DIGITAL ECONOMY COUNCIL OF AUSTRALIA

Submission to the Australian Taxation Office

Draft Taxation Ruling TR 2026/D1: receipt and disposal of crypto assets by an airdrop | 16 October 2026

To: Tax Counsel Network, Office of the Chief Tax Counsel, Australian Taxation Office (CryptoPagComments@ato.gov.au)

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Status: DECA consents to these comments being included in the edited compendium of comments.

1 About DECA and this submission

1.1 The Digital Economy Council of Australia (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, token issuers, accounting and tax practices, crypto tax software providers, SMSF administrators and auditors, academics and their legal advisers.

1.2 This submission was prepared by DECA's Taxation and SMSF Working Group, which considered the draft at its meeting on 14 October 2026. It reflects written input from member accounting and tax practices, lawyers and academics, and the discussion at that meeting. At least one member practice has given us a detailed technical paper, and we draw on it below.

1.3 DECA supports the Commissioner publishing this Ruling. The framework it adopts, which turns on the character of the receipt in the hands of the recipient, is the right one. The published draft is a clear improvement on the version circulated to our Working Group in April 2026, most of all in applying only prospectively to initial allocation airdrops and in placing non-business recipients on capital account. Our concerns are practical: how market value is to be established, the compliance burden created by unsolicited, dust and malicious tokens, the treatment of trading businesses, and several technical questions on issuers and CGT events that members consider need fuller reasoning before the Ruling is finalised.

1.4 We lodged a separate submission on TD 2026/D2 (wrapping and unwrapping) on 2 October 2026. The two drafts were released on the same day and share a foundation in the property analysis of crypto assets. We have kept our positions on the two consistent, in particular on timing.

2 Recommendations

2.1 DECA recommends that the Commissioner:

1. Take account of the High Court's reasons in Poulton v Conrad before finalising the Ruling, and reissue it in draft if those reasons change the property or CGT event analysis on which it rests.
2. Retain the prospective date of effect for initial allocation airdrops, and give that term a self-contained definition that operates at the level of the distribution program and disregards pre-market trading and late claims.

3. Apply the Ruling prospectively to unsolicited receipts by recipients who are not carrying on a business, where the law has been equally unsettled and the recipient has done nothing.

4. Adopt, as an administrative approach under the general powers of administration, a de minimis rule for unsolicited airdrops, including dust and malicious tokens: nothing is included on receipt, the asset takes a nil cost base, and tax consequences arise only on disposal.

5. Confirm that market value is fixed at the time of receipt and is not revised by a later listing, accept any reasonable and documented valuation methodology applied consistently across an income year, address claim-based airdrops and assets with no market at receipt, and define "no or negligible market value".

6. Add an example of a malicious token that does land in the holder's wallet, confirming that it has nil value, that wallet security costs are not part of its cost base, and that moving other assets to a new wallet is not a CGT event, and define "scam" for the purpose of paragraph 6.

7. Redraft paragraph 13 in line with the High Court's decision in Stone, so that a trading business includes an airdrop in assessable income only where the receipt has the necessary connection with that business, and define a "business of crypto asset trading".

8. For issuers, explain how airdropped crypto assets satisfy subsection 70-10(1) or confirm they are not trading stock, confirm that section 70-90 does not apply to an airdrop made in the ordinary course of business, clarify the treatment of distribution costs, and identify the basis for the market value deduction at paragraph 19 or confine it to cost.

9. Set out fuller reasoning on which CGT event happens to the issuer and to the recipient, including CGT events A1, C1, C2 and D1.

10. State the hobby criteria as a matter of principle with indicia relevant to crypto activity, and define "another income-producing activity" in paragraph 16.

11. Publish a timetable, or update the Advice under development program, for the matters carved out at paragraph 9, in particular staking, liquidity provision and rebasing.

3 Timing, date of effect and what has changed

Poulton v Conrad

3.1 The Ruling proceeds on the basis that a crypto asset is property and a CGT asset, and its CGT event analysis depends on how that property is held and transferred. The High Court has reserved judgment in Poulton v Conrad, in which the Commissioner intervened.[1] If the Court holds that bitcoin is not property, much of the Ruling's legal basis falls away. If it holds that bitcoin is property, its reasons may still bear on central questions here, including whether crypto assets are intangible for the purposes of CGT event C2. We made the same request in our TD 2026/D2 submission.

[1] Poulton v Conrad [2025] TASFC 7. The High Court granted special leave on 5 February 2026 and heard the appeal on 13 August 2026. Judgment is reserved.

3.2Because initial allocation airdrops are already dealt with prospectively, the cost of waiting a short time for the judgment is low. The cost of finalising on reasoning the Court then displaces is higher.

Initial allocation airdrops

3.3Members strongly support the prospective treatment of initial allocation airdrops. It answers the principal concern raised in April. Practitioner members note that the published draft also improves the position for ordinary holders: earlier ATO web guidance treated an airdrop of an established token as ordinary income on receipt for every recipient, whereas paragraphs 16 and 20 now place a non-business recipient on capital account.

3.4The definition in paragraph 66, however, refers to the first distribution of a crypto asset where there has been no prior trading. In practice, launch airdrops are often preceded by pre-market or derivative trading on some venue, and claims commonly remain open for weeks after the token lists. Read literally, almost no launch airdrop would qualify. We ask that the term be defined at the level of the distribution program, so that pre-market trading and later claims under the same program do not take a distribution outside it.

Unsolicited receipts

3.5We ask that the same prospective treatment apply to unsolicited receipts by recipients who are not carrying on a business. Example 5 is new since April, the law on unsolicited receipts has been equally unsettled, and the recipient has taken no step at all.

Movement since April

3.6For completeness, members reviewing the April version noted that the published draft narrows the date of effect, adds issuer treatment (Division 70, section 8-1 and Example 7), reverses the earlier emphasis on a nil cost base so that section 112-20 now applies unless market value is nil or negligible, adds Example 5, and tightens the definitions. Each is a sound change. The move to section 112-20 is favourable to taxpayers, but it makes valuation load-bearing in a way the earlier draft did not, which is the subject of the next section.

4 Valuation

4.1Market value at the time of receipt determines whether a business recipient has income, what deduction an issuer claims and what cost base a capital account recipient takes. The Ruling does not say how that value is to be established.

4.2Practitioner members report that tax agents rely on reputable public price aggregators and crypto tax software, using whichever source carries the token. A newly distributed token frequently trades on a single venue, with low depth, and in the hours after launch its price can move by orders of magnitude. Different sources give materially different figures.

4.3Our working draft asked whether a volume-weighted average over a defined window would help. Members at the 14 October meeting did not support it as the default. Where liquidity spikes at launch and then collapses, a window average can lock in a value the holder never had, and for practitioners processing thousands of transactions for decentralised finance clients it adds work without improving accuracy. Members prefer that:

1. the default remain market value at the time of acquisition, taken from a reputable public source;
2. the Commissioner accept any reasonable, documented methodology applied consistently across the income year, including a defined window where the taxpayer elects it;
3. market value be fixed at the time of acquisition and not revised by reference to a later listing or later trading; and
4. claim-based airdrops, which can be received weeks after launch when the price has moved by multiples, be valued at the time of the claim on the same basis.

4.4We also ask the Commissioner to define "no or negligible market value", or to set a threshold below which an airdropped asset will be accepted as having negligible value. Paragraph 87 already concludes that an asset with no market at receipt has a nil cost base. Stating where "negligible" begins would let that conclusion be applied without a valuation exercise in each case.

5 Unsolicited, dust and malicious airdrops

The compliance problem

5.1Example 5 gives a recipient a CGT asset, with a cost base equal to an observable market value, through the unilateral act of a stranger. The legal analysis is orthodox. The practical consequence is that a holder of an ordinary self-custody wallet may receive many unsolicited and dust distributions in a year, each potentially requiring a valuation at receipt and a record to support a later disposal, for assets the holder did not seek and often cannot sell. Practitioner members tell us that in practice dust and spam tokens are ignored because they have no meaningful effect on a client's tax position. The Ruling should not create an obligation that the profession, reasonably, does not apply.

A general de minimis approach

5.2Our working draft offered a de minimis threshold or a disclaimer mechanism. Members have settled on a general de minimis approach, which the Commissioner can adopt in the exercise of the general powers of administration. Where it applies, nothing is included on receipt, the asset takes a nil cost base, and tax consequences arise only on disposal. A gain on disposal is taxed in full, and if there is no gain nothing is included. The approach would cover unsolicited, dust and malicious tokens, and would remove the need to value or track assets that have no established market at receipt.

5.3The revenue cost is small. Because the cost base is nil, any value the token later acquires is taxed on disposal. What is removed is valuation and record keeping for assets that will never be sold. A disclaimer mechanism would achieve the same outcome but is harder to administer, since the recipient cannot return the token and would have to make an election.

Malicious airdrops

5.4Example 4 deals with a phishing email offering tokens that never arrive. That is correct, but it is not the common pattern. More often a token does land in the wallet and is engineered so that any attempt to sell or move it triggers an approval that drains other assets. On the draft as written that token is a CGT asset, and the cost of securing the wallet could be read, by analogy with Example 5, as part of its cost base.

5.5We ask for an example confirming that such a token has nil value because there is no genuine market, that wallet security costs are not second element costs of the malicious token, and that moving the holder's other assets to a new wallet is not a CGT event. Paragraph 6 also refers to airdrops received as a result of a scam, but no ruling paragraph addresses them and the term is not defined. Most scams are easy to recognise, but the line can be contentious at the edges, and Example 4 implies a different outcome if the recipient had clicked the link or the token had simply appeared. A definition would resolve this.

5.6DECA has engaged extensively on the Scams Prevention Framework. Tax guidance that requires a victim to value and track a malicious token sits awkwardly beside a consumer protection framework directed at removing it, and we would welcome the two being aligned.

6 Recipients carrying on a business of crypto asset trading

6.1Paragraph 13 states that a recipient carrying on a business of crypto asset trading includes the market value of an airdrop in assessable income even if the receipt is a gift, a windfall or unsolicited. Members consider this too broad.

6.2Footnote 6 cites the first instance decision in Stone. The High Court did not hold that every receipt of a business taxpayer is income. The question was whether the receipts were income of that business, and even the gratuitous grants were income because they were rewards for the conduct of the taxpayer's business.[2] Airdrops are generally distributed by reference to a holding of a linked asset, without regard to whether the holder trades. A trader receives such an airdrop in the same way, and for the same reason, as any other holder. It is not connected with the trading activity in the sense Stone requires. We ask that paragraph 13 be redrafted accordingly.

6.3The scope of paragraph 13 also depends on what a "business of crypto asset trading" is, and the Ruling does not define it. That matters well beyond airdrops. Paragraph 14 of TD 2014/27 treats bitcoin held by an exchange business as trading stock, yet an exchange that holds assets on trust for its customers does not hold them beneficially, as courts have recognised for commingled crypto assets.[3] We ask the Commissioner to define the term and to address whether operating an exchange, including one that holds assets on trust, is such a business.

6.4Finally, where a trading business does receive an airdrop with the necessary connection, but the token cannot be sold, transferred or otherwise realised at the time of receipt, we ask the Commissioner to confirm a compliance approach under which the amount is brought to account when the token can first be realised. Paragraph 87 already gives a nil value where there is no market at all. The difficult case is a nominal price on a venue the taxpayer cannot access.

7 Issuers

7.1The issuer material is new since April. Members with issuer clients have raised the following points.

[2]Commissioner of Taxation v Stone [2005] HCA 21; (2005) 222 CLR 289 at [52], [60] and [62]. Footnote 6 of the draft Ruling cites the first instance decision, Stone v Commissioner of Taxation [2002] FCA 1492.
[3]TD 2014/27 at paragraph 14; Ruscoe v Cryptopia Ltd (in liq) [2020] NZHC 728; Re Blockchain Tech Pty Ltd [2024] VSC 690.

Trading stock

7.2 Paragraphs 11 and 12 and Example 7 treat airdropped assets as trading stock of an issuer carrying on a business of crypto asset trading, but do not explain how they satisfy paragraph 70-10(1)(a). Members doubt that they do. An airdrop involves no consideration, so the assets are not held for sale. The Commissioner has said that "sale" and "exchange" are correlative terms covering trading in which ownership passes for consideration (ATO ID 2009/97), which does not extend to a gratuitous transfer. And whether assets produced for distribution are held in the ordinary course of a business cannot be decided without the definition sought above. We ask the Commissioner to explain the basis or confirm the assets are not trading stock.

7.3 If they are trading stock, an airdrop is a gratuitous disposal, and the High Court has treated gifts and transfers for inadequate consideration as falling outside the ordinary course of business (Pastoral & Development Pty Ltd v FCT (1971) 124 CLR 453). Unless the final Ruling confirms that the airdrop is in the ordinary course of the issuer's business, the assets would come into existence in the ordinary course and then, usually within a short time, be disposed of outside it, so that section 70-90 deems market value to be assessable. We ask for that confirmation.

Costs and deductions

7.4 Paragraph 11 states that separate distribution and platform costs may be deductible under section 8-1. Where the assets are trading stock valued at cost, it is unclear whether those costs are also absorbed into the cost of the assets under absorption costing principles.[4] Example 7 at paragraph 65 appears to treat them as absorbed. We ask that this be stated expressly.

7.5 Paragraph 19 allows an issuer to deduct the market value of an existing crypto asset it airdrops. Section 8-1 deducts outgoings actually incurred and has no market value substitution rule. We ask the Commissioner to identify the basis for a market value deduction or confine the deduction to cost. Separately, paragraph 12 treats the cost of assets issued for goods or services as deductible because something is received in return. Deductibility depends on the character of the outgoing, and an airdrop in return for development of the issuer's platform may be capital (TR 2023/2).

8 Which CGT event happens

8.1 Paragraph 15 states that CGT event A1 happens when an issuer airdrops a crypto asset, with market value substituted for nil capital proceeds. That places a non-trading issuer in a worse position than a trading issuer whose gain is disregarded under section 118-25. Members consider that whether A1 happens at all needs fuller reasoning, for three reasons.

8.2 First, the issuer may never own the asset. A token contract can record the supply against recipients' addresses from creation, in which case there is nothing for the issuer to dispose of. Secondly, there is a substantial body of analysis that a transfer of a crypto asset, on either a UTXO or an account-based ledger, extinguishes the transferor's asset and creates a new one in the recipient's hands, consistently with the established characterisation of transfers between bank accounts.[5] On that view there is no change in ownership of the same asset, and an event in Subdivision 104-C is more apt than A1. Thirdly, CGT event C2 does not fit well either. An airdrop

[4] Philip Morris Ltd v Federal Commissioner of Taxation (1979) 10 ATR 44; IT 2350.

[5] Law Commission of England and Wales, Digital Assets: Final Report (Law Com No 412, 2023) at paragraphs 6.14 and 6.28; R v Preddy [1996] AC 815 at 834 and 841.

is not abandonment, because the issuer intends ownership to pass; it is not surrender, because nothing is yielded up to a greater interest; and it is not forfeiture, because there is no default. C2 also applies only to intangible assets, which may be affected by the reasons in Poulton v Conrad.

8.3If CGT event C1 is the relevant event, the market value substitution rule does not apply to it (section 116-25; ATO ID 2002/633), so an issuer receiving no capital proceeds would have no gain. The same questions bear on whether A1 is the right event on the recipient's later disposal at paragraph 17.

8.4At our meeting an academic member also asked why CGT event D1 is not considered where an airdrop creates new rights, for example a token representing an interest in real property or an equitable right. Other members took the view that a basic airdrop creates no contractual or equitable rights at issue, so D1 does not arise and the transfer is closer to a gift. Members agree that the final Ruling would be clearer if it explained why D1 does not apply and identified when a token's terms might change that answer.

9 Hobby, business and "another income-producing activity"

9.1Example 3 concerns a student who receives in-game rewards and is not carrying on a business. It is clear on its facts, but it does not state the hobby criteria as a matter of principle, and the game coin in the example has a market value (paragraph 37), so it can be sold. In-game assets of this kind are in fact bought and sold for money (R v Lakeman [2026] EWCA Crim 4 at [3]). It is unclear whether saleability matters, and more importantly when crypto activity beyond gaming is a hobby rather than an investment or a business.

9.2Members discussed the indicia that practitioners apply. The ordinary business indicia remain the starting point, including whether the activity has a commercial purpose, its scale and regularity, and whether it is carried on in a businesslike way. Members suggested several considerations specific to this setting:

1. whether the token is designed so that rewards convert automatically into a tradeable or fiat amount, which points toward a commercial rather than recreational purpose;
2. repeated and systematic participation in reward events or competitions, together with study of the protocol and record keeping, although records alone are not decisive without an organised, profit-directed system;
3. the use of automation or multiple accounts; and
4. whether the activity is directed at the token rather than at the game or platform itself, and when a pastime becomes a profit-making undertaking from one income year to the next.

9.3Paragraph 16 also turns on whether a receipt is part of "another income-producing activity", a phrase the Ruling does not define. Practitioner members identify the line between a capital receipt and such an activity as the most difficult question for clients who are neither traders nor hobbyists. We ask that it be defined or illustrated.

10 Carved-out issues

10.1 Paragraph 9 excludes liquidity provision rewards, rebasing tokens and non-arm's length arrangements. DECA does not ask the Commissioner to expand the Ruling to cover them, which would only delay it. We do ask for a timetable. Our Working Group regards staking and liquidity provision as the largest area of uncertainty in digital asset taxation, and one that will become a mainstream institutional concern as tokenised money scales. Publishing a timetable, or updating the Advice under development program, would show that the carve-outs are a matter of sequencing.

11 Comparative approaches

11.1 The Commissioner's framework is consistent with comparable administrations. HM Revenue and Customs does not treat an airdrop received without doing anything in return, and not in the course of a cryptoasset trade, as income on receipt. Inland Revenue in New Zealand distinguishes business recipients, recipients for whom airdrops form part of a regular income-earning activity, and others, a structure close to the draft Ruling's.

11.2 The difference is at the margins. The United Kingdom draws its line by asking what the recipient did, whereas paragraph 13 draws it by asking what the recipient is. The Internal Revenue Service in the United States treats an airdrop as income only once the taxpayer has dominion and control, and not where the units cannot be transferred. DECA does not suggest importing that test, but it shows that other administrations have found it necessary to deal with the token that cannot be realised, which is the gap Recommendations 4, 5 and 7 address.

12 Conclusion

12.1 DECA welcomes the Ruling and in particular the narrowing of its date of effect. The framework is sound. What remains is largely practical: a clear approach to valuation, a de minimis rule for unsolicited, dust and malicious tokens, a narrower paragraph 13, and fuller reasoning on the issuer and CGT event questions, finalised with the benefit of the High Court's decision in Poulton v Conrad.

12.2 We would welcome the chance to discuss this submission, and our Taxation and SMSF Working Group can convene members with valuation, software and issuer experience to help with any practical questions.

Digital Economy Council of Australia

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