Australia's Blockchain Future

Recommendations for the Taxation of Initial Coin Offerings

Blockchain Australia

RMIT Blockchain Innovation Hub

Executive Summary and Recommendation

Australian entrepreneurs are suffering from a lack of access to venture capital, putting at risk our future economy and competitiveness. Funding for Australian start-ups, a crucial piece of the innovation pipeline, has fallen by two thirds in the past year.[1]

ICOs are a mechanism of funding for the creation of technology platforms and development of blockchain businesses. To date globally, more than USD$26B of capital has been raised through the Initial Coin Offering (ICO[i]) market. Australia currently has only 0.79 per cent of this market[ii] which is attributable in part to the current taxation treatment.

ICOs are bridging the financing gap in the blockchain sector and also reduce the need for taxpayer-funded grants. However, Australia's tax laws presently do not contemplate ICOs as a type of capital raising. Instead, proceeds are most commonly taxed as income, immediately reducing the amount of money raised by startups relying on this form of capital raise. This does not align with the treatment of proceeds under other capital raising mechanisms. If continued, Australian tax laws will limit the access to capital for burgeoning Australian technology firms, which will very possibly lead to these would-be firms moving elsewhere.

Tax regulation that is not fit for purpose will result in Australian blockchain companies failing to thrive or going offshore.

The development of a competitive blockchain ecosystem is crucial to enable Australia's future as a FinTech leader and to deliver improved services to the Australian people.

We acknowledge that the Australian Government has addressed some of the taxation issues already, by taking measures such as removing the double taxation of digital currency transactions by treating certain digital currencies like money for GST purposes. There is a history of taxation reform by the government to reflect the needs of industry.

This report recommends that a company's proceeds from the issuance of tokens in an ICO should be considered 'not assessable' for income tax purposes, which is equivalent to the treatment offered to companies in respect of proceeds of a capital raise. The treatment should apply from the date of Australia's first ICOs in 2017.

This would ensure Australia is competitive in the global blockchain sector, and as the companies grow, would deliver significant tax revenue to the Australian Treasury as well as helping the Australian economy to reach its full potential.

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This report will be provided to the Department of Industry, Innovation and Science as a submission to the Federal Government's National Blockchain Roadmap.

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i This report focusses on utility token ICOs, which represent the majority of the market to date. Other kind of ICO offerings (such as Security Token Offerings) raise separate issues which are worthy of further attention, but as these offerings are generally rare in the market they are not considered here.

ii $0.21B (Australia) divided by $26.7B (Global) = 0.79 per cent by value (Source: ICO Monthly Report, April, page 23, ICOBench.com)[2]

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Australia's FinTech boom: An opportunity lost?

Considering the quality of Australia's financial institutions and development of its industry, Australia has captured a small fraction of the international ICO opportunity, see Figure 1 in Appendix 1. Of the USD$26B of capital raised through ICOs internationally to date, Australia has raised less than USD$210m[3] through to February 2019. This is only 2.11 per cent by number of ICOs, and 0.79 per cent by funds raised, as seen in Figure 2 in Appendix 1.[2]

The direct importance of blockchain to FinTech and FinTech to blockchain can be summarised by the fact that 43 per cent of enterprise blockchain deployments are related to financial services.[3] 77 per cent of financial services firms aim to incorporate blockchain into their business by 2020.[4] The Australian Government aims to be a leader in FinTech, of which blockchain is an important part. It follows that the Australian Government must be aiming to be a leader in blockchain.

Australia is already a leader in the development and deployment of blockchain technology, but this is not mirrored in commercial results. We submit that Australia is not a tax efficient jurisdiction for a blockchain FinTech company to raise money, which has contributed to Australia's limited success in the international ICO market.

Rectifying taxation improves Australian competitiveness

Australia must carefully identify and use its available policy levers to position itself as a blockchain leader. Australia does not have the luxury of a small and specialised finance sector which can be specifically geared towards a particular industry. In addition, the Australian economy is characterised both by institutional inertia and established businesses.

Australia's corporate taxation rate is higher than every jurisdiction analysed, with the exception of France, although France is also planning to lower its corporate taxation rate to 25 per cent by 2022.[5] It would seem unlikely that Australia will choose to lower its company income tax rates, and the factors identified above will not change. Therefore the country will need to foster the FinTech industry through other means.

Australia has not yet taken significant steps to entice the blockchain sector from a regulatory point of view - which can be seen as either a criticism of FinTech policy to date, or an opportunity to make a fresh start to encourage FinTech through targeted tax treatment. Australia has the chance to do it once, and to do it correctly.

Other jurisdictions can provide useful guidance to reflect upon. For example, France has pushed to create a favourable legal framework for ICOs. Their goal is to make Paris the 'capital of ICOs'.[6]

Elsewhere in the EU, Portugal's equivalent clarifications have led the trade of tokens not being considered as subject to capital gains tax, as well as being exempt from VAT.[7] As the EU pushes to harmonise taxation interpretation across the single-market, it is reasonable to conclude that these leaders will dictate the tenor of future ICO tax policy.

Switzerland has become an ICO hub because of the combination of a clear regulatory environment and favourable taxation regime.

Positions other jurisdictions have taken, including the United Kingdom, USA, and Singapore, are summarised in Appendix 2.

It is clear that each jurisdiction is attempting to balance the historic inertia of financial and regulatory institutions with the economic opportunity of transformative blockchain technologies.

From a strategic point of view, careful taxation policy will ensure Australia is able to attract innovative blockchain businesses while maintaining Australia's enviable position as a 'blue ribbon' jurisdiction, which adds credibility to all Australian businesses working on the international stage.

Australia's leadership in blockchain and FinTech

Australia's FinTech strategy and the role of ICOs have been discussed for some time by the Australian Government. The stated policy goal is to 'promote Australia's FinTech capability'. Since 2016, the Government has supported the industry's objective to make Australia the leading market for FinTech innovation and investment in Asia by 2017.[8]

The ambition was clear, but time has passed and Singapore, Hong Kong, and five Chinese cities are ahead of Australia according to the *2018 Global FinTech Hub Report*.[9] Clearly, the ambitions have not met results, and a strategic recalibration is in order.

Like comparable jurisdictions, Australian regulators have adopted some early recommendations from industry off the back of the Australian FinTech strategy. These include amendments to GST rules to remove double taxation and facilitating compliance with anti-money laundering and counter-terrorism financing legislation. However, in this newly-competitive and ever evolving environment further changes are essential. Taxation policy around ICOs is an area that has received little attention from most jurisdictions. It follows that progressive ICO taxation could give Australia the edge as a FinTech friendly place to do business, particularly in the Asian region. A retrospective application would also ensure that companies that have contributed to the development of Australia's blockchain FinTech marketplaces can continue to grow, rather than being treated inequitably in comparison to the next generation of FinTech companies.

Australian Prime Minister Scott Morrison has been an active advocate for FinTech innovation, stating in a 2018 speech addressed to FinTech leaders in Australia, *"you are all in the business of financial technology disruption. I am in the business of policy disruption"*.[10] At the G20 conference in 2017, Prime Minister Morrison also acknowledged the "new paradigm" created by blockchain within the FinTech space. Here he stated, "... *with opportunities come fresh challenges and risk. They require an open mind; they demand flexibility. And we must always remain critically engaged."* In the Prime Minister's own words, Australia must remain critically engaged. On this point, Prime Minister Morrison went further saying:

> **"That is how Australia is approaching blockchain technology — something, it should be said, we're strongly pursuing. Blockchain technology and other distributed ledger technologies — or DLTs — have the potential to re-engineer transactions, deliver greater efficiency and security, and promote greater data sharing."** [11]
>
> Prime Minister Scott Morrison, 2017

Additionally, Australia has an Assistant Minister for FinTech for the first time in Senator Jane Hume. The signals are strong, and the blockchain industry is looking forward to these signals being turned into tangible innovations in crypto-asset regulation.

The taxation regime in Australia is not fit for ICOs

The taxation regime in Australia is not yet optimised to consider ICOs as a capital-raising method. The principal reason for this is the fact that ICOs are a novel form of fundraising that was not in contemplation at the time of the development of the relevant taxation laws.

Responses to the Treasury's Issues Paper published in January 2019 highlight that the industry struggles with applying the general income tax laws to ICOs, which may lead to a tax outcome that is much less favourable for Australian projects rather than projects that choose other jurisdictions.[12 13 14]

As in many other areas of taxation (e.g. the OECD's work on digitalisation), it is apparent that traditional concepts may lead to tax outcomes that are not aligned with policy objectives. In this case, the policy objectives should aim to:

1. Encourage home-grown start-ups to seek funding from Australia;
2. Encourage overseas investors to invest in Australian projects;
3. Incentivise start-ups to remain in Australia and to spend funding on R&D and other activities here (e.g. hiring and training STEM employees); and
4. Tax the profits of start-up businesses at an appropriate stage in their lifecycle. In particular, the taxation regime should be neutral with respect to the capital raising mechanism employed by start-up businesses.

For this reason, it is proposed that Australia's income tax laws should accommodate the occurrence of ICOs in Australia in a manner that is comparable to other means of capital raising in Australia.

Proper taxation treatment will cause issuers of tokens to be treated in the same way as issuers of equity. This would mean proceeds from the sale of tokens in an ICO should be treated the same way as proceeds from the sale of equity for taxation purposes and not as revenue, in circumstances where the proceeds are being used primarily in the development of the technology and business.

The proposed treatment is in line with the design principles for the taxation system set out in the Treasury Report "Australia's future tax system": equity, efficiency, simplicity, sustainability and policy consistency.

We propose that the issuer of an ICO should not be taxed at the time of issue. Instead, the issuer should be taxed on its income derived from the use of the blockchain enabled technology solution.

This nuanced and targeted tax treatment will signal to Australian FinTechs and the international community that Australia is ready to embrace innovative technology. It will show that the government is prepared to consult with industry and address its concerns with concrete reforms, not just rhetoric. Australia has historically done an excellent job of working with businesses in a wide range of industries to facilitate growth. Our proposed tax treatment simply applies this approach to the FinTech businesses which may shape the future of the Australian economy.

To the extent there is any immediate loss stemming from the upfront taxation of ICO proceeds, we submit that it will be more than offset by revenues from the ICO issuers in particular and the ongoing growth of blockchain technology and associated economic activity in Australia in general. ICO funding is used to develop a platform, which can then generate revenue. It follows that this revenue from the finished product will be greater than that from the ICO in the first place. There is a real opportunity in letting early stage companies grow their taxable revenue base.

There is also risk associated with policy inaction. If the taxation treatment of ICOs is not brought into line with the tax treatment of an equity raise, there is a substantial risk that ICOs simply will not be undertaken in Australia at all and the potential economic activity associated with this industry will stay or move offshore. Those jurisdictions will have the benefits from the maturation of innovative technology companies. This would be a loss to Australia, from the perspective of forgone revenue, lost innovation and lost jobs.

There is now an opportunity for the Australian Government to show leadership and support for the legitimate FinTech and blockchain industry. This opportunity will not last forever and the industry is ready for legislative leadership; the time for the Australian Government to take action is now.

Benefits of adopting the recommendation

This report recommends that a company's proceeds from the issuance of tokens in an ICO should be considered 'not assessable' for income tax purposes, which is equivalent to the treatment offered to companies in respect of proceeds of a capital raise. The treatment should apply from the date of Australia's first ICOs in 2017.

Potential benefits of adopting this recommendation include:

1. Encourage local and global blockchain businesses to raise capital in Australia, increasing Australia's global market share of the industry;
2. Long-term taxation benefits flow from growth of blockchain businesses;
3. Blockchain facilitated FinTech will provide better and more efficient services, benefiting the lives of the Australian people;
4. Providing certainty and facilitating growth of blockchain FinTechs already established in Australia; and
5. Creation of more Australian blockchain industry jobs.[13]

The implementation of a regime that has fit for purpose taxation is aimed at achieving greater innovation, a stronger FinTech sector, and high value jobs for Australians. This will benefit the Australian Treasury over the medium and long term.

Making Australia a more attractive destination for ICOs will incentivise both local and foreign blockchain projects to base themselves in Australia and raise capital out of Australia, which better reflects our country's FinTech potential.

Facilitating the blockchain sector in Australia is good for Australia and Australians.

Due to the decentralised nature of blockchain technology, IT infrastructure built using blockchain can be built rapidly, therefore more quickly delivering affordable solutions to the Australian people. The technology can empower Australians to deal directly with each other rather than go via expensive hubs which can also be monopolistic. This would create more competition with incumbent financial service providers to provide improved services to Australian consumers.

If Australia does not develop these products, they will be imported from overseas, which is clearly undesirable.

Addressing the taxation anomalies for ICOs is important for all major stakeholders, the Australian Treasury, the blockchain sector, and Australian people. A failure to address this will lead to the undesirable outcome of Australia being a follower, as opposed to realising Australia's potential as a FinTech leader.

We encourage Australian policymakers and Treasury to take an informed approach to taxation of ICOs to signal to Australian FinTechs, and the world at large, that Australia is a good place for progressive companies to do business.

In relation to the above, we submit that a new Division be inserted in the Income Tax Assessment Act 1997 (the 1997 Act) that provides that the proceeds from an "eligible ICO" are "non-assessable, non-exempt income" to the issuer where:

I. An "eligible ICO" is an initial coin offering undertaken:
   A. For purposes of capital raising to develop an innovative business;

B. Where the proceeds of which are reasonably expected to be applied to the development of a blockchain platform or similar platform;

C. Where tokens issued under the ICO are reasonably expected to perform a function on the platform;

II. An "issuer" of an ICO includes the underlying or related entity if that entity issues through a nominee.

Relatedly, it is proposed that the following amendments be made to the capital gains tax regime in Part 3-1 of the 1997 Act:

I. A new subsection 104-10(2A) inserted to state:

"for the purposes of this section, a disposal does not occur by the issue of tokens under an eligible ICO";

II. A new paragraph 104-35(5)(ca) inserted:

..."(5) CGT event D1 does not happen if: ...(ca) an entity issues tokens under an eligible ICO."

Appendix 1 - Australia missing out on available funding

ICO funds raised worldwide

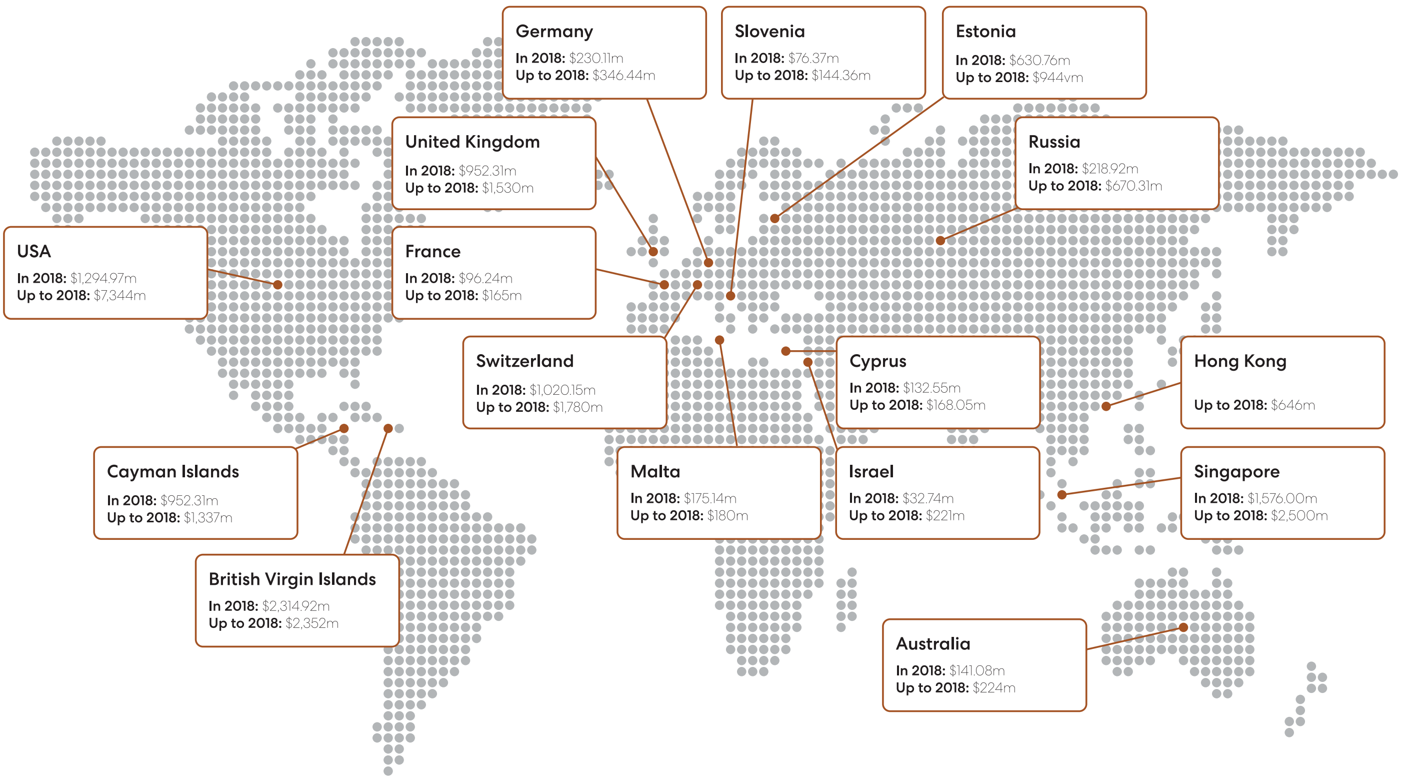

Figure 1 - ICOs by country.[2]

Australia as a fraction of global ICO funds raised

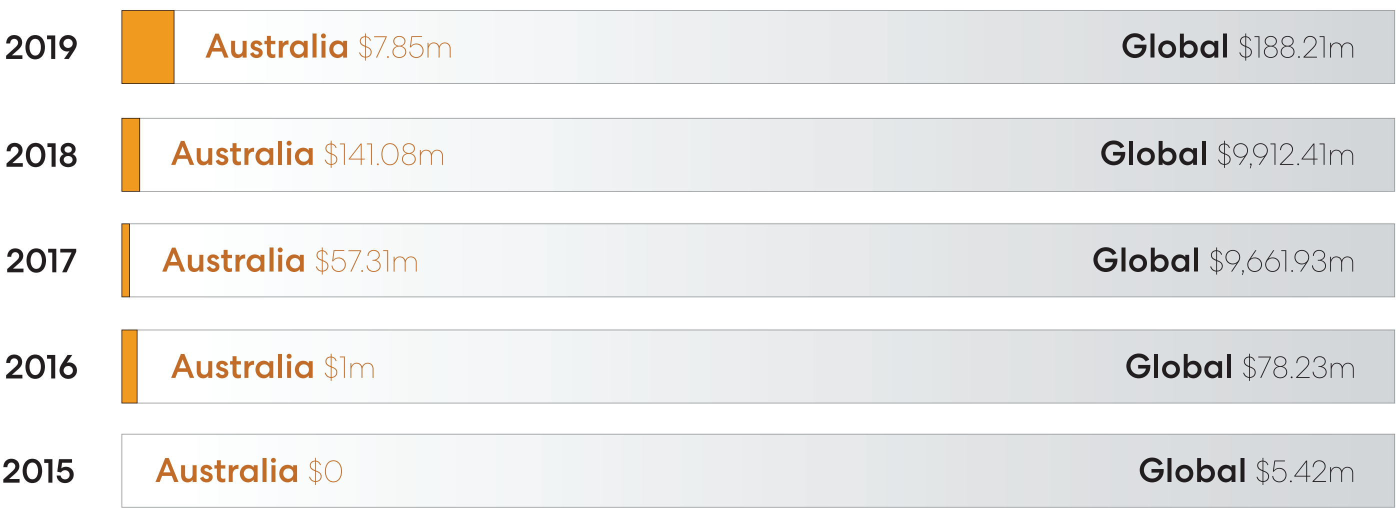

Figure 2 - Australia's ICO position globally.[15] *It should be noted that Coinschedule.com and ICOBench.com's data did not exactly align.*

Appendix 2 - A high-level analysis of jurisdictional ICO and crypto-asset regulation

Country	No. of ICOs[2]	Funds raised to date ($USD million)[2]	Corporate income tax rate[16]	Summary	Ref.
Australia	112	$224	30%/27.5%	· Position in Australia can be summarised as 'unclear', largely due to lack of blockchain projects in Australia, and even less that have engaged with advisors and the ATO. · Treasury Issues Paper released January 2019, invited comments from industry. · ASIC has been an active regulator, quietly halting a number of ICOs before they were officially completed or announced. · The Federal Government has generally been supportive of FinTech and blockchain, as shown by the support of the Smart Cities and Suburbs program. · Some cryptocurrencies qualify as 'digital currency' for GST purposes so the cryptocurrency transaction is not subject to GST. However, this does not include guidance on other cryptocurrencies which may not qualify as 'digital currencies' and requires updating. · The ATO has indicated that cryptocurrency trades will be subject to CGT unless the trading stock rules or profit-making scheme rules apply, but tax guidance is generally limited to tokens which would fall within the definition of digital currency under the GST Act. · There is strong support for innovation in the regulatory space. There is an ASIC Innovation Hub and AUSTRAC Innovation Hub, both aimed at providing 'smarter regulation'. Central to this is ASIC's implementation of a regulatory sandbox to allow certain early stage companies to provide limited services without complying with licensing obligations. · The overarching regulatory mandate is to ensure market integrity and consumer protection in relation to the Australian financial system. · So far the predominant approach is to start by examining how cryptocurrencies fit under existing regulation, as shown by ASIC's *Information Sheet 225* and ATO web guidance. · Changes to the law, such as to treat digital currency transactions like money for the purposes of GST and to require digital currency exchange providers to enroll or register with AUSTRAC have been made to assist the industry. The definitions of digital currency, whilst similar are not the same. This was designed to ensure that the definition reflected the policy aims of each regulator and each Act, rather than to homogenise the definitions for ease of reference. That being said, these definitions are limited in scope and may not always encompass a cryptocurrency issued through an ICO. Whether these should or should not fall under a similar regime, or if these tokens fall under existing regimes should be considered and guidance provided. · The ATO has not contemplated in any form of binding guidance whether deferral of income is possible under *Arthur Murray* principles or factors that relate to the rights and obligations of a particular cryptocurrency, allowing ICO proceeds to be assessed as income across a number of years and offset against ongoing expenses.	17 18 19 20 21

Country	No. of ICOs[2]	Funds raised to date ($USD million)[2]	Corporate income tax rate[16]	Summary	Ref.
USA	704	$7,344	21% + state rate	• There is large variation between federal and state governments, with no uniform definitions of crypto-assets. • The SEC, CFTC, OCC, Federal Reserve and various state regulators have differing views regarding the definition and treatment of cryptocurrencies. • There is a general trend of federal regulatory dominance and competing state jurisdictions trying to attract business. • Although most funds raised are in the USA, a large portion of these funds came early on in the ICO timeline, before regulatory uncertainty had been considered by the industry. • The Securities and Exchange Commission (SEC) has been very active in the enforcement of regulations designed for traditional financial instruments in this new realm, with a notable example being the ongoing lawsuit with Kik. The important point of interest here is that this is a legal dispute over whether or not their coin (Kin), was classified as a security. Depending on the outcome of the Kik case and the interpretation of tokens, tokens issued through ICOs could be required to be sold through a licensed broker, and only trade on licensed trading systems approved by the SEC. • Another relevant and ongoing lawsuit by the SEC is the investigation of Telegram, whose actions the SEC alleges are unlawful. This case is in its infancy. • In 2018, SEC Chairman Jay Clayton said *"all ICOs he had seen were securities yet enforcement action has been taken against relatively few"*. • New York State has attempted to lead cryptocurrency regulation, with the Department of Financial Service introducing their 'BitLicense' in July 2014, requiring businesses engaged in virtual currency activities to be licenced. It appears however, that his regulatory innovation is too stringent and only 8 entities have been licensed. To avoid this regime, others have ceased operating in New York. • Laws were introduced in Wyoming, to define a utility token and provide classifications of digital assets: digital securities, digital assets and virtual currencies. • Other states within the USA have moved in various directions compared to one another. Some states, like Wyoming, have instantiated legislative exemptions from some relevant statues. Whereas others, such as Alabama, have legislated explicitly that virtual currencies fall under relevant regulations, such as money transmission legislation. However, most states do not have much, if any, guidance at all. • Delaware has introduced the State Blockchain Initiative to "work with state leaders and members of the business community to understand the top concepts that have been identified, vet legal concerns, and facilitate a group discussion to prioritize where to start". • This follows discussions regarding the issuance of shares on a blockchain, which began in 2016. • There is, of course, the question as to whether such legislation is necessary given the role of certain federal regulators in this space.	22 23 24 25 26 27

Country	No. of ICOs[2]	Funds raised to date ($USD million)[2]	Corporate income tax rate[16]	Summary	Ref.
UK	496	$1,530	19%	· Rigorous analysis of cryptocurrency regulation and economic impacts. Very active in the relevant area of FinTech. · Stringent AML practices however there has not yet been specific legislation enacted to account for digital currencies or cryptocurrencies. From January 2020, Her Majesty's Treasury will appoint the Financial Conduct Authority (FCA) as the regulator to supervise and regulate AML with respect to virtual currency businesses. · Approved businesses are able to test new products and services using a customised regulatory environment for each test – including safeguards for consumers. This allows businesses to test innovative propositions in the market, with real consumers. · Legal precedents have been made, with the UK leading the way in the development of cryptocurrency taxation practices. · However, non-payment crypto-assets, such as utility tokens are significantly less clear in comparison to 'conventional' cryptocurrencies. · FCA held an inquiry into the treatment of crypto-assets, with 92 responses to clarify how cryptocurrencies wit within existing regulatory perimeter (FSMA 2000). · The guidance is intended to "enable market participants to understand whether certain cryptoassets fall within FCA's remit or are otherwise regulated. This should allow firms to have increased certainty about their activities while meeting our own regulatory objectives of consumer protection, enhancing market integrity and promoting effective competition in consumers' interest." · The FCA guidance distinguishes between security tokens (which provide rights and obligations akin to specified investments), e-money tokens (tokens that reach the definition of e-money) and unregulated tokens (tokens which do not meet the definition of e-money or provide the same rights as other specified investments including utility and exchange tokens (such as bitcoin)). That being said, the exact differentiation between securities, e-money and unregulated tokens is a question for the courts. · The FCA now views utility tokens as 'unregulated' stating that "the regulatory treatment of these tokens does not change depending on their label. If they do not meet the definition of e-money tokens or security tokens, then these tokens will be unregulated." This means that they are not viewed as being under the FCA's remit. This is an important clarification to be noted (FCA PS 19/22).	28 29 30 31 32 33 34 35
Singapore	575	$2,500	17% (No CGT)	· Jurisdiction appears to be generally wary of security-like features of various tokens (such as a utility token), and thus hesitant to define some tokens outside of MAS regulatory perimeter. · Currently, virtual currencies (e.g. Bitcoins) are not considered as 'money', 'currency' or 'goods' and are instead treated as a supply of services which is subject to GST. · Proposed to make cryptocurrency transactions with digital payment tokens GST exempt, by 2020. A digital payment token is narrowly defined. · Businesses that use cryptocurrencies will be taxed on profit derived, converting cryptocurrency to their market rate. · Active technologist and legal communities led to early clarity from the Monetary Authority of Singapore (MAS). · No capital gains tax applies in Singapore. · Singapore has a comparatively low company tax rate. · Singapore crypto-asset definitions involve the assessment of whether a crypto-asset is a 'digital token', which include implied shares, debenture, a unit of a business trust, securities, or a unit in a collective investment scheme (CIS). · MAS has not explicitly categorised token functions as yet. The MAS has provided guidance regarding the structure and characteristics of, including the rights attached to, a cryptocurrency which will be examined in determining if the digital token is a type of capital markets product. MAS has made strong pre-ICO warnings for compliance. · A token is considered under the remit of the MAS if the token is a 'capital markets product' under their *Securities and Futures Act (SFA).*	36 37 38 39 40 41 42 43 44

Country	No. of ICOs[2]	Funds raised to date ($USD million)[2]	Corporate income tax rate[16]	Summary	Ref.
Switzerland	257	$1,780	8.5% + state rate (13-24% total)	· Switzerland's relevant regulatory body Financial Market Supervisory Authority (FINMA) has clear guidelines on the classifications of crypto-assets. · Crypto-assets are categorised by their economic function into payment tokens, utility tokens, and asset tokens. · Generally, capital gains for individuals are exempt from income tax however, capital gains for an individual's business are subject to an income tax. · Corporate income tax applies to net taxable earnings on the sale of cryptocurrencies. · Regarding VAT, cryptocurrencies are treated the same as legal tender, meaning that trading and exchange activities using cryptocurrencies are exempt from VAT. · Classification as a security is dependent on factors of economic function. This classification and usage determines AML compliance. Utility tokens for example are not subject to AML regulation, as long as the main feature of the token is to provide access to non-financial application of blockchain technology. · Significant use of Swiss *Stiftung* as the Foundation and ICO issuer. Income tax exemption is not automatic and must be applied for. · Utility token ICOs, where utility function is undefined or unavailable at the time of issue, must be treated the same as BTC. If utility token carries the right a specific and precisely defined (or definable) service or delivery at the time of issue, this constitutes an advance payment and will be subject to Swiss VAT (7.7%).	45 46 47 48
Hong Kong	184	$646	16.5% (No CGT)	· No capital gains tax. · The Hong Kong Monetary Authority (HKMA) recognises cryptocurrencies as 'virtual commodities'. · There are no ICO specific tax rules as this follows existing laws where tokens are shares, debentures or interests in a collective investment scheme. · This may create different rights and obligations to investors. · There are some areas of restricted trading, but tokens issued by ICO may be considered to be shares, debentures, or interests in a collective investment schemes (CIS). This distinction has an effect on whether an authorisation is required from the Securities and Futures Commission (SFC). · Hong Kong has strict AML laws which are imposed on businesses in the cryptocurrency space.	49 50 51
Israel	39	$221	23%	· Israel has taken an early proactive approach to crypto-asset regulation. · In addition being a successful technology and FinTech hub, Israel has had competent and active regulatory bodies such as the Israel Securities Authority (ISA). The ISA imposes disclosure requirements for crypto offerings that are considered to be offerings of securities. Specific Regulation for trading cryptocurrencies is also likely to be developed. · The overarching strategy has been to set up active internationally focused innovation hubs, such as Tel Aviv. · The ISA seeks to make the clarification between virtual currencies as an asset and utility tokens, the former being subject to CGT, and the later 'in accordance with the nature of the issuing company's operations and its business model'. · There still appears to be ambiguity over the taxation of utility tokens.	52 53 54
France	78	$165	31%	· France has recently been pushing to be an active leader in this space. · France has stated that bitcoin and other similar cryptocurrencies are not considered to be money nor are they otherwise considered to be financial instruments. Regulation is "embryonic" and cryptocurrencies pose significant risks. · The French government is focusing on developing a 'favourable legal framework'. This activity involves multiple institutions, such as the Bank of France, the ropean Central Bank. · However it has been noted that France still needs to practically clarify their intentions. · Undergoing tax reform to move corporate income tax rate to 25% by 2022. · Crypto-fiat trade is subject to 20% VAT. · Crypto-crypto trade is VAT exempt. · Gains taxed differently depending on whether is an 'occasional activity' (therefore a noncommercial profit), or a 'habitual activity' (therefore an industrial and commercial profit). · Expansive plan to invest €4.5 billion into 'breakthrough innovations', including blockchain.	6 55 56 57 58

Country	No. of ICOs[2]	Funds raised to date ($USD million)[2]	Corporate income tax rate[16]	Summary	Ref.
Portugal	10	$6	17-21%	• Within the Eurozone, Portugal has been pushing to create a competitive and attractive environment. • Key institutions involved are the *Banco de Portugal* (Banking authority), CMVM (securities authority), and the ASF (insurance and pension). • Cryptocurrencies are not categorised as 'money' or even 'electronic money'. • This understanding has led to a strong emphasis as tokens serving an economic function other than as a currency. • This in practice means that trading tokens is non-taxable event.	59
Malta	53	$180	0-5%,15%, or 35%	• Malta has moved to deliberately attract ICOs, and is creating bespoke legislation for issuance of tokens. • The Malta Digital Innovation Authority Act, Innovative Technological Arrangement and Services Act, and Virtual Financial Asset (VFA) gives clarity regarding the tax treatment of tokens. • Effective tax rate can be less than 5%. • There is a dynamic and active regulatory body, 'Malta Financial Services Authority' MFSA. • Questions have been raised regarding AML from the EU. • There are several active organisations working with the government to improve blockchain. This is an example of true attempt at building a competitive and dynamic ecosystem; BitMalta, the Blockchain Malta Association, etc.	60 61 62 63
British Virgin Islands	71	$2,352	0%	• No corporate income tax. • The BVI is predominantly attractive due to the lack of appropriate taxation and there are no specific cryptocurrency regulations. • As there is no regulatory framework, there are no express prohibition or limitations.	64 65
Cayman Islands	119	$1,337	0%	• No corporate income tax, capital gains, or other relevant taxes. • The Cayman Islands are attractive because of little or no taxation. • No direct crypto-asset regulation.	66
Estonia	290	$944	20%	• A part of Estonia's truly digital strategy, X-Road. • Estonia has been an early and active tester of blockchain since 2008. • Multiple leading digital policies, including e-residency. • Government institutional knowledge built up over a prolonged period of time. • Estonia's unique taxation system is well suited to utility tokens as income is taxed when profits are distributed (eg to shareholders), not when they are received. • This delay suits utility tokens because a 'pre-payment' of a service is not taxed until the service is provided, well in the future. • Estonia's amendments to *Money Laundering and Terrorism Financing Prevention Act* is an example of retrofitting existing regulation to provide clarity.	67 68 69 70
Bermuda			0%	• Bermuda has no corporate tax. • The government is looking to focus on the development of FinTech industry with the *Digital Asset Business Act*, providing clarity on the taxation of digital assets. • Under this legislation, coins are taxed under a separate regime of licensed participation. This means that any 'digital business' (not including ICOs) must be licensed, which include several steps of formal incorporation. • ICOs are however under a separate *Companies (Initial Coin Offering) Regulations 2018*, and *Limited Liability Companies (Initial Coin Offerings) Regulations 2018*, Which includes some general requirements, such as auditability and powers of cease and desist. • Interestingly, Bermuda has moved to institutionalise cryptocurrencies, allowing taxation and government services to be paid through the cryptocurrency USDC. • Additionally, the Bermudan government is moving to develop a blockchain based National ID System.	71 72 73 74 75

Appendix 3 - Discussion points not covered

The unique nature of blockchain technology gives rise to a number of issues which are beyond the scope of this report but which will likely require attention as the technology develops:

1. The appropriate treatment of Decentralised Autonomous Organisations which are ‘doing business’ in Australia, from corporate, financial product and taxation perspectives;
2. The appropriate way to ensure our ‘code of law’ consumer and contractual protections are upheld when individuals and organisations interact with DAOs with no clear jurisdiction or counterparty and ‘code is law’ philosophy residually applies;
3. The definition of cryptocurrencies, digital currencies and other crypto-assets and how these interact with existing regulatory requirements;
4. AML/CTF and Corporations laws more broadly;
5. The particular application of taxation rules for different entities’ investment in cryptocurrencies, such as investment funds;
6. Following a standardisation of the relevant regime, the extent to which projects launched before that standardisation are ‘brought in’ to the regime or permitted to continue trading in their current form;
7. The application of the non-cash payment facility rules to companies using cryptocurrency;
8. The application of the existing GST ruling to cryptocurrencies other than bitcoin; and
9. Whether specialised laws are required to facilitate digital currency and blockchain development.

References

1 Redrup, Y. Angel investors on the wane in Australia. *Australian Financial Review* https://www.afr.com/technology/angel-investors-on-the-wane-in-australia-20190924-p52ubf (2019).

2 ICOBEnch. ICOs rated by experts | ICObench. https://icobench.com/ (2019).

3 Rauchs, M. *et al.* 2nd Global Cryptoasset Benchmarking Study. *SSRN Electron. J.* (2018) doi:10.2139/ssrn.3306125.

4 PwC. Global FinTech Report 2017. 20 (2017).

5 KPMG. France: Revised phase-down of corporate income tax rate, enacted - KPMG United States. *KPMG* https://home.kpmg/us/en/home/insights/2019/07/tnf-france-revised-phase-down-of-corporate-income-tax-rate-enacted.html (2019).

6 GLI. Blockchain Laws and Regulations | France | GLI. *GLI - Global Legal InsightsInternational legal business solutions* https://www.globallegalinsights.com/.

7 Legalico. Portugal ICO regulation. *Legalico* https://www.legalico.io/portugal/ (2018).

8 Australia's FinTech priorities | Treasury.gov.au. https://treasury.gov.au/publication/backing-australian-fintech/australias-fintech-priorities.

9 Cambridge Judge Business School. *The Future of Finance is Emerging, New Hubs, New Landscapes.* (2018).

10 James Eyers. Morrison to fintechs: 'Don't stuff it up'. https://www.afr.com/companies/financial-services/morrison-to-fintechs-dont-stuff-it-up-20180802-h13gmv (2018).

11 Scott Morrison. G20 Conference on digitising finance, financial inclusion and financial literacy, Wiesbaden Germany | Treasury Ministers. http://ministers.treasury.gov.au/ministers/scott-morrison-2015/speeches/g20-conference-digitising-finance-financial-inclusion-and (2017).

12 KPMG. *FinTech100: Leading Global FinTech Innovators.* https://h2.vc/wp-content/uploads/2018/11/Fintech100-2018-Report_Final_22-11-18sm.pdf (2018).

13 Blackman, P. Global fintech investment rockets to a record $111.8B in 2018, driven by mega deals: KPMG Pulse of Fintech - KPMG Global. *KPMG* https://home.kpmg/xx/en/home/media/press-releases/2019/02/global-fintech-investment-hits-record-in-2018.html (2019).

14 Australian Government. *Issues Paper - Initial Coin Offerings.* https://treasury.gov.au/sites/default/files/2019-03/c2019-t353604-Issues_Paper-1.pdf (2019).

15 CoinSchedule. Statistics about cryptocurrency, ICO, IEO and STO - CoinSchedule. *https://www.coinschedule.com/* https://www.coinschedule.com/stats.

16 Deloitte. Corporate Tax Rates 2019. 17 (2019).

17 ASIC. 18-274MR ASIC acts against misleading Initial Coin Offerings and crypto-asset funds targeted at retail investors. https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-274mr-asic-acts-against-misleading-initial-coin-offerings-and-crypto-asset-funds-targeted-at-retail-investors/.

18 ASIC. ASIC makes first moves against Australian ICOs after dividend structure throws up red flags. *SmartCompany* https://www.smartcompany.com.au/startupsmart/news/asic-makes-first-moves-against-australian-ico-after-dividend-structure-throws-up-red-flags/ (2018).

19 GLI. Blockchain Laws and Regulations | Australia | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/.

20 ASIC. Initial coin offerings and crypto-assets. https://asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings-and-crypto-assets/.

21 ATO. Changes to company tax rates - website. https://www.ato.gov.au/Rates/Changes-to-company-tax-rates/?default (2018).

22 Moran, J. D. The Impact of Regulatory Measures Imposed on Initial Coin Offerings in the United States Market Economy. 26, 47.

23 State of Delaware. State of Delaware Blockchain Initiative, Prioritization Engagement Executive Summary. (2018).

24 Tinianow, rea, Initiative, D. B., Long, C., Symbiont & on. Delaware Blockchain Initiative: Transforming the Foundational Infrastructure of Corporate Finance. https://corpgov.law.harvard.edu/2017/03/16/delaware-blockchain-initiative-transforming-the-foundational-infrastructure-of-corporate-finance/ (2017)

25 FT. Cryptocurrencies/SEC: Kik-start. *Financial Times* https://www.ft.com/content/bb79bac2-b895-11e9-8a88-aa6628ac896c (2019).

26 Moffitt, J. L. The Fifty U.S. States and Cryptocurrency Regulations. *Coin ATM Radar* https://coinatmradar.com/blog/the-fifty-u-s-states-and-cryptocurrency-regulations/ (2018).

27 Shubber, K. SEC sues Telegram to halt $1.7bn digital token offering. *Financial Times* (2019).

28 GLI. Blockchain Laws and Regulations | United Kingdom | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/.

29 Deloitte. United Kingdom Highlights 2019. 7 (2019).

30 Bank of England, Financial Conduct Authority & HM Treasury. Cryptoassets Taskforce: final report. 58 (2018).

31 Financial Conduct Authority. *Guidance of Cryptoassets: Feedback and Final Guidance to CP19/3.* https://www.fca.org.uk/publication/policy/ps19-22.pdf (2019).

32 UK Government. *Blockchain in the UK.* (2018).

33 HM Treasury. Economic crime plan 2019 to 2022. *GOV.UK* https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022 (2019).

34 FCA. Sandbox tools. *FCA* https://www.fca.org.uk/firms/regulatory-sandbox/sandbox-tools (2017).

35 FCA. Regulatory sandbox. *FCA* https://www.fca.org.uk/firms/regulatory-sandbox (2016).

36 Deloitte. Singapore Highlights 2019. 6 (2019).

37 Zhao, W. Singapore's Tax Agency Proposes to Exempt Cryptos From GST. *CoinDesk* https://www.coindesk.com/singapore-proposes-to-end-double-tax-on-cryptocurrencies (2019).

38 PwC. Singapore sales tax exemption of digital tokens to boost crypto exchanges, says PwC. *Tech in Asia* https://www.techinasia.com/singapores-move-waive-sales-tax-digital-payment-tokens-spur-innovation-boost-crypto-currency-exchanges-pwc (2019).

39 Greene, R. & Chuen, D. Singapore's Open Digital Token Offering Embrace: Context & Consequences. *J. Br. Blockchain Assoc.* 2, 1–11 (2019).

40 Stephen Banfield. ICOs in Singapore – Some Tax Considerations. https://www.withersworldwide.com/en-gb/insight/icos-in-singapore-some-tax-considerations (2018).

41 Sion Yoong. A Guide to Digital Tokens Offerings. *SAL Pr. 16* (2019).

42 MAS. *Guide to Digital Tokens Offering.* https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Guidelines/Guide-to-Digital-Tokens-Offering-last-updated-on-5-April-2019.pdf (2019).

43 Internal Revenue Authority of Singapore. GST, Specific Registered businesses. https://www.iras.gov.sg/IRASHome/GST/GST-registered-businesses/Specific-business-sectors/e-Commerce/#title5.

44 Internal Revenue Authority of Singapore. e-Tax Guide (Draft), GST: Digital Payment Tokens. https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/GST/Draft%20e-Tax%20Guide%20_GST_Digital%20Payment%20Tokens.pdf (2019).

45 FINMA, E. F. FINMA publishes ICO guidelines. *Eidgenössische Finanzmarktaufsicht FINMA* https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/.

46 FINMA. *Guidelines for enquiries regarding the regulatory framework for ICOs.* (2018).

47 GLI. Blockchain Laws and Regulations | Switzerland | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/ (2018).

48 EY. Swiss Canton of Geneva publishes Initial Coin Offerings Guide. https://www.ey.com/gl/en/services/tax/international-tax/alert--swiss-canton-of-geneva-publishes-initial-coin-offerings-guide (2018).

49 Woodhouse, A. Hong Kong watchdog outlines plans to regulate cryptocurrency industry. *Financial Times* https://www.ft.com/content/07142e74-dd93-11e8-9f04-38d397e6661c (2018).

50 GLI. Blockchain Laws and Regulations | Hong Kong | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/.

51 EY. EY - Four tax considerations to heed before launching an ICO. https://www.ey.com/cn/en/industries/financial-services/ey-four-tax-considerations-to-heed-before-launching-an-ico.

52 Israel Securities Authority. *Regulation of Decentralised Cryptographic Currency Issuance to the Public - Final Report.* (2019).

53 Deloitte. *Israel Fintech Landscape Report.* https://www2.deloitte.com/content/dam/Deloitte/il/Documents/technology/Israel%20Fintech%20Landscape%20Report.pdf (2018).

54 Staff, G. L. R. D. Regulation of Cryptocurrency Around the World. https://www.loc.gov/law/help/cryptocurrency/world-survey.php#israel (2018).

55 Landauro, I. France to ask EU partners to adopt its cryptocurrency regulation. *Reuters* (2019).

56 Boring, N. Regulation of Cryptocurrency: France. https://www.loc.gov/law/help/cryptocurrency/france.php (2018).

57 Mitchell, R. *France Won't Tax Crypto-to-Crypto Trades, But Will Hit Gains Cashed Out.* https://news.bloombergtax.com/daily-tax-report-international/france-wont-tax-crypto-to-crypto-trades-but-will-hit-gains-cashed-out (2019).

58 Bercy Infos. Crypto-monnaies, crypto-actifs… Comment s'y retrouver ? http://www.economie.gouv.fr/particuliers/cryptomonnaies-crypto-actifs (2018).

59 Deloitte. Portugal Highlights 2019. 6 (2019).

60 ICOMalta. Malta ICO Regulation, Full ICO Legal Services. *Icomalta* https://icomalta.com/ico-regulation/.

61 KPMG. Blockchain Tax Guideline in Malta. 2 (2018).

62 Blockchain Tax Guidelines in Malta - KPMG Malta. *KPMG* https://home.kpmg/mt/en/home/insights/2019/01/blockchain-tax-guidelines-in-malta.html (2019).

63 Palmer, D. Malta Needs to Up Its AML Game As Crypto Sector Grows, Says EU. *CoinDesk* https://www.coindesk.com/malta-needs-to-up-its-aml-game-as-crypto-sector-grows-says-eu (2019).

64 Deloitte. British Virgin Islands Highlights 2019. 3 (2019).

65 GLI. Blockchain Laws and Regulations | British Virgin Islands | GLI. *GLI - Global Legal Insights International legal business solutions* https://

www.globallegalinsights.com/.

66 Blockchain Laws and Regulations | Cayman Islands | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/.

67 Comistar. ICO guidelines in Estonia. Home https://e-resident.me/searching-for-the-way-out/ (2016).

68 Witismann, R. J. Estonia among top countries with the most vibrant ICO scene. *Medium* https://medium.com/@Incorporate_ee/the-future-of-fundraising-managing-digital-assets-in-estonia-9c61f9f15468 (2018).

69 GLI. Blockchain Laws and Regulations | Estonia | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/.

70 Estonia Highlights 2019. 4 (2019).

71 Bermuda Government. Digital Asset Business Act 2018. 59 (2018).

72 Foxley, W. Bermuda Starts Development of a Blockchain-Based National ID System - CoinDesk. https://www.coindesk.com/bermuda-starts-development-of-a-blockchain-based-national-identity-system.

73 Kim, C. Bermuda Now Accepts USDC Crypto for Taxes and Government Services. *CoinDesk* https://www.coindesk.com/bermuda-now-accepts-usdc-crypto-for-taxes-and-government-services (2019).

74 GLI. Blockchain Laws and Regulations | Bermuda | GLI. *GLI - Global Legal Insights International legal business solutions* https://www.globallegalinsights.com/.

75 Bermuda Government. Limited Liability Company (Initial Coin Offering) Regulations 2018. 10 (2018).

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