Submission to the Australian Taxation Office

Draft Taxation Determination TD 2026/D2: capital gains tax consequences of using a smart contract to wrap and unwrap crypto assets

Digital Economy Council of Australia | 2 October 2026

1 Introduction

The Digital Economy Council of Australia (DECA) welcomes the opportunity to comment on TD 2026/D2. This submission was prepared through our Taxation and SMSF Working Group and reflects input from member accounting practices, exchanges and wallet providers. We will lodge a separate submission on TR 2026/D1 (airdrops) by 16 October.

DECA welcomes the Commissioner dealing with wrapping through binding public advice rather than web guidance alone. Members do not ask the Commissioner to adopt a view that would leave the wrapped token with a nil cost base. Their views differ on whether CGT event C2 is the right result. A significant group considers that a simple one-for-one wrap is a change in the form of the same asset to which section 112-25 applies, and we ask the Commissioner to give that view fuller consideration. If the C2 view is retained, our concerns are with how far its reasoning reaches, the date of effect, and the compliance and tax consequences for ordinary holders.

Our recommendations are set out in section 3, with reasons following. DECA consents to these comments being included in the edited compendium.

2 About DECA

DECA is the peak industry body for Australia's digital economy, representing businesses across blockchain, digital assets, artificial intelligence, payments and related technologies. Our members include exchanges and platforms, custody and self-custody wallet providers, infrastructure firms, accounting and tax practices, crypto tax software providers, SMSF administrators and auditors, and their legal advisers.

We have engaged consistently on the tax treatment of digital assets, including the Board of Taxation review, the Innovative Business CGT Concession and enhanced tax transparency for crypto transactions. Members have operated for years without binding published views on common transactions, and in our experience uncertainty costs them more than an unfavourable but clear position.

3 Recommendations

DECA recommends that the Commissioner:

Recommendation 1

Defer finalisation until the High Court has delivered judgment in Poulton v Conrad, and consult on a revised draft through the Crypto Industry Working Group the ATO agreed to form in response to the Board of Taxation review.

Recommendation 2

Reconsider the section 112-25 view for a bounded class of arrangement: where a crypto asset is sent to a contract that mints a new asset one-for-one against it, the new asset is redeemable for the locked asset on demand by the holder alone through the same contract, no other person holds a discretion over the locked asset, and the holder beneficially owns both. Subsection 112-25(3) would carry the cost base and acquisition date across, which answers the nil cost base concern at paragraph 48.

Recommendation 3

If the C2 view is retained, expressly confine the reasoning to arrangements of the kind described at paragraph 2, and state that it is not intended to change the Commissioner's position on transfers between a taxpayer's own addresses, transfers from self-custody wallets to exchanges and custodians, assets held for clients in omnibus custody, staking (including lock-without-mint deposit contracts), protocol migrations or liquidity provision.

Recommendation 4

Apply any final Determination prospectively from its date of issue, or provide a transitional safe harbour for taxpayers who lodged on a reasonable alternative view.

Recommendation 5

Publish a practical compliance approach, including a valuation shortcut where the wrap and unwrap are of the same quantity of the same asset, and allow taxpayers to use a consistent, documented valuation methodology and data source across an income year.

Recommendation 6

Deal with bridging (including canonical layer 2 bridges), custodial wrapping and liquid staking in the same instrument, by reference to characteristics a taxpayer can identify, as the Board of Taxation asked in Recommendation 9.4, and give guidance for holders on revenue account.

Recommendation 7

Publish guidance on network and platform fees, which the Determination excludes but which arise on every transaction it covers.

Recommendation 8

Record in the compendium the policy question of whether a format conversion needed to use a protocol should be taxed at all, and if the Commissioner considers the current law requires the C2 outcome, raise with Treasury a targeted deferral along the lines of the no gain, no loss treatment the United Kingdom has proposed.

4 The C2 conclusion and the change of form view

Abandonment

The Determination's primary basis for CGT event C2 is that ownership ends by abandonment. As paragraph 32 accepts, abandonment in its general legal meaning requires an intention to forgo any future claim to the property.[1] A person who wraps ETH does not intend that. They receive a token that carries the ability to call the same quantity of ETH back out of the contract, and paragraph 9 accepts that the wrapped token gives the holder that practical ability. Footnote 22 says the asset is still abandoned where the holder expects an equivalent quantity back, but that is difficult to reconcile with the intention paragraph 32 identifies as central.

[1] Re Jigrose Pty Ltd [1994] 1 Qd R 382; TD 2026/D2 at [32] and footnote 22.

The fallback of surrender or release at paragraphs 38 to 41 has its own difficulty. The meanings quoted involve yielding something to another person, while elsewhere the Determination proceeds on the basis that there is no other person: no counterparty for CGT event A1, no trustee for events E1 and E2, no entity for the market value substitution rule. If surrender requires a recipient, there is none. If release operates without one, the right released and how it ends should be identified.

Section 112-25

Paragraph 112-25(1)(b) applies where a CGT asset changes into an asset of a different nature and the taxpayer beneficially owns both. The change is not a CGT event and the cost base carries across. The Commissioner already applies this to a change of form in TD 2000/10,[2] where a conversion of shares involves no CGT event because beneficial ownership continues while the holding is recorded differently.

Paragraphs 56 and 57 reason that because each recorded balance is a distinct digital object, ETH cannot have changed into WETH. Section 112-25 expressly contemplates a change into an asset of a different nature, so technical distinctness is where the inquiry starts rather than the answer to it. The real question is whether beneficial ownership of the underlying interest continues. On a one-for-one wrap executed atomically, with no counterparty and no change in exposure, members who favour this view say it does.

The concern at paragraph 58 about sequential wrapping is met by limiting the view to the conditions in Recommendation 2. Swaps through liquidity pools, custodially issued wrappers such as WBTC, bridges with a counterparty and yield-bearing or rebasing tokens would fall outside it and be dealt with on ordinary principles.

Other members, including practitioners who advise in line with existing web guidance, are content for the Commissioner to retain the C2 view provided the reasoning is confined and the date of effect addressed. DECA puts both positions so the Commissioner has the full range of member views, and the remaining sections apply whichever view is taken.

5 The reach of the property reasoning

If the C2 view is retained, the reasoning needs to be confined. Each step turns on losing private key control over a balance, which also describes a customer moving bitcoin from a self-custody wallet to an exchange, staking (including the Ethereum deposit contract, where no receipt token is issued and the analysis would leave a nil cost base on withdrawal), 1:1 protocol migrations and deposits into liquidity pools. A self-custody wallet provider raised the exchange transfer point with us directly in relation to paragraph 33.

Paragraphs 26 to 29 add a second proposition: that a balance at a contract address is nobody's property because it is pooled and no part is identifiable to a particular depositor. That reasoning depends on aggregation and fungibility, not on the absence of a counterparty. Applied more widely, it would create uncertainty for assets held in an exchange or custodian's omnibus wallet, which is how most Australian retail holdings are held. Courts have recognised trusts over commingled fungible crypto assets[3], and a public ruling should not adopt reasoning that sits uneasily with those authorities.

[2] Taxation Determination TD 2000/10.

[3] Ruscoe v Cryptopia Ltd (in liq) [2020] NZHC 728; Re Blockchain Tech Pty Ltd [2024] VSC 690.

Paragraph 3 limits the Determination's scope but not the reach of its reasoning. Adviser members tell us clients are already asking whether the draft changes the position on exchange deposits and staking. The reasoning also sits uneasily with the ATO's data-matching program, which treats exchange balances as the customer's holdings. If a control test is to be stated, it should require loss of both factual and legal control.

We note also that in its submissions to the High Court the Commissioner described the private key as the means of control that makes a holding property, and relied on the control concept in new section 761GB of the Corporations Act 2001, which accommodates joint and indirect control.[4] A WETH holder controls the WETH balance with their key and can cause the corresponding ETH to be released to them without anyone's consent. That supports treating the transfer as a change in the mechanism of control rather than a loss of it.

We do not recommend asking the Commissioner to lead with surrender or release instead of abandonment. Surrender to another person fits a deposit to an exchange better than a deposit to a smart contract, so it would strengthen the argument that an exchange deposit is a C2 event. What we ask for is a clear statement confining the reasoning to the arrangements it was written for, which would not disturb the Commissioner's legal analysis.

6 Tax and compliance consequences

Using the Commissioner's own example, Finella pays tax on a $20,000 gain in the year she wraps, although she has sold nothing and received no cash to pay it. The ETH she receives on unwrapping is a new asset, so if she sells within twelve months she loses the CGT discount despite holding ETH continuously for four years. Her $2,000 loss on unwrapping is quarantined to capital gains, and if the wrap and unwrap fall either side of 30 June the loss cannot offset the earlier gain. Gains and losses across the position still total the same economic gain, but tax is brought forward and the total can be higher because the discount and loss rules apply separately at each step. Members also note that each new acquisition date will reset the starting point for cost base indexation once the reforms from 1 July 2027 begin.

Practitioner members report that a typical client with DeFi holdings records around 20 to 30 wrap and unwrap events a year, and active participants many more. NFT marketplaces that settle in wrapped ether turn each sale into two events. Each event needs a valuation, a record and a return calculation.

There is also a reporting gap. Under Australia's implementation of the Crypto-Asset Reporting Framework, obligations attach to providers that carry out exchange transactions for customers. A holder who wraps by interacting directly with an autonomous contract does so without any such provider, so no third-party report of the step exists. The United States has excluded wrapping and unwrapping from broker reporting pending further study.[5] On the C2 view each taxpayer must identify, value and record every wrap and unwrap themselves.

Valuation

The Determination does not say how market value is to be established. Values at the moment of a contract call have to be taken from venue data at second-level granularity, different sources

[4] Submissions of the Commissioner of Taxation (seeking leave to intervene), Poulton v Conrad, High Court of Australia, H1/2026, filed 7 May 2026; Corporations Act 2001 (Cth) s 761GB, as inserted by the Corporations Amendment (Digital Assets Framework) Act 2026 (Cth).

[5] Internal Revenue Service, Notice 2024-57, sections 3.01 and 3.02.

give different figures, and thin liquidity can make them unreliable. The Board's Recommendation 7.7 asked the ATO to consider valuation shortcuts.[6] Where the wrap and unwrap are of the same quantity of the same asset, a shortcut would remove most of the burden at little revenue cost.

Fees

Current practice among member practitioners is to treat a network fee paid in crypto as a disposal of that crypto, with its Australian dollar value included as an incidental cost under section 110-35. We ask the Commissioner to confirm that approach or publish an alternative.

SMSF audit

SMSF auditors already require wallet-level evidence and independent pricing, and already qualify accounts where exchange statements are unreliable or self-custody addresses cannot be evidenced. A C2 event at every wrap adds another valuation point to locate and evidence on-chain, for a transaction the trustee may not have seen as a disposal. The likely result is more qualified audit reports rather than more accurate ones.

7 Timing and date of effect

The Determination's property analysis relies on the decision of the Full Court of the Supreme Court of Tasmania in Poulton v Conrad.[7] The High Court granted special leave on 5 February 2026, the Commissioner intervened, and the appeal was heard by a Full Court of seven on 13 August 2026 with judgment reserved. The reasons will bear directly on paragraphs 23 to 29 and 56 to 58, including the Ainsworth framework the draft relies on at paragraph 58. If the Court changes the property analysis, a Determination finalised now may need revision. If it does not, nothing is lost by waiting.

The Determination is proposed to apply before and after its date of issue. Until 19 August 2026 the only ATO material on wrapping was web guidance first published in November 2023, which is not binding and used WBTC, a custodially issued token, as its example. The draft now excludes custodial wrapping, which suggests the Commissioner's own view has moved. Practitioners have generally advised in line with the web guidance, but taxpayers who took a reasonably arguable position in earlier years should not face amended assessments based on a view finalised while its legal basis is before the High Court. Reliance on the draft protects against penalties and interest but not the primary tax.

TR 2026/D1, released the same day, applies prospectively to initial allocation airdrops on similar reasoning. Reconstructing valuations at historic block times for high-volume taxpayers is often not achievable at reasonable cost, so retrospective application is more likely to produce non-compliance than revenue.

8 Scope questions

The Determination excludes custodial wrapping, bridging, liquid staking, network fees and holders on revenue account, so it gives certainty on the narrowest case while its reasoning will be applied to everything else. The Board asked for guidance identifying the characteristics a

[6] Board of Taxation, Review of the tax treatment of digital assets and transactions in Australia (Final Report, February 2024), Recommendation 7.7.

[7] Poulton v Conrad [2025] TASFC 7; special leave granted [2026] HCADisp 9 (5 February 2026); High Court of Australia, H1/2026, heard 13 August 2026, judgment reserved.

taxpayer can use to tell whether a taxing event has occurred.[8] We ask the Commissioner to confirm the treatment of:

(a) *canonical layer 2 bridge deposits and withdrawals*, now a routine way for Australian users to move ETH to lower-cost networks, each of which would be a CGT event if the reasoning applies;

(b) *other cross-chain bridges*, which often involve a validator set or operator holding the locked asset, so paragraph 3 may or may not apply;

(c) *liquid staking tokens*, where the underlying asset is deployed rather than simply locked;

(d) *lock-without-mint deposits*, where the analysis produces a nil cost base on withdrawal;

(e) *protocol migrations* at a fixed 1:1 ratio through a migration contract, such as FTM to S and MATIC to POL, which are mandated by the protocol rather than chosen by the holder;

(f) *yield-bearing and rebasing wrapped tokens* such as wstETH and sDAI, where the 1:1 relationship assumed at paragraph 42 does not hold;

(g) *sequential wrapping* as contemplated at paragraph 58, where one atomic user action may generate several C2 events;

(h) *NFT marketplace settlement* in wrapped tokens;

(i) *unwrapping by a holder who acquired the wrapped token on market*; and

(j) *holders on revenue account*, who are the most frequent users of wrapping and currently receive no guidance at all.

9 Rollover and the policy question

We accept that Subdivision 124-B is not available. The rollover is directed at involuntary loss, and a deliberate exchange of one asset for another is not compensation in the sense used in paragraph 124-70(2)(a).

Wrapping exists because some protocols cannot interact with a native coin. A taxpayer who wraps is not realising a gain or changing their exposure, but converting format to use a service. Taxing that conversion means the same economic position can be taxed differently depending on how a protocol was built, which is at odds with the technological and functional neutrality the Board's principles framework calls for. The Senate Select Committee on Australia as a Technology and Financial Centre recommended in 2021 that digital asset transactions only create a CGT event where they result in a clearly definable gain or loss.[9]

Members also note that the digital asset platform framework being implemented by Treasury and ASIC distinguishes public blockchain infrastructure from custodial arrangements, and would not treat interacting with that infrastructure as giving up custody. A tax analysis under which the same step ends ownership sits awkwardly with that. If the Commissioner considers the current law compels the C2 outcome, we ask that a targeted legislative deferral be raised with Treasury so that tax falls on the eventual economic disposal.

[8] Board of Taxation, Review of the tax treatment of digital assets and transactions in Australia (Final Report, February 2024), Recommendations 9.4 and 9.5.

[9] Senate Select Committee on Australia as a Technology and Financial Centre, Final Report (October 2021), Recommendation 6.

10 Comparative approaches

In the United Kingdom, HMRC published a policy paper and draft legislation on 13 July 2026 under which certain disposals involving cryptoasset loans and liquidity pools are treated as no gain, no loss from 6 April 2027, deferring tax until an economic disposal.[10] The stated aim is to align tax treatment with the economics of the arrangements. That is the model for the legislative fallback in Recommendation 8.

In the United States, realisation generally requires that the properties exchanged be materially different, and there is no published IRS guidance on whether a wrapped token meets that threshold. Australian law asks only whether an asset ended, which is why it reaches a taxable event where an economically identical position is kept. As noted above, the US has also excluded wrapping from broker reporting pending further study.

Singapore and several other regional centres do not tax capital gains on digital assets. We do not suggest Australia follow that approach, but note it is relevant to the relocation pressures members described during the Innovative Business CGT Concession consultation.

11 Conclusion

DECA supports the Commissioner publishing binding guidance on wrapping. We ask that finalisation wait for the High Court, that the section 112-25 view be reconsidered for simple one-for-one wraps, and that if the C2 view is retained its reasoning be confined, it apply prospectively, and it be accompanied by practical approaches to valuation and fees.

We would welcome the chance to discuss this submission, and our Taxation and SMSF Working Group can convene members to help with practical questions on valuation, transaction volumes and reporting data. Please contact Alec O'Sullivan at alec@deca.org.au.

Contact

Amy-Rose Goodey, Chief Executive Officer
Alec O'Sullivan, Head of Operations, alec@deca.org.au

[10] HM Revenue and Customs, Tax treatment of Cryptoasset Loans and Liquidity Pools (policy paper, 13 July 2026).