected computers which each individually maintain a record of transactions, and all partake in establishing the current state of the network.¹⁰² This differs from a centralized system, where one main computer is responsible for maintaining a definitive record. As multiple computers on the network are involved, there needs to be a way in which any potential differences in the record are resolved. This is known as a ‘consensus mechanism’ and lies at the heart of crypto transactions. There are two main categories of consensus mechanisms currently in use (Proof-of-Work (**POW**) and Proof-of-Stake (**POS**) Schemes), though a wide range of other more uncommon mechanisms also exist.¹⁰³

A1.2.1.1. Mining

The precise mechanism of a POW Scheme is extremely complex,¹⁰⁴ but essentially, computers in the network compete to solve mathematical equations that are difficult to solve but whose solutions can be easily checked.¹⁰⁵ Miners make calculations to verify the transactions and share their results with the network, with the fastest correct miner receiving tokens.¹⁰⁶ Essentially, mining is a mechanism put in place to ‘pay for’ the running of the distributed ledger system and the ‘costs’ are spread amongst the existing owners of the digital token as an increased supply of the token leads to a devaluation of the existing tokens, in a manner akin to inflation. The requirement to expend significant computing power in order to update the ledger makes it uneconomic for a party to simply control the majority of the nodes in the network and make fraudulent amendments to the ledger (in what is commonly-known as a 51 percent attack).¹⁰⁷ The process of solving mathematic equations as a node in the network under a POW mechanism is known as ‘mining’ and successful ‘miners’ will receive freshly generated tokens as compensation for their efforts.

A1.2.1.2. Forging

The highly resource-intensive nature of POW Schemes led to the creation of less computationally expensive POS Schemes. Once again, the precise mechanism is extremely complex,¹⁰⁸ but

¹⁰² Vincent Ooi, Kian Peng Soh and Jerrold Soh, ‘Blockchain Land Transfers: Technology, Promises, Perils’ (2022) 45 Computer Law & Security Review 1, 3.

¹⁰³ For a comprehensive explanation and evaluation of consensus mechanisms in blockchain see Christian Cachin and Marko Vukolić, ‘Blockchain Consensus Protocols in the Wild’ in Andrea Richa (ed), *31st Intl. Symposium on Distributed Computing (DISC)* (2017); Wenbo Wang, *et. al.*, ‘A Survey on Consensus Mechanisms and Mining Management in Blockchain Networks’ (2019) 7 IEEE Access 22328.

¹⁰⁴ Ooi *et. al.* (n 102), 3-5.

¹⁰⁵ OECD (2020) (n 19), 11.

¹⁰⁶ OECD (2020) (n 19), 11.

¹⁰⁷ See Christopher Koch and Gina Pieters, ‘Blockchain Technology Disrupting Traditional Records Systems’ (2017) <<https://ssrn.com/abstract=2997588>> accessed February 25, 2024.

¹⁰⁸ Ooi *et. al.* (n 102), 5.

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essentially, existing holders of tokens ‘vote’ to validate transactions by placing a ‘deposit’ and thus ‘staking’ their tokens. The ‘deposit’ can be forfeited if the node is found to have engaged in errant behavior that threaten the integrity of the ledger.¹⁰⁹ While the nodes still maintain and verify the ledger, no mathematical equations need to be solved. This process is known as ‘forging’ and successful ‘forgers’ will likewise receive freshly generated tokens as compensation for their efforts.

A1.2.2. ‘Wallets’ and the Issue of Pseudonymity

There is an apparent contradiction with crypto-assets in that while a public blockchain ensures that transaction records of crypto-assets are generally replicated in a large number of ledgers on many different nodes, ensuring maximum transparency, there is also talk of difficulties in identifying the parties behind crypto transactions. How then can there be a challenge with identifying taxpayers if the transaction history of crypto-assets is practically in the public domain? The answer lies in the pseudonymous nature of crypto-assets. As a starting point, pseudonymity is conceptually different from anonymity. In the case of the latter, a party acts in a way that makes it unidentifiable. The same party could perform the same action multiple times and there would be no way of knowing that it was the same person. In the case of the former, however, a party acts in a way in which they can be identified, but there is a ‘mask’ or ‘shield’ which conceals their identity outside the system in which they are acting. So, everyone might know that the same person performed the same act thrice, but they have no information who that person might be.

The ‘wallets’ which store private keys (and thus, control over tokens) are unique and identifiable. It is public information what transactions a particular ‘wallet’ is involved in and it is also possible to trace the flow of tokens (i.e. the changes in ownership) from wallet to wallet. However, all this information is of little use in uncovering the ultimate beneficial owner behind a ‘wallet’. The ‘wallets’ themselves do not contain any information that could identify their owners. Pseudonymity in this context means that one can know the entire transaction history of a particular ‘wallet’ but be unable to uncover the ‘true identity’ of the owner of the ‘wallet’. Several global initiatives¹¹⁰ are now underway to extend the current international exchange of information framework to crypto-assets as well, placing the burden on intermediaries who assist with crypto transactions to conduct ‘know your client’ checks and collect information on the ultimate beneficial owners behind ‘wallets’. However, the inherent pseudonymity of crypto-assets means that there will inevitably be gaps in the information gathered, since not all users will go through a regulated intermediary.

¹⁰⁹ To be precise, the staked tokens will be forfeited if a node violates either one of two ‘slashing conditions’ which are: 1) a validator must not vote simultaneously for two blocks at the same target height and 2) a validator must not vote within the span of its other votes. See Vitalik Buterin, ‘A Next-Generation Smart Contract and Decentralized Application Platform’ (Github) (June 23, 2020) <<https://github.com/ethereum/wiki/wiki/White-Paper>>; and Vitalik Buterin and Virgil Griffith, ‘Casper the Friendly Finality Gadget’ (Cornell University) (October 25, 2017) <<https://arxiv.org/abs/1710.09437>> accessed February 25, 2024.

¹¹⁰ For example, the CARF (n 11); European Commission’s MiCA (n 13); and FATF’s Guidance on VASPs (n 14).

A1.3. International Exchange of Crypto Information Mechanisms

A1.3.1. CARF

The CARF¹¹¹ is one of three leading international exchange of crypto information mechanisms, the other two being the European Commission's DAC8¹¹² and FATF's Guidance on Virtual Asset Service Providers.¹¹³ While it draws heavily from the CRS, it is a separate and complementary framework put in place to address the gaps in reporting under the CRS, which does not cover many forms of crypto-assets.

The focus of the CARF is on Reporting Crypto-Asset Service Providers ('**RCASPs**'), ensuring that they collect and send crypto information to tax administrations at a domestic level. The information can then be exchanged with other jurisdictions internationally. RCASPs are defined as 'any individual or Entity that, as a business, provides as service effectuating Exchange Transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such Exchange Transactions, or by making available trading platform'.¹¹⁴

There are three main types of transactions which RCASPs are required to report: 1) exchanges between Relevant Crypto-Assets and Fiat Currencies; 2) exchanges between one or more forms of Relevant Crypto-Assets; and 3) transfers (including Reportable Retail Payment Transactions) of Relevant Crypto-Assets.¹¹⁵ RCASPs must provide the following information about the relevant reportable persons: 1) the persons' name, 2) address, 3) jurisdiction of tax residence, 4) TIN, and 5) date and place of birth.¹¹⁶

Other information about the relevant transactions must also be provided such as: 1) the full name of the relevant crypto-assets; 2) any acquisitions and disposals of the crypto-assets (whether exchanged for fiat currency or other crypto-assets); 3) retail payment transactions; and 4) other transfers of crypto-assets.¹¹⁷ The reporting is to be done on an aggregate basis by type of transactions, distinguishing between: 1) outward and inward transactions, 2) crypto-to-crypto transactions, and 3) transfer types. The reporting should be done in a fiat currency. If fiat currency were not used in the transaction, the reportable value should be based on the market value of the relevant asset at the time of the relevant transaction.¹¹⁸

The CARF consists of three distinct components: 1) Rules and related Commentary that can be transposed into domestic law to collect information from RCASPs; 2) a Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the CARF ('**CARF MCAA**') and related Commentary; and 3) an electronic format (XML schema) to be used by Competent Authorities for purposes of exchanging the CARF information, as well as by

¹¹¹ CARF (n 11).

¹¹² DAC8 (n 13).

¹¹³ FATF's Guidance on VASPs (n 14).

¹¹⁴ CARF (n 11), 19.

¹¹⁵ CARF (n 11), 14, 22-23, and 31-36.

¹¹⁶ CARF (n 11), Section II(A) of the CARF Rules, 18-19.

¹¹⁷ CARF (n 11), 31-35.

¹¹⁸ Noked (n 33), 16-17. CARF 2023, 18-19. Issues of valuation are addressed in CARF 2023, 36-38.

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Reporting Crypto-Asset Service Providers to report CARF information to tax administrations (yet to be finalized).¹¹⁹

This Toolkit makes reference to the CARF on several occasions for a variety of purposes. It is useful to consider the definition of ‘crypto-assets’ in the CARF (‘a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.’)¹²⁰ The CARF is also a useful standard for reference, such as when considering what kinds of information should be collected and submitted to the tax authority by the RCASPs.¹²¹ This standard can be applied when designing a domestic framework for the reporting of crypto information by centralized and decentralized exchanges. It can also be applied at an international level when exchanging crypto information with other jurisdictions, possibly utilizing CARF mechanisms.

The CARF is currently the most prominent international exchange of crypto information mechanism and jurisdictions may consider ratifying it if they find that they have the necessary resources and a cost-benefit analysis shows that the benefits outweigh the costs

¹¹⁹ CARF (n 11), 12.

¹²⁰ CARF (n 11), Section IV(A)(1) of the CARF Rules, 22.

¹²¹ CARF (n 11), Section II(A) of the CARF Rules, 18-19.