Article Information

Authors: Steven Pettigrove, Jake Huang, Luke Higgins, Luke Misthos
Service: Blockchain, FinTech
Sector: Financial Services, IT & Telecommunications

Blockchain Bites: Australia endorses status quo in Crypto-Tax Review, TradFi embraces Stablecoins as banks and fintechs eye new gold rush, OFAC in a whirlwind trying to spin Tornado Cash case

Steven Pettigrove, Jake Huang, Luke Higgins and Luke Misthos of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

The Long Road to a Short Response: Australia endorses status quo in Crypto-Tax Review

On 21 March 2025, after years of industry anticipation, the Australian Government finally issued its response to the Board of Taxation's comprehensive review of the taxation of crypto-assets. The Board, which undertook extensive consultations across tax professionals, academia, and the crypto industry, delivered its 295-page report to the Government in February 2024. The Government's response? A comparatively humble four page response.

Background

The review began in December 2021 when the former Treasurer tasked the Board with evaluating how Australia taxes digital assets. The aim was to assess whether existing tax laws adequately covered crypto transactions, whether Aussie businesses and investors understood their tax compliance obligations, and how international approaches to crypto taxation could assist in informing domestic policy.

A working group, comprising Board members, tax experts, and officials from The Treasury and the Australian Taxation Office (ATO), led the review. Consultations began in 2022, with key stakeholders (which included crypto-asset exchanges, software providers, developers, and investors) providing submissions. The result was a dense, detailed report exploring almost every facet of crypto taxation and its implications.

To briefly summarise the 295-page report, the Board opinion is that crypto-asset taxation could sufficiently be dealt with under the existing regime and that bespoke legislation would be ill-placed as blockchain remains in its infancy. This approach contemplates only the issuance of further ATO guidance where required and the establishment of a Working Group to help collate existing guidance for tax payers.

The Three Key Recommendations

As expected, the Government's response largely avoids committing to significant legislative change (as suggested by the Board's report). Rather, it agrees with three key recommendations.

1. The 'Principles Framework' for Crypto Taxation (Recommendation 5.1)

The Principles Framework developed by the Board promotes certainty, simplicity, integrity as well as competitive, revenue, technological and functional neutrality. It also ensures that the tax treatment of crypto assets and transactions should be based on existing ordinary tax principles, unless there are unforeseen or unintended outcomes. The Board recommends that the Principles Framework be used as a guide by the Government, when considering the suitability of amendments to current Australian taxation laws and/or any amendments to or creation of a new tax legislation for crypto assets and

transactions. In assessing any proposed measure by reference to the Principles Framework, all relevant factors should be considered. This may include features of the crypto ecosystem that give rise to risks and integrity concerns (see Chapter 4). For example, neutrality in principles 3, 4 and 5 needs to consider the inherent integrity risks that exist for crypto assets that do not exist for other traditional assets including cash, shares and property.

Frustratingly, the report cites the common regulatory refrain of "technology neutrality" to defend the status quo when the application of existing principles are designed based on existing economic and trading paradigms which incentivise or disincentive particular activities.

The so-called "inherent integrity" risks of crypto-assets are not addressed or explained.

2. No Crypto-Specific Tax Laws (Recommendation 13.1)

Some options for crypto-specific legislative taxation regimes were raised with the Board during consultations. The Board does not recommend the introduction of any crypto-specific legislative taxation regime at the present time, when the crypto ecosystem is changing and developing rapidly. Even if the crypto ecosystem was more settled, a crypto-specific legislative taxation regime could raise issues such as ensuring confined and applicable definitions, acting contrary to neutrality, potential integrity concerns, increased complexity and barriers to entry for a developing market. Should the Government decide to explore the suitability of introducing a crypto-specific legislative taxation regime at some time in the future, the Government may decide to consider one or more of the options identified in this Chapter 13, which were the subject of varying levels of discussion during the Review. Should the Government decide to consider any of these options in the future, the Board recommends that the Government undertake further consultation with key stakeholders and a further detailed review in relation to any option that it might consider.

3. Further Review of Emerging Crypto Sectors (Recommendation 13.2)

The Board's stakeholder consultations together with its own research indicates that areas in the crypto ecosystem that are currently increasing in scale and developing at a particularly fast rate are Decentralised Autonomous Organisations (DAOs), Decentralised Finance (DeFi), Gaming Finance (GameFi), and Non-Fungible Tokens (NFTs). The Government may like to consider undertaking further work in relation to the taxation implications of these four areas in the future particularly in light of any policy responses made to the regulation of such activities. In the meantime, the Board recommends that the ATO continue to consider the tax treatment of new and evolving crypto assets and transactions in accordance with existing rules and principles, including in relation to these four areas.

A 'Wait and See' Approach

For those hoping for substantial reform or tailored crypto tax legislation, the Government's response will come as a disappointment (but to be fair – this effectively echoes the Board's report which recommended holding off on crypto-asset specific legislative reform given blockchain is still in its infancy). The overarching theme of the reply (and the Board's report) is that existing tax principles apply, and while future discussions might take place, there is no immediate appetite for dedicated crypto tax laws.

The timing of this response is no coincidence. Australia is on the brink of a Federal election, which is expected to be called any day now. With political attention focused elsewhere, comprehensive tax reform of crypto-assets is unlikely to be a government priority in the near term. For businesses and investors in the digital asset space, this means navigating crypto taxation under existing frameworks, with the ATO continuing to apply general tax principles rather than bespoke crypto regulations. The applications of these principles to novel situations like wrapping or staking tokens can lead to surprising and onerous tax obligations which create obstacles to the development of the technology.

Final Thoughts

The Board of Taxation's exhaustive 295-page report and the Government's concise response underscores the cautious approach being taken. While this avoids hasty, ill-conceived legislation, it also leaves many questions unanswered about how Australia will tax newly emerging crypto technologies (or other technologies should they arise) in the future. After a four review year, it appears that industry and tax payers will have to wait a little longer for more guidance on key areas identified in the report. For now, the message is clear: the Government is in no rush to make sweeping changes. This cautious approach is likely to hinder Australia's position as a leader in blockchain innovation, leaving tax payers to grapple with uncertainty, and likely lead to tax disputes as the application of existing principles to new facts is tested.

Written by Luke Higgins and Steven Pettigrove

TradFi embraces Stablecoins as banks and fintechs eye new gold rush

Stablecoins, a type of crypto assets that maintain (or purport to maintain) a stable value to fiat currencies, are facing increasing regulatory scrutiny in European Union (EU) while attracting strong institutional interests in other jurisdictions including the United States and Hong Kong. The Financial Times report that there are about US$210bn of stablecoins issued globally, with about US$142bn minted by El Salvador-based Tether and US$57bn by the US's Circle, branded as USDT and USDC respectively.

It is reported that some of the worlds' largest banks and fintech companies are currently "rushing to launch their own stablecoins", with an aim to leverage these crypto assets to gain a greater share of the cross-border payments market. Notable players such as Bank of America announced last month that it would likely launch its own stablecoin. Other established payments businesses including PayPal, Standard Chartered, Revolut and Stripe also have plans to issue their own stablecoins or expand their current stablecoin offerings, challenging a business so far dominated by Tether and Circle.

For example, PayPal – which has already issued a stablecoin named PYUSD, said it is expanding this offering as a payment option more widely in 2025, and expects it to be adopted widely by US businesses paying overseas suppliers.

The CEO of "Buy now, pay later" giant Klarna – which is working on an US IPO – has also announced on social media platform X that:

Ok. I give up. Klarna and me will embrace crypto! More to come… Last large fintech in the world to embrace it. Someone had to be last. And that's a milestone as well of some sort.

Meanwhile, as the EU's Market in Crypto Assets regulation (MiCA) comes into effect, scrutiny on unregulated offerings is increasing: Tether announced they are discontinuing their EUR denominated stablecoin, with users to exit by 27 November 2025, meanwhile a number of exchanges have delisted USDT and Coinbase terminated rewards for EU users holding USDC.

In Hong Kong, Standard Chartered announced last month that it will form a joint venture to issue Hong Kong's first regulated HKD-backed stablecoin. This initiative marks a significant step in Hong Kong's ambition to cement its place as Asia's crypto hub, and as a global leader in regulated cryptocurrencies. The joint venture will apply for a license from the Hong Kong Monetary Authority under their new regulatory framework for stablecoin issuers. A bill issued in December is currently under review by the Legislative Council to establish the framework. The collaboration brings together three key players from Hong Kong's banking, Web3, and telecommunications sectors, each contributing their expertise to the project. It also coincide with the release of Hong Kong's comprehensive ASPIRE roadmap for crypto regulations.

Corporate giants appear to be embracing a new gold rush as they eye Tether and Circle's impressive returns from their holdings of reserves. However, upcoming regulations (such as EU's MiCA) look set to impose more stringent (and costly) compliance requirements, which may cause some of these stablecoin promises to burst. Myths around stable coins are still many, with a great debunking by Jai Massari and Alex Barrage:

Myth	Fact
Myth 1: Stablecoins are like deposits, and their issuance is inherently riskier than bank deposit taking.	Well-regulated stablecoins with full reserve requirements are *not* inherently riskier than traditional banking. Unlike fractional reserve banking, stablecoins must be fully backed by high-quality liquid assets (HQLA), with transparent attestations and tailored capital buffers.
Myth 2: Stablecoins will displace bank deposits and disrupt money creation.	Stablecoins will complement, not displace deposits. They're more expensive for banks to issue than traditional deposits (HQLA vs higher-yield investments) and more expensive for users to hold than interest-bearing accounts, making them suitable primarily for transactional needs.

Myth 3: Stablecoin issuer failures require specialized FDIC resolution; bankruptcy process is unworkable.

With proper modifications to the Bankruptcy Code, bankruptcy can provide better consumer protection than FDIC resolution for non-bank issuers. Key improvements would include segregating reserves from the bankruptcy estate, preventing clawbacks, and enabling expedited holder payments.

Our summary of Jai and Alex's great article

Demand for dollars particularly in emerging markets and for cross-border payments means stablecoins are increasingly finding product market fit. While the role of stablecoins in the global financial system remains to be seen, one thing is for sure – stablecoins are getting the corporate and fintech world excited.

Written by Steven Pettigrove and Jake Huang with Michael Bacina

OFAC in a whirlwind trying to spin Tornado Cash case…

In August 2022, the U.S. Treasury's Office of Foreign Asset Control (OFAC) took the unprecedented step of sanctioning the smart contract address of Tornado Cash, a decentralized cryptocurrency mixer operating on Ethereum. This marked the first time a set of smart contracts—rather than individuals or organizations—was placed on the Specially Designated Nationals (SDN) list (although the founder of Tornado Cash was also named on the sanction list).

The sanctions came after reports that North Korean state-sponsored Lazarus Group and other criminal actors laundered over US$7 billion through the protocol, including US$96 million from the Harmony Bridge hack. Despite Tornado Cash developers' earlier attempts at compliance through implementing Chainalysis tools to block sanctioned addresses, OFAC determined these measures were insufficient.

This action sparked immediate backlash from cryptocurrency stakeholders who viewed it as governmental overreach against open-source software rather than against specific bad actors, and a lawsuit was launched alleging that OFAC overstepped their authority in sanctioning code.

The legal challenge to OFAC's authority gained significant momentum when the U.S. Fifth Circuit Court of Appeals, in November 2024, delivered a landmark ruling that OFAC exceeded its statutory powers. The court distinguished that Tornado Cash's immutable smart contracts cannot be classified as "property" under sanctions laws like the International Emergency Economic Powers Act. This critical distinction—that code itself cannot be owned or blocked—undermines the legal foundation of OFAC's sanctions and represents a significant victory for blockchain technology advocates who have long argued that code itself should not be criminalized based on how third parties might use it.

Meanwhile, the Department of Justice has pursued parallel criminal proceedings against Tornado Cash developers Roman Storm and Roman Semenov, charging them with money laundering conspiracy and operating an unlicensed money transmitting business. Storm sought to dismiss the proceedings unsuccessfully. The prosecution contends the developers failed to implement adequate KYC and sanctions screening measures, while the defense maintains that Tornado Cash doesn't qualify as a "financial institution" and that developers cannot control immutable smart contracts once deployed. This case raises profound questions about developer liability for autonomous code that operates without ongoing human intervention. After the publication of the appeal judgment and subsequent orders being made to have Tornado Cash's address removed from OFAC's designated list, OFAC published a press release saying:

> Based on … review of the novel legal and policy issues … we have *exercised our discretion* to remove the economic sanctions against Tornado Cash

(our emphasis)

After this announcement OFAC then filed a motion with the Court that the whole case was "moot" since the smart contract was no longer sanctioned, seeking to end the proceedings without a final order.

This puzzled many, since OFAC has lost the case, and was called out by Coinbase Senior Counsel:

> they now claim they've mooted any need for a final court judgment. But that's not the law, and they know it…Treasury has … removed the Tornado Cash entities from the [sanctions list], but has provided no assurance that it will not re-list Tornado Cash again. That's not good enough, and will make this clear to the district court.

The sanctions sparked intense debate throughout the cryptocurrency industry about the limits of government authority over open-source code, raising fundamental questions about financial privacy rights, the technical enforceability of sanctions in decentralized systems, and the potential for regulatory overreach. Meanwhile, software developers and DAOs face potential criminal and civil liability where open source software and smart contracts are misused by third party actors.

The appeal court decision was celebrated as a victory for code development but the last minute manoeuvring by OFAC is a reminder that the fight to keep software from being the subject of sanctions is not yet over.

Written by Steven Pettigrove with Michael Bacina