Digital Economy Council of Australia

Consultation on enhanced tax transparency for crypto transactions

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About the Digital Economy Council of Australia (DECA)

The Digital Economy Council of Australia (DECA) is the peak industry body representing Australian businesses and professionals driving innovation in the digital economy through the use of blockchain technology, tokenised assets, and digital assets. DECA advocates for responsible adoption and regulation of these technologies, working closely with government and industry to ensure Australia remains a global leader in innovation and economic growth.

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Questions

1. ***What are the benefits to Australia of implementing the Crypto Asset Reporting Framework?***

Enhanced Tax Transparency: CARF addresses information asymmetry in the crypto sector, improving the ATO's ability to detect tax non-compliance and safeguard public revenue (OECD 2023; Australian Treasury 2024).

Alignment with Global Standards: Joining 58 jurisdictions implementing CARF by 2027 strengthens Australia's reputation as a responsible regulator and reduces regulatory arbitrage (OECD 2023). Ensuring consistency in reporting obligations across international markets helps maintain Australia's position as a destination for legitimate digital asset businesses, rather than pushing activity offshore due to uncertainty.

However, implementing CARF should not introduce overlapping or contradictory compliance requirements. Ensuring that reporting obligations align with existing Common Reporting Standard (CRS) frameworks, anti-money laundering (AML) laws, and capital gains tax (CGT) provisions will be crucial in maintaining clarity and efficiency for both businesses and regulators.

Fostering Innovation: Regulatory clarity fosters investment and innovation, ensuring Australia remains competitive in blockchain and digital asset markets (Avelar 2023).

2. ***Is there a preference between implementing the OECD-developed CARF or designing bespoke domestic rules?***

DECA supports efforts to enhance clarity and consistency in reporting, ensuring legitimate tax obligations are met while maintaining a competitive business environment for Australian digital asset service providers.

Given that Australian crypto exchanges and service providers already operate under the ATO's Crypto Data Matching Protocol, it is essential to assess the practical impact of CARF. DECA proposes to engage with its members, particularly crypto asset designated service providers, to compare the costs and challenges of compliance under the existing reporting regime versus those introduced by CARF and CRS.

3. ***Should the CARF due diligence rules apply to Australian residents as well as foreign residents (i.e. reporting crypto asset service providers would need to provide information to the ATO on all their customers, making Australia a reportable jurisdiction, along with all other foreign jurisdictions)?***

Administrative Simplicity
Requiring reporting crypto-asset service providers (RCASPs) to provide information on all customers, regardless of residency, simplifies compliance and reduces confusion for businesses. A dual framework for domestic and foreign residents could increase administrative complexity and costs for RCASPs (Michel & Falcao 2023).

4. ***Are the scope of definitions contained within the CARF Model Rules sufficiently clear within Australia's domestic context?***

The CARF Model Rules provide a strong foundation, but certain definitions require refinement to align with Australia's regulatory and operational context both now and as it is expected to evolve in the next 3-5 years:

"Effectuating": Effectuating" must be narrowed to apply only to custodial service providers, avoiding unintended inclusion of wallet providers and DeFi protocols (OECD 2023).

NFTs: Clarify that NFTs not used for payment or investment purposes (e.g., collectibles, credentials) are excluded from reporting obligations (Michel & Falcao 2023).

Wrapped Tokens and Staking: Exclude wrapping and staking activities from "exchange transactions" as they are generally thought not to trigger taxable events notwithstanding that some ATO guidance suggests they can be taxable events.

Consistency with CRS and AML: Definitions must align with Australia's existing CRS and AML frameworks to avoid duplication and confusion (Australian Treasury 2024).

5. ***Are there areas in Australia's tax law where existing terms and concepts should be leveraged for CARF purposes?***

DECA supports targeted guidance to harmonise CARF definitions with existing tax, financial services, and AML/KYC frameworks, ensuring clarity without unnecessary legislative changes.

Common Reporting Standard (CRS) Framework

Utilise existing CRS definitions and reporting infrastructure, which industry stakeholders are already familiar with, to streamline CARF and CRS amendments implementation and reduce compliance burdens (Australian Treasury 2024; OECD 2023).

Anti-Money Laundering and Know Your Customer (AML/KYC) Regulations

Align CARF due diligence requirements with Australia's AML/KYC frameworks to avoid duplicative procedures for identifying and verifying users (Michel & Falcao 2023).

Financial Services Laws

Leverage learnings from known tensions of existing concepts in the Corporations Act 2001 (Cth) for defining custodial relationships and responsibilities to ensure consistency in identifying reporting crypto-asset service providers.

6. ***Would additional guidance or clarification in Australia's domestic law be helpful? If so, what areas specifically would benefit from further guidance?***

Entity Scope and Reporting Obligations

Clarify the definition of "effectuating," specifically differentiating custodial service providers from non-custodial entities like DeFi protocols and wallet providers (OECD 2023).

Classification of Digital Assets

Provide explicit guidance on the treatment of non-fungible tokens (NFTs), wrapped tokens, and staking rewards, especially when these assets do not meet payment or investment criteria (Michel & Falcao 2023).

Alignment with Existing Frameworks

Define how CARF integrates with existing Common Reporting Standard (CRS) obligations, AML/KYC requirements, and capital gains tax (CGT) provisions to minimise duplication (Australian Treasury 2024; Siwela 2023).

Threshold Adaptation

Offer clarity on applying CARF's USD 50,000 reporting threshold in the Australian context, considering exchange rate fluctuations and the nature of crypto transactions (Avelar 2023).

Privacy and Security

Detailed measures to protect sensitive taxpayer data shared under CARF, addressing concerns over confidentiality and cybersecurity risks (OECD 2023).

Implementation Timelines and Technical Requirements

Provide clear milestones and technical specifications, such as reporting formats and XML schemas, to assist businesses in system upgrades and compliance preparations (Australian Treasury 2024).

Develop a comprehensive implementation manual with practical examples, tailored to the Australian regulatory environment.

Host regular industry consultations to address sector-specific challenges and refine guidance.

Create educational resources to support small and medium-sized enterprises (SMEs) in meeting CARF obligations.

7. ***What are the risks to Australia of failing to meet the OECD's agreed implementation timeframes?***

Reputational Damage

Delays in implementation could harm Australia's reputation as a leader in tax transparency and innovation. Participation in global frameworks demonstrates Australia's commitment to international standards, and non-compliance may weaken its standing among OECD and G20 nations (OECD 2023; Australian Treasury 2024).

Regulatory Arbitrage

Without CARF, Australia risks becoming a jurisdiction of choice for individuals and entities seeking to exploit regulatory gaps, undermining global efforts to combat tax evasion (Michel & Falcao 2023). A measured implementation approach can mitigate unintended compliance burdens.

Loss of Reciprocal Information

Australia would forfeit access to critical tax-related data from other jurisdictions participating in CARF, reducing the Australian Taxation Office's (ATO) ability to detect non-compliance and safeguard the domestic tax base (OECD 2023).

Economic Implications

Failure to adopt CARF could deter international investment and partnerships in Australia's digital economy. Regulatory uncertainty may disadvantage Australian businesses in a competitive global market (Avelar 2023).

Missed Opportunity for Revenue Protection

The rapid growth of crypto asset markets, with 20% of Australians owning cryptocurrencies, presents tax compliance challenges. Delayed implementation risks revenue loss from unreported or misreported crypto transactions (Swyftx 2024; Australian Treasury 2024).

Fragmented Domestic Framework

DECA advocates for timely implementation of CARF by 2027, aligning with global commitments.

Australia should prioritise stakeholder engagement, publish clear guidance, and provide phased timelines to support businesses in meeting compliance requirements.

8. ***How could reporting entities be assisted to manage the intended implementation timeframes (commencing in 2026 to enable exchanges beginning from 1 January 2027)?***

Comprehensive Guidance and Educational Resources

Publish a detailed implementation manual tailored to Australia's regulatory context, including specific examples, reporting templates, and FAQs (Australian Treasury 2024).

Conduct workshops, webinars, and sector-specific training sessions to help reporting entities understand their obligations.

Technical and Financial Support

Provide government-funded grants or subsidies to offset the costs of upgrading IT systems and staff training, especially for small and medium-sized enterprises (SMEs) (Michel & Falcao 2023).

Develop government-endorsed software solutions or toolkits to streamline compliance and reporting processes.

Phased Rollout and Piloting Programs

Implement a phased approach, starting with voluntary compliance periods or pilot programs, to allow entities to test and refine their systems before mandatory reporting begins (OECD 2023).

Industry Collaboration and Feedback Loops

Establish a formal consultation mechanism to gather ongoing feedback from industry stakeholders and address challenges promptly.

Create a dedicated CARF support team within the ATO to provide direct assistance to reporting entities.

Alignment with Existing Frameworks

Leverage existing CRS infrastructure to minimise duplication and streamline reporting processes, reducing compliance burdens (Avelar 2023).

Align CARF due diligence requirements with Australia's AML/KYC standards to ensure consistency and familiarity for reporting entities.

Extended Deadlines for Complex Cases

Allow for extensions or tailored compliance timelines for entities facing significant challenges, such as those managing large or complex datasets (Australian Treasury 2024).

DECA urges the government to prioritise collaboration, education, and phased implementation to ensure reporting entities can meet CARF timeframes without excessive burden.

9. ***Are there any other issues that should be considered in implementing the CRS amendments?***

Alignment with CARF

Harmonise CRS amendments with CARF to prevent duplication and clarify reporting obligations (Australian Treasury 2024; OECD 2023).

Emerging Digital Assets

Define the treatment of stablecoins, CBDCs, and derivatives tied to crypto-assets (Michel & Falcao 2023; Avelar 2023).

Technical Compatibility

Update CRS systems to support CARF-compliant XML Schema and reduce technical burdens (OECD 2023).

Simplified Compliance for SMEs

Introduce streamlined reporting for smaller entities to lower administrative costs.

Data Privacy and Security

Enhance safeguards for sensitive data, ensuring secure international exchanges (Australian Treasury 2024).

Stakeholder Support

Engage industry stakeholders through consultations and provide targeted training (Michel & Falcao 2023).

Global Consistency

Align with international standards, including the EU's DAC8, to maintain competitiveness (OECD 2023).

*10. **What would be the implementation costs and what would be the ongoing costs?***

Implementation Costs
Initial compliance costs for reporting entities are expected to be significant, particularly for entities without existing reporting infrastructure. Key expenses include:

System Upgrades: Developing or modifying IT systems to accommodate CARF reporting requirements, including XML schema integration.

Staff Training: Educating staff on CARF obligations, compliance processes, and reporting formats.

Professional Services: Legal and accounting consultations to ensure accurate reporting and regulatory compliance.

Onboarding Self-Certifications: Collecting and validating self-certifications for existing and new customers, particularly for entities with large customer bases (Michel & Falcao 2023).

Ongoing Costs
Recurring expenses include:

Annual Reporting: Data validation, reporting submissions, and follow-up for errors.

System Maintenance: Upgrades and updates to ensure continued compliance with evolving standards.

Staffing Costs: Ongoing training and dedicated compliance teams to manage reporting obligations.

Audit and Assurance: Ensuring compliance through periodic internal and external reviews.

Cost Impacts by Entity Type

Large Financial Institutions: Higher initial and ongoing costs due to complex systems and extensive customer bases.

Small and Medium Enterprises (SMEs): Disproportionate cost impacts due to limited resources and smaller economies of scale.

Recommendations to Mitigate Costs

- Government support via subsidies or grants for SMEs.
- Simplified reporting pathways for smaller entities.
- Development of standardised tools and templates to streamline compliance.

11. ***How could the compliance costs of implementing the CARF be minimised?***

Leverage Existing Frameworks

Align CARF with Australia's existing Common Reporting Standard (CRS) and AML/KYC frameworks to reduce duplication and streamline compliance (Australian Treasury 2024; OECD 2023).

Government-Funded Support

Provide subsidies, grants, or tax incentives to offset costs for system upgrades and training, particularly for SMEs disproportionately impacted by CARF requirements.

Simplified Reporting for SMEs

Introduce simplified reporting pathways for small and medium-sized enterprises to lower administrative burdens while maintaining compliance (Michel & Falcao 2023).

Standardised Tools and Templates

Develop government-endorsed software, reporting templates, and technical toolkits to help entities comply efficiently with CARF reporting obligations (OECD 2023).

Phased Implementation

Roll out CARF in stages, starting with voluntary compliance or limited reporting requirements before mandatory implementation in 2027. This allows businesses to adjust gradually (Avelar 2023).

Ongoing Guidance and Training

Provide detailed guidance documents, webinars, and workshops to assist entities in understanding and meeting compliance requirements.

Recommendations

- Align CARF with existing systems, reduce redundancy, and offer financial assistance.
- Develop resources tailored to SMEs and conduct regular industry consultations to address challenges early.

12. ***Can you provide detailed information on the likely costs incurred by businesses in meeting the CARF reporting requirements?***

Implementation Costs

System Upgrades: Estimated between AUD $500,000–$2 million for mid-sized entities, depending on existing infrastructure and integration complexity.

Training and Professional Advice: Estimated AUD $20,000–$75,000, with variation based on entity size and the need for external legal consultation

Onboarding Self-Certifications: Significant labor costs for validating customer data.

Ongoing Costs

Annual Reporting: Expected costs range from AUD $200,000–$750,000, with larger firms potentially exceeding this due to higher reporting volumes.

System Maintenance: AUD $500,000–$1 million annually for updates.

Compliance Teams: Additional staffing costs could range from AUD $50,000–$200,000 per year, depending on the size and complexity of the reporting entity.

Audits: Up to AUD $150,000 annually for assurance activities.

Impact by Entity Size

Large Institutions: High costs due to complex systems and extensive customer bases.

SMEs: Disproportionate costs, potentially exceeding AUD $100,000–$200,000, with fewer resources to absorb the burden (Michel & Falcao 2023).

Recommendations:

- Government subsidies or tax credits to offset costs.
- Simplified reporting options for SMEs.
- Collaborative industry consultations to identify efficiencies.

13. ***Are there different cohorts of businesses that are likely to be affected more heavily than others with the implementation of the CARF? If so, who are they, to what extent, and why?***

Small and Medium Enterprises (SMEs)

- **Impact**: Disproportionate compliance costs (AUD $100,000–$200,000) due to limited resources.
- SMEs lack in-house expertise and scalable infrastructure.

Crypto-Asset Exchanges and Wallet Providers

- **Impact**: High costs for system upgrades and customer data validation, potentially millions annually (OECD 2023).
- Large transaction volumes and broad reporting obligations.

Non-Custodial Entities

- **Impact**: Ambiguity in definitions like "effectuating" may impose unnecessary burdens.
- Non-custodial models lack control over user transactions.

Startups

- **Impact**: High compliance costs create barriers to market entry.
- Limited funding and resources to meet upfront compliance demands.

Recommendations

- Provide financial support and simplified reporting for SMEs.
- Clarify definitions to exclude non-custodial entities.
- Engage startups to ensure compliance pathways are practical.

14. ***To what extent will entities be impacted by DAC8 reporting requirements? What are the implications for entities reporting under both DAC8 and the CARF? How should Australia take these considerations into account for the domestic implementation of the CARF?***

Extent of Impact

a. **Increased Burden**: Multinational entities face duplicative compliance costs due to differing requirements between DAC8 and CARF, including timelines, thresholds, and data fields (OECD 2023).
b. **Higher Costs**: Adapting systems for both frameworks significantly increases operational expenses.

Implications of Dual Reporting

c. **Complexity**: Conflicting definitions and stricter DAC8 rules risk inconsistent reporting and potential penalties (European Council 2023).
d. **Operational Challenges**: Entities must reconcile overlapping obligations, adding to administrative workloads.

Considerations for CARF Implementation in Australia

e. **Global Alignment**: Harmonise CARF with DAC8 to reduce overlap, particularly in reporting formats and verification rules.
f. **Exemptions**: Allow partial exemptions for entities already compliant with DAC8 where obligations overlap.
g. **Unified Reporting**: Provide streamlined processes for entities subject to both frameworks (Michel & Falcao 2023).

Recommendations

- Consult with affected entities to address dual compliance challenges.
- Publish clear guidance aligning CARF with DAC8.
- Develop unified reporting formats to reduce duplication.

References

Avelar, R.F.D.P., 2023. *Crypto-assets & Tax Transparency: The OECD Crypto-Asset Reporting Framework*. Available at: https://run.unl.pt/bitstream/10362/162176/1/Avelar_2023.pdf.

Australian Treasury, 2024. *Consultation on Enhanced Tax Transparency for Crypto Transactions*. Available at: https://treasury.gov.au/consultation/crypto-transparency.

European Council, 2023. *DAC8 Directive on Administrative Cooperation*. Available at: https://www.consilium.europa.eu/en/press/press-releases/2023/10/17/dac8-directive.

Michel, B. and Falcao, T., 2023. *Towards a Comprehensive Cryptocurrency Income Tax Policy*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4658850.

OECD, 2023. *Crypto-Asset Reporting Framework and CRS Update*. Available at: https://doi.org/10.1787/896d79d1-en.

Siwela, J., 2023. *The Tax Treatment of Crypto Assets*. Available at: https://search.proquest.com/openview/1355d334f5f89e0df15304a850d0aa15/1.

Swyftx, 2024. *4th Annual Australian Crypto Survey*. Available at: https://swyftx.com/wp-content/uploads/2024/09/swyftx-cryptocurrency-survey-2024.pdf.