



1701 Rhode Island Avenue Northwest
Washington, D.C. 20036
(202) 715-2270
contact@theblockchainassociation.org

2308 Mt. Vernon Avenue Suite 762
Alexandria, VA 22301
(202) 818-8694
contact@defieducationfund.org

April 28, 2022

Via Email: taxpublicconsultation@oecd.org

Organization for Economic Cooperation and Development
2 Rue André Pascal
75016 Paris, France

Re: Public Consultation Document on the “Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard”

To the International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration:

The Blockchain Association¹ and the DeFi Education Fund² submit this letter in response to the Organization for Economic Cooperation and Development’s (“**OECD**”) public consultation document titled “Crypto-Asset Reporting Framework and Amendments to the Common

¹ The Blockchain Association is a non-profit organization dedicated to improving the public policy environment for public blockchain networks so that they can develop and prosper in the United States. We endeavor to educate policymakers, courts, law enforcement, and the public about blockchain technology and the need for regulatory clarity to allow for a more secure, competitive, and innovative digital marketplace. The Association is comprised of over 80 industry leaders who are committed to responsibly developing and supporting public blockchain networks fueled by cryptocurrencies. Our diverse membership reflects the wide range of this dynamic market and includes crypto exchanges, custodians, software developers, early-stage investors, trading firms, and others supporting the crypto ecosystem.

² The DeFi Education Fund is a nonpartisan advocacy group based in the United States with a mission to educate policymakers about the benefits of decentralized finance and to achieve regulatory clarity for the DeFi ecosystem.

Reporting Standard” (“**CARF**”),³ specifically regarding the tax reporting guidelines for digital assets.

We thank the OECD for the opportunity to comment on the CARF, as it is essential to uniformly promote tax compliance for all economic activities. We fully support the OECD’s effort to modernize tax transparency frameworks in response to technological and economic developments in the digital asset ecosystem.

The fundamental differences between traditional financial markets and digital asset markets require different approaches to achieve the same goal: promoting tax compliance. On the one hand, a reporting framework tailored to the digital asset ecosystem—one that leverages its novel characteristics and addresses its novel challenges—will be best-equipped to promote tax compliance for activities involving digital assets. On the other hand, some methods designed to promote tax compliance in the traditional financial system that do not account for the unique qualities of digital assets are not fit for purpose.

This letter includes summaries of our perspectives on the four key areas for comment delineated in the public consultation. We would welcome the opportunity to further engage with the OECD to provide additional details and collaborate on the development of a well-tailored framework for the digital asset ecosystem.

Crypto-Assets in Scope

The CARF’s definition of “Crypto-Asset” specifically notes the inclusion of certain non-fungible tokens (“**NFTs**”) that represent the rights to collectibles, games, works of art, physical property, or financial documents that can be traded or transferred to other individuals or entities in a digital manner. In response to the CARF’s definition of Crypto-Assets, we believe that NFTs should be excluded from the definition of Crypto-Assets for a number of reasons, including:

- NFTs are not easily comparable to fungible cryptocurrencies; NFTs enable a variety of unique use-cases that, if treated as “crypto-assets,” would unreasonably require all transactions involving an NFT to be reportable events. For example, with respect to gaming NFTs, reporting could require players to report microtransactions based on in-game asset transfers, even though such reporting has never been required for games that utilize non-NFT microtransactions. This would place an unreasonable burden on both game developers and players to report on a transaction that has never before been required.

³ Organization for Economic Cooperation and Development, “Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard,” (March 22, 2022), <https://www.oecd.org/tax/exchange-of-tax-information/public-consultation-document-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>.

- NFT collectibles are often sold or transferred in bundles to alleviate the cost burden of the transfer. The CARF does not sufficiently address questions like: would the bundle of NFTs be treated as a singular asset, or a collection of assets? Would the bundle require individual filings for each asset, or a singular filing for the collection of assets? If each NFT is to be treated as an individual crypto-asset, this would effectively ban the practice of bundled transfers or place an unworkable and unprecedented burden on the seller and purchaser to negotiate individual values for each asset.
- Very few NFTs are inherently financial assets, and treating them as such would create reporting for peer-to-peer transactions that do not exist for like assets in the physical world. For example, millions of trading cards are sold each year and traded between peers who value each card differently. These trades are not currently taxed, but NFTs that are transferred with the same intention would be taxed under the suggested framework, purely because they are digital.

Intermediaries in Scope

We have significant concerns with the report’s proposal to include non-intermediaries as intermediaries in scope. The CARF defines Reporting Crypto-Asset Service Providers (“**Reporting CASPs**”)—entities that would be required to report information to tax authorities—as

any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers (which for purposes of this definition includes users of services of Reporting Crypto-Asset Service Providers), including by acting as a counterparty, or as an intermediary, to Exchange Transactions, or by making available a trading platform.⁴

The core of this definition is consistent with the obligations of businesses traditionally subject to tax reporting requirements, i.e., businesses that “effectuate” financial transactions “for or on behalf of customers.” As intermediaries, these businesses have access to relevant information about the transactions they effectuate on behalf of their customers, including the transacting parties’ identities and the profit or loss associated with each transaction.

However, the remainder of the proposed definition designates businesses that do not intermediate transactions and do not “provide[] a service effectuating Exchange Transactions for or on behalf of customers” as Reporting CASPs. For example, the definition would capture entities that “mak[e] available a trading platform that *provides the ability for... customers to*

⁴ “Crypto-Asset Reporting Framework,” 43.

effectuate Exchange Transactions...⁵ (emphasis added). A transaction that a *user effectuates on her own behalf* does not involve an intermediating “individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers....”⁶

Entities that do not intermediate transactions should not be designated as intermediaries in scope. We welcome the opportunity to collaborate with the OECD to clarify which entities will be considered intermediaries in scope while also exploring novel means through which tax compliance can be augmented in disintermediated markets.

Reporting Requirements

In response to the CARF’s guidelines for reporting requirements, we believe that there are many potential issues with the outlined requirements applied to the relevant transactions in crypto-assets, and the opt-in reporting on external wallet addresses.

- The basis of the CARF’s guidelines rest on the ability of service providers to determine a fair market value of a token. This is inherently problematic due to the decentralized nature of most tokens in the crypto market: there is no standard or global price of tokens at any given time, as prices differ between service providers. This could present a myriad of unworkable problems for service providers in determining the “fair market value” and coordinating that value between providers.
- The determination of a “fair market value” is further complicated by the existence of airdrops for both fungible and non-fungible tokens. Airdropped tokens are not purchased by recipients; rather, the tokens are received free of charge. Airdrops are to be encapsulated under the definition of a transfer and, therefore, service providers would be required to determine a fair market value of an asset that, in many cases, has an indeterminate value because it was received free of charge. Airdrops are critical to the launch of many newly created tokens in the ecosystem, and requiring the same reporting requirements and market valuation on these “free” tokens is unworkable.
- In paragraph 20 under the subtitle “Reporting Requirements,” the CARF allows for tax authorities to opt into receiving reporting on the list of external wallet addresses to which Reporting CASPs transfer crypto for users in an effort to increase visibility. We believe such a requirement, even if optional, represents a substantial infringement on the privacy rights of users, and would unnecessarily create a centralized list of all wallet addresses for which Reporting CASPs have effectuated transfers to or on behalf of their users. As a result, we do not support even an opt-in approach by which tax authorities

⁵ Ibid.

⁶ Ibid.

might gain access to said information, as it is not necessary to promote tax compliance, nor would it fulfill any policy goal described within the framework.

Due Diligence Procedures

In response to the due diligence procedures of the CARF and its relationship with the Common Reporting Standard (“**CRS**”), we generally agree with the CARF’s procedures to be followed by centralized Reporting CASPs in identifying their crypto-asset users. However, as explained above, we note that the non-intermediaries currently captured by the CARF’s definition of intermediaries in scope are not capable of performing, and should not be required to perform, the due diligence procedures set forth here. Accordingly, if the OECD were to maintain its current definition of intermediaries in scope, these due diligence procedures would be unworkable.

* * *

We thank the OECD for the opportunity to comment on the “Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard.” The Blockchain Association and the DeFi Education Fund support efforts to modernize the existing framework to properly address tax compliance within the cryptocurrency space. We are dedicated to working with the OECD to construct a framework that works both for the industry and tax authorities and are available to discuss and answer any questions regarding our submission at the OECD’s convenience.

Sincerely,



Jake Chervinsky
Head of Policy
The Blockchain Association



Miller Whitehouse-Levine
Policy Director
DeFi Education Fund