EDITION 1

KING&WOOD MALLESONS
金杜律师事务所

KWM TAXATION OF CRYPTO ASSETS GUIDE

CRYPTODUCTION

In the wake of the Senate Committee's report on the crypto and crypto asset industry, it is clear that the taxation of digital assets will be a Government focus with the Senate's report concluding that the "taxation rules for crypto assets require further clarification".

This guide is the first of a KWM series designed to help you navigate the taxation of crypto assets.

The first instalment of the KWM series "Cryptoduction" provides you with the fundamentals: the what, the who, the why and the how of digital assets, essential elements in determining the tax treatment of these assets.

WHAT IS A CRYPTO ASSET?

"Crypto asset" is the term given to a broad range of digital, transferable records which exist on a blockchain or distributed ledger. What that record is will depend on the rights and obligations received. These range from recording peer-to-peer transfers of value, to recording of title to real-estate, from rights to digital artwork, to complex financial products, and everything in between.

WHO ARE THE PLAYERS?

- **Developers –** People involved in the creation of blockchain and DLT protocols which underpin crypto assets.
- **Miners, Validators, Delegators and more –** People who are key to the processes of verifying transactions on a blockchain or DLT protocol. Their role will depend on the technology itself and may differ. For example, depending on the protocol, they may act together or alone.
- **Traders –** Ordinarily traders are those that have a trading business and intend to generate profit from buying and selling crypto assets. Such activities have a range of tax considerations, including considering whether they have or gain revenue or revenue trading stock.
- **Stakers and Liquidity Providers –** People who stake or otherwise lock up crypto assets within a dedicated smart contract or facility, restricting the use of those crypto assets, to receive an amount of another crypto asset in return. The nature of these contracts varies significantly, including in relation to the crypto asset received, the rate of return, and whether 'collateral' is provided (and in what form). The purpose of staking can also vary as it may be used to 'loan' crypto, or to provide 'liquidity' to a third party or network.
- **Investors** – People who hold crypto assets for capital appreciation are investors. Here, gains and losses (whether in crypto assets or otherwise) could be treated as capital.
- **Users for "personal" purposes** – Typically would involve using the crypto asset as a "personal use asset", like having crypto assets for a short time and using it as a means of exchange to buy items for a personal, domestic or household use.
- **Employers and employees** – Certain employers pay their employees in crypto assets (or offer them the option).
- **Custodians** – Some professional custodians (both licensed and unlicensed) may offer their services to store crypto assets.

WHAT ARE THE USES?

In this KWM series we will be addressing the different crypto assets or uses of crypto assets to assist in ascertaining the taxation of the following crypto asset transactions:

HOW ARE CRYPTO ASSETS TAXED?

In this KWM series we will walk through the potential tax treatment for each player in the digital asset space with respect to digital asset uses.

While the taxation of digital assets (particularly crypto assets) is currently being considered further, the taxation of these assets is governed by the following principles:

Capital asset treatment

Crypto assets which are held for long-term investment are likely held on capital account and subject to capital gains tax with a capital gains tax event occurs (including but not limited to a disposal of an asset). The "long-term investment" could be for the purposes of long-term store of value or where there is an expectation of capital appreciation over a long-term period. In such circumstances, capital gains made on the disposal of crypto assets may be eligible for the 50% CGT discount (dependent on the duration held and identity of the holder).

Personal use treatment

Personal use assets are defined as capital assets (other than collectables) that are used or kept mainly for personal use or enjoyment. Capital gains made on the sale of personal use assets are disregarded if they were originally acquired for less than AUD10,000 and are otherwise taxed as capital assets (see left).

Revenue asset treatment

On the other hand, crypto assets will be revenue account assets where they are used speculatively with a view of profit-making in transactions that are part of a business operation or otherwise commercial in character. This can include both an isolated transaction and a series of transactions. Like a capital asset, revenue assets are taxed on disposal (but any gains made do not attract a discount).

Trading stock

Crypto assets can be trading stock for tax purposes where they are held for the purposes of sale and/or exchange in the ordinary course of business. The actual business itself could be or involve the trading, mining or exchanging of crypto assets. Gains or losses on the disposal of the asset will be taxed under the trading stock rules under the Australian tax legislation and like revenue assets, a gain does not attract a discount.

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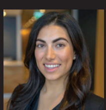

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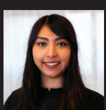

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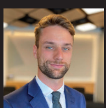

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