



**Taxation of Cryptocurrency in Asia Pacific:
Current and proposed tax regimes**

The Dbriefs Corporate Income Tax series

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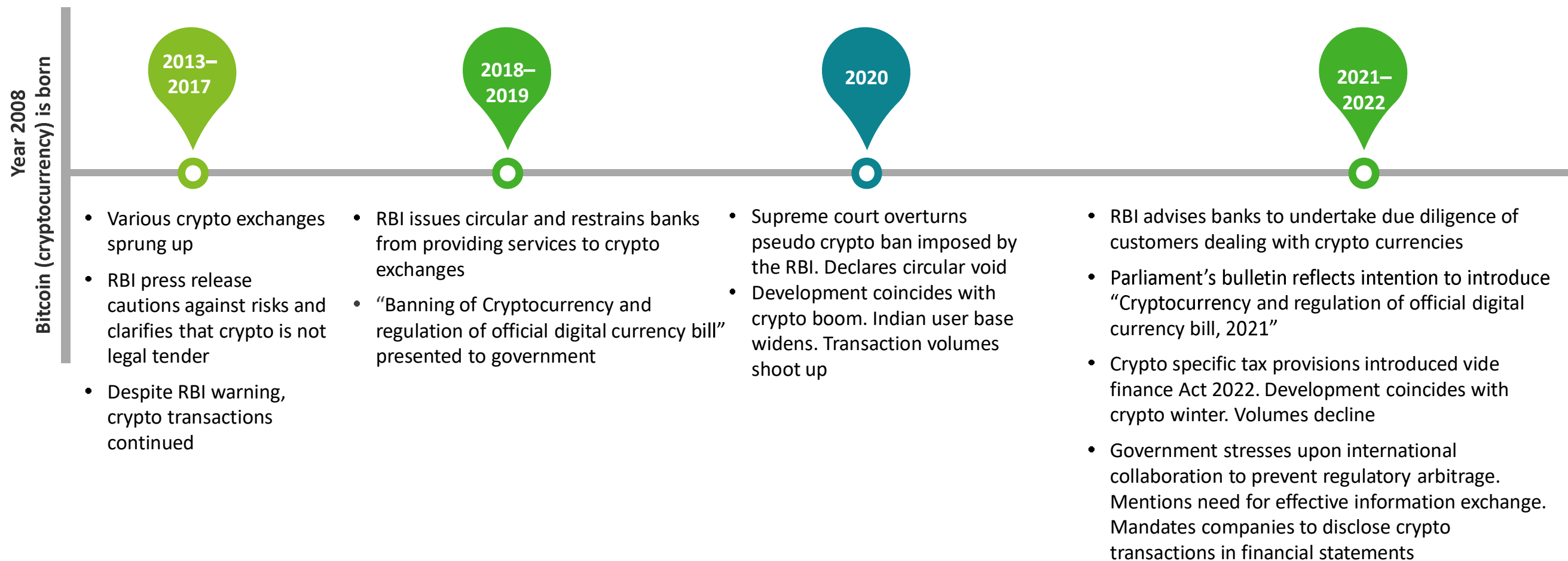
Agenda

- India
- Australia
- Hong Kong
- Singapore
- Panel session

Taxation of Cryptocurrency in Asia Pacific

India – Promod Batra

Cryptocurrency: checkered history



Crypto and blockchain ecosystem in India



- Indian celebrities widely issuing non-fungible tokens. Corporate entities to follow suit with unique products
- Metaverse space witnessing traction –Indian corporate seen investing in virtual land
- Several new consulting and service businesses emerging to support adoption of block chain technology

India – crypto tax regime

- **Meaning of Virtual Digital Assets (VDA)**

- VDA (umbrella term intended to subsume crypto assets) has been defined to include following

- Information/code/number/token (not being Indian/foreign currency) – generated cryptographically or otherwise, with the promise or representation of having inherent value, or functions as a **store of value** or a **unit of account**; and can be transferred, stored or traded electronically
- Non fungible tokens
- Other virtual assets notified by government

- **Exclusions from VDA**

- Gift cards/vouchers/mileage/reward/loyalty points
- **Non-fungible token** whose transfer results in transfer of underlying **tangible asset** and such transfer is **legally enforceable**

India – crypto tax regime(cont'd)

Tax regime

- Income from the transfer of VDA to be taxed at 30 percent
- Only cost of acquisition allowable to be deducted in computing taxable income. Losses on VDA's ineligible for set off
- Income from VDA's treated in a similar manner as speculative income
- Gift of VDA taxable if the value exceeds INR 50,000 (~ \$625)

Withholding tax provisions

- Withholding of tax at the rate of 1%. Provisions introduced as information gathering mechanism. Primary responsibility to withhold on buyer
- In case of in-kind payments or exchange of VDA's, payer to ensure tax has been deposited by payee
- Exchange may agree to undertake compliance

Key open issues from tax and withholding standpoint



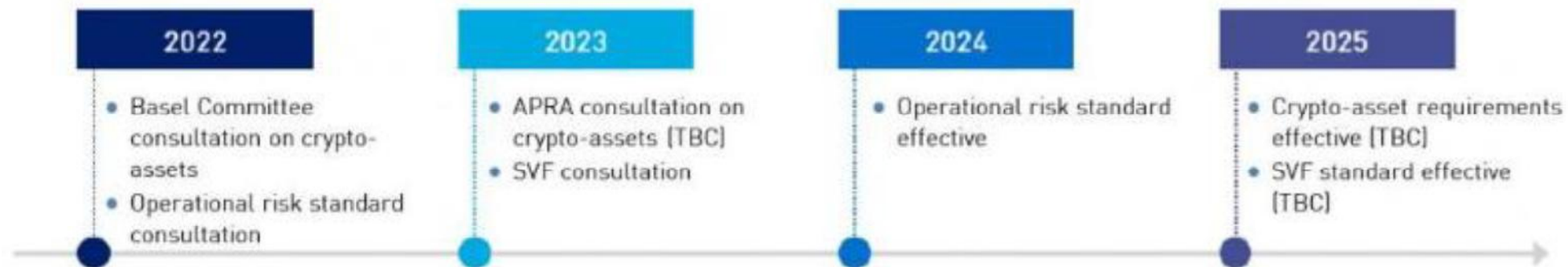
- Situs of VDA
- Determination of residential status of seller for withholding
- Foreign crypto marketplace – whether required to comply with Indian withholding tax provisions
- Goods and Services tax issues – no clarity around classification of VDA as “goods” or “services”. Issues around “place of supply”

Taxation of Cryptocurrency in Asia Pacific

Australia – Neil Pereira

Australia – crypto tax regime

- **Current status** – **no crypto specific tax legislation**; there was a crypto terms of reference released by Australia government on 21 March 2022 to the board of taxation. Board reporting back to government by end of 2022, however no consultation has taken place as of yet (change in government)
- **APRA** The Australian Prudential Regulation Authority – has set out it's risk management expectations which involves consultation and a roadmap for prudential approach



Australia – crypto tax regime

Regulation

- Summary of current regulation across various regulators and agencies
- All of these represent current legislation which may or may not be the most appropriate mechanism to deal with this asset class
- For example whether or not crypto is a financial product and presumption of crypto assets being capital assets for tax

| Overview of Australian crypto asset regulation | | | | | |
|--|--|---|--|--|--|
| Category | Financial product | Not a financial product | AML/CTF | Taxation | Financial Stability |
| Regulator/ agency | ASIC | ACCC | AUSTRAC | ATO | RBA, APRA, ASIC |
| Relevant legislation | <i>Corporations Act, ASIC Act</i> | Australian Consumer Law | <i>AML/CTF Act</i> | <i>Income Tax Act Goods and Services Tax Act</i> | <i>Payments Systems (Regulation) Act, Corporations Act, Banking Act</i> |
| Details | If the crypto asset is a financial product, it will be subject to certain obligations and requirements under the Corporations Act and ASIC Act which are designed to protect investors. This includes prohibitions on misleading and deceptive conduct or unconscionable conduct, “hawking” or pressure selling, requirements as to disclosure about the features and characteristics of financial products before sale, and, for those financial products traded on financial markets, prohibitions on market manipulation. | For crypto assets that are not financial products, the provisions of the Australian Consumer Law apply including prohibitions against misleading and deceptive conduct. Businesses may engage in conduct that involves a combination of financial and non-financial products or services. To address this potential overlap, in 2018, the ACCC delegated powers to ASIC to take action under the Australian Consumer Law relating to digital currencies and digital tokens (which includes crypto assets). | Digital currency exchanges are regulated by the Australian Transaction Reports and Analysis Centre (AUSTRAC) under the <i>Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Act</i> for the purposes of preventing and detecting money laundering and terrorism financing. Digital currency exchanges must register with AUSTRAC and meet AML/CTF compliance and reporting obligations (including Know Your Customer requirements). | Investors in crypto assets and other market participants are subject to tax laws. Australia has not implemented crypto asset specific tax laws. If an entity is carrying on a business in relation to digital currency, or as part of their existing business, or if they are accepting digital currency as a payment in business, the entity needs to consider any GST consequences that may arise. Tax implications for investors flow from the underlying nature of the rights and obligations attached to the asset and the personal circumstances of the investor. Crypto assets will generally be capital assets, meaning there could be capital gains tax consequences. ¹⁹ | Banks, payment systems and financial market infrastructures such as clearing and settlement facilities are subject to regulation administered by RBA, APRA and ASIC. In the event a regulated entity was to involve crypto assets in its operations (e.g. through exposure to crypto assets or the use of crypto assets in the clearing and settlement of financial products) then the relevant regulator may impose additional requirements on the regulated entity to reflect the increased level of risk. |

Australia – crypto tax regime

Regulation(cont'd)

- Current status of regulatory **review** around crypto
 - **Treasury** recently released a consultation on proposed licensing and custody requirements for crypto asset secondary service providers, including digital currency exchanges
- There is generally support for things like
 - The development of a single definition for crypto assets
 - Some products, services, or offerings may require more or less regulation in line with the risks associated
 - A uniform and consistent regulatory framework to safeguard private keys

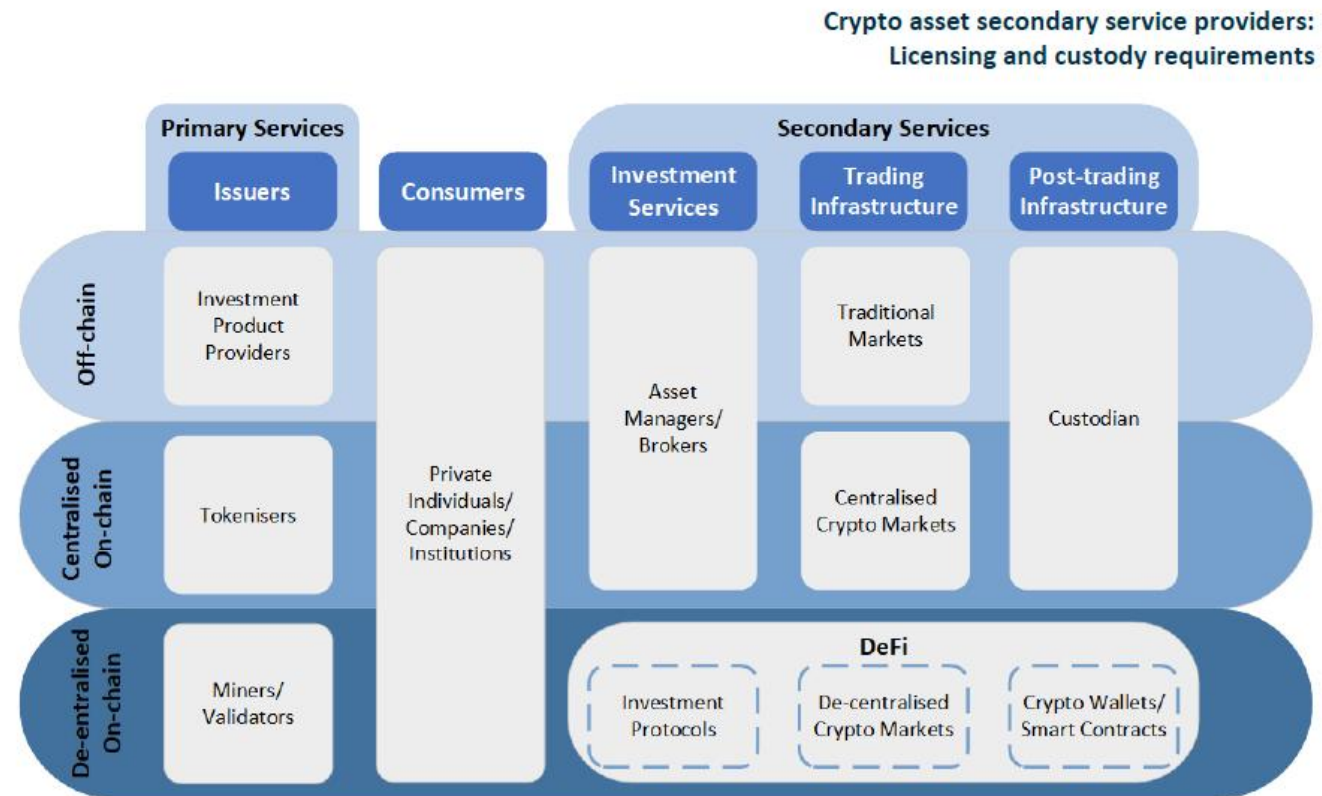


Figure 1: Simplified structure of the ecosystem for crypto assets (adapted from Ankenbrand et al (2021)).⁵

Australia – crypto tax regime(cont'd)

- How do we currently treat crypto for tax – **general principles** and the need for tax office rulings
- Government confirmed crypto not treated as foreign currency
- **Tax office guidance** – limited to individuals; key concern is for individuals to bring into their tax returns hence focus on data matching

Australia – general observations

- Widespread adoption of **blockchain technology** in business and use cases for DAOs – which will likely increase taxation issues related to crypto as this also becomes more widespread
- Over the past 2 years there has been a lot of work in setting up **new structures** to deal with investments into crypto – however there is still a lot of **uncertainty of tax treatment** that can arise – such as **source**, application of **treaties** and as to whether any **concessional tax status** may apply to crypto related investments. For **GST**, crypto may be more commonly and potentially less controversially treated as not subject to GST and input taxed
- Currently a lot of tax office scrutiny on **individuals** (e.g., data matching) as tax compliance/filings are due but not a lot of focus (as yet on business)
- **Activity across the spectrum** of investment and trading in coins, through to defi, NFTs, games, and platforms
- Crypto is increasingly seen as a viable **investment strategy** with more HNWI placing a small proportion of wealth into crypto



Polling question 1

What are you seeing the most in terms of the investment or activity in the crypto and digital assets space?

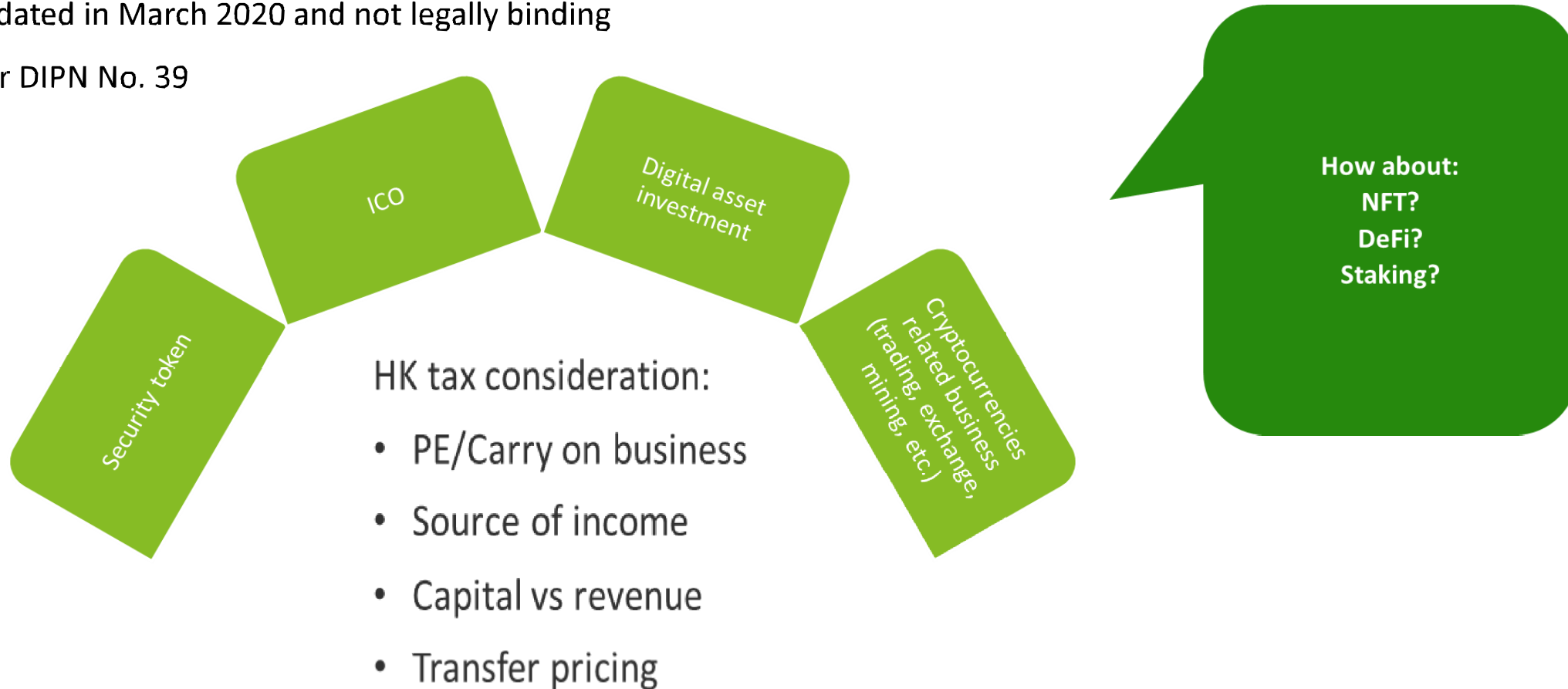
- Cryptocurrency – Bitcoin, Ethereum, etc (buy and hold)
- Mining
- Staking
- Defi and investment/platforms (including digital asset funds)
- Trading and exchanges
- NFTs
- Don't know/not applicable

Taxation of Cryptocurrency in Asia Pacific

Hong Kong – Roy Phan

Hong Kong – crypto tax regime

- **No specific tax legislation** on tax treatment of digital assets
- **The only guideline so far** – IRD’s departmental interpretation and practice notes (DIPN) No. 39
 - Updated in March 2020 and not legally binding
- Under DIPN No. 39



Hong Kong – crypto tax regime(cont'd)

- For specific tax exemptions regimes on funds (unified funds exemption) and family offices
 - Cryptocurrencies not within the scope of “qualifying assets” for the purpose of tax exemption
 - For individuals
- Investment income not taxable in Hong Kong
- In practice, Inland revenue department unlikely to consider frequent trading in stocks/other financial assets by individuals as “business”
- Crypto received by employee as salaries or bonus

Taxation of Cryptocurrency in Asia Pacific

Singapore – Matthew Lovatt

Singapore – general observations

- **Overview**

- Wide adoption and strong local ecosystem
- Considered to have a clear regulatory environment
- Territorial tax system and non-taxation of capital gains provides structuring options
- Interaction of traditional financial services and fintech fuelling contributing to activity

- **Market activity and trends**

- 2017 to 2018, large number of ICOs
- 2018, crypto winter – still much activity, but more compelling business cases; enterprise blockchain applications
- 2019-2020, increasing number of exchanges launched locally
- 2020 onward, increasing number of digital asset funds
- More recently, high volume of NFT, and NFT marketplace launch enquiries

Singapore – direct taxation

- **No special income tax legislation**

- Income tax rules largely outcomes-based, and typically fit for purpose

- Taxation of income that (i) has a Singapore source, or (ii) has a foreign source and which is received in Singapore
- No taxation of capital gains

- Difficulty typically arises from the complexity of tech-heavy operating models (especially re DAOs)

- **Tax authority guidance**

- IRAS eTax guide: Income Tax Treatment of Digital Tokens (Rev. ed.) 9 October 2020

- Somewhat outdated, and classifies tokens as either payment tokens, utility tokens or security tokens

- Read broadly, basically explains that income tax depends upon facts and circumstances

- Mining – taxable on disposal (no guidance on staking, but perhaps similar outcome)

Singapore – indirect taxation

- **Indirect tax**

- Barter trade
- Specific GST exemption introduced with effect from 2020, applicable to “digital payment tokens”
 - Defined in section 2A GST act; broadly maps onto what industry considers cryptocurrencies
- Use of crypto to purchase goods or services, outside of scope
- Utility tokens: application of voucher rules (i.e., reference to single or multiple-use)
- NFTs: need to consider underlying; can be complex where bundle of rights

- **Tax authority guidance**

- IRAS eTax guide: GST: digital payment tokens (second edition) 3 August 2022

Singapore – wider considerations

- **Regulation**

- Securities and futures act 2001
- Payment services act 2019
 - Legislation of travel rule
- Financial services and markets bill

- **Nature**

- CLM versus CLN and others [2022] SGHC 46
 - Application for injunction: support for cryptocurrencies as property

- **Frictions**

- Non-application of fund exemptions for Singapore-managed digital asset funds
- Stamp duty applicable in respect of transfers of tokenised shares on private marketplaces

Polling question 2

Where have you seen the most crypto related activity in the region?

- Australia
- India
- Singapore
- Hong Kong SAR
- Japan
- Other

Panel session

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Glossary

| Notation | Description |
|-----------------|----------------------------|
| RBI | Reserve Bank of India |
| PR | Press Release |
| VC | Virtual Currency |
| PIL | Public Interest Litigation |
| SC | Supreme Court |
| VDA | Virtual Digital Asset |



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