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Submitted via Email

Re: Written Comments in Response to Proposed Enhancements to the Common Reporting Standard for Virtual Assets

Dear Director Saint-Amans, Dr. Pross, and Mr. Kerfs:

The Chamber of Digital Commerce (the “Chamber”) welcomes the opportunity to submit this letter on the proposed application of the Common Reporting Standard (“CRS”) to virtual assets, a topic under consideration by Working Party 10 (“WP 10”) of the Organisation for Economic Co-operation and Development (“OECD”).

A. About the Chamber

The Chamber is the world’s largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology. We are supported by a diverse membership that represents the blockchain industry globally. Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a responsible, pro-growth legal environment relating to the application of laws concerning anti-money laundering (“AML”), securities, tax, and other rules. We believe such an approach
fosters trust, innovation, job creation, and investment, while building protections from bad actors.

Our members include the world’s leading innovators, operators, advisory firms, and investors in the blockchain ecosystem, such as leading-edge startups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, and investment firms. Consequently, the Chamber and its members have a significant interest in the appropriate regulation of activities involving blockchain and distributed ledger technology.

B. Summary

CRS provides a framework and minimum standard for countries to gather and exchange information with respect to financial accounts maintained with reporting financial institutions (“FIs”) so as to help participating countries minimize the potential for tax evasion. The goal is increased global tax transparency and efficiency of tax administration.

The Chamber believes that applying the principles of CRS to virtual assets is generally consistent with the goals of increasing global tax transparency. This should be done by:

• Ensuring that the rules applicable to virtual assets services providers (“VASPs”) are not more burdensome than the rules for FIs dealing with traditional financial assets – adhering to the principle that similar activities be regulated similarly;
• Subjecting only exchange-traded virtual assets to CRS reporting;
• Excluding non-custodial wallets from the definition of “reportable account” (“accounts”) and manufacturers and developers of non-custodial wallets from the definition of “financial institution;”
• Reporting on an aggregate basis, not transactional basis, consistent with existing CRS reporting;
• Reporting on the basis of units of virtual assets as opposed to local fiat values, when and as appropriate;
• Broadly adopting existing account due diligence rules for traditional financial assets and FIs, while considering their paperless and mobile nature in the virtual asset ecosystem; and
• Allowing for appropriate transition rules including appropriate lead-in time for due diligence for new and pre-existing accounts and future CRS reporting.
• Countries should provide a safe harbor to companies making a good faith effort to comply under one reporting regime relevant to its business model until clarity on virtual asset vs. e-money CRS regimes is provided in domestic legislation.

Such an approach is aligned with the current CRS framework and will improve tax authorities’ abilities to:
• Assess whether a taxpayer owns virtual assets for risk assessment purposes;
• Determine whether activities involving virtual assets present the potential for reportable income;
• Aid in confirming a taxpayer’s tax calculations; and
• Minimize misleading/erroneous reporting.

In our view, reporting along the lines we suggest minimizes the potential for data distortion and the imposition of undue burdens that discourages entrepreneurship and innovation.

C. Clarification of Scope of Virtual Assets Subject to CRS

We provide the following suggestions with respect to the WP 10 suggestion to use the definition of “virtual assets” developed by the Financial Action Task Force (“FATF”):

A virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.¹

1. Defining Virtual Assets

The proposed definition of virtual assets is overly broad and, we believe, will result in the reporting of information that has no relationship to tax evasion. We note that the FATF published detailed guidance in conjunction with adopting this definition to clarify the intended scope of the new framework, among other things.² In our view, in the context of tax compliance, the definition of virtual assets should include the closest corollary to financial assets such as virtual assets traded on an exchange.

One example of the over breadth of this proposed definition is that it would apply to tokens usable only in a gaming environment to purchase in-game items (e.g., additional lives, enhanced-powers, weapons). We also suggest limiting the definition to virtual assets that have a readily ascertainable market value because they are traded on exchanges and can be used for payment purposes outside a specific (or closed) environment.

2. Assessing the Treatment of Stablecoins

Another area requiring clarification relates to stablecoins, which have become a topic of discussion by central banks, governments, and international bodies. Stablecoins are designed to establish price stability while still transacting quickly and efficiently in a digital environment. They can have varied governance structures and stabilization mechanisms, among other things, that may prompt different regulatory treatment and policy objectives.\(^3\)

This is an area that is evolving rapidly. Consequently, further study is required to better define which characteristics trigger which specific obligations. In this regard, however, a number of principles should be maintained. First, any clarity should specify one reporting regime (i.e., it should be clear that duplicative reporting is not required). Industry engaging with virtual assets needs clarity on which reporting obligations apply to ensure appropriate compliance. Second, rules should be clear so that taxpayer analysis is not required to determine which regulatory regime applies. In this regard, WP 10 should clarify whether stablecoins, or certain types of stablecoins, are subject to the requirements for virtual assets, e-money, or other regimes.

**D. Crafting the Scope of Reporting Obligations: Definition of Accounts and FIs**

The notions of “financial account” and “financial institution” under CRS ensure that the businesses with information relevant to the sales, income, and identifying data that are also relevant to the goals of CRS are the enterprises tasked with reporting obligations.

1. **Wallets\(^4\)**

The definition of financial accounts should include the closest corollary to accounts holding financial assets. This means that the scope of financial accounts should include only those relationships where the entity maintaining the financial account has information required to be reported under CRS. In this case, that is custodial wallets. This also means that providers of tools and applications to financial institutions and investors should be excluded. For example, the makers of storage devices that can be used for traditional financial assets, such as vaults, do not have reporting obligations. Similarly, the makers of non-custodial storage devices and applications for virtual assets

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\(^4\) Wallets are software applications or other digital mechanisms for transferring and otherwise managing digital assets (e.g., hold, buy, sell, or trade). A wallet can be hosted or non-hosted. Hosted wallets are those whereby the developer of the wallet software maintains the private key to the digital assets of the user under an agreement with the user or allows the user the option to hold the private key with a third-party custodian. A non-hosted wallet facilitates engagement by users but does not maintain the private key on behalf of the user. Wallet services are often provided in conjunction with other services described above. IRS Comment Letter on Information Reporting for Virtual Currency Transactions, CHAMBER OF DIG. COMMERCE (Apr. 3, 2020), https://digitalchamber.org/wp-content/uploads/2020/04/Chamber-of-Digital-Commerce-IRS-Comment-Letter-on-Information-Reporting-for-Digital-Asset-Transactions.pdf.
where there are no relationships that produce information relating to the goals of CRS should not be subject to reporting obligations. Likewise, institutions providing safekeeping or similar services for such storage devices should not be considered as maintaining accounts where such safe-keeping affords no visibility into transactions or balances in the device.

2. Decentralized Platforms

In the context of CRS, FIs are defined as legal persons that perform certain functions relating to financial assets. This definition presents challenges in the context of decentralized platforms because there is no legal person performing the functions that trigger FI status. Rather, a software protocol performs those functions. Accordingly, we recommend that WP 10 further study the potential application of CRS to decentralized trading platforms that are not legal persons prior to the publication of any special rules for such platforms, particularly as this area of technological innovation is in its nascent stages. Retaining the current definition of legal person embedded in the definition of FI accomplishes this.

Further, we do not believe that excluding decentralized exchanges from the scope of CRS at this stage would lead to increased tax evasion because the vast majority of known transactions take place with the involvement of a VASP.

E. Nature of Account Information Required to Be Provided

Once the scope of entities subject to reporting is appropriately determined, the next question is what information must be reported. We believe any requirements should follow those applicable to FIs in traditional financial markets – with modifications reflecting the nature of digital assets.

1. Determining the Scope of Reportable Information

The scope of reportable information with respect to virtual assets should be defined by reference to the scope applicable under current CRS to reportable accounts, i.e., personal identifying information, year-end account balance, income, and gross proceeds. Transactional level reporting is currently not done, nor is reporting on purchases.

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6 For example, name, date and place of birth, residence, and TIN/jurisdiction where tax resident.
7 We note that what constitutes income in the virtual asset environment is not settled and is not consistent among jurisdictions.
8 Particular reporting requirements can vary based on type of account. Gross proceeds reporting is not required for deposit accounts, for example.
a. **Transaction Reporting**

If the virtual asset market were asked to provide more information than the securities market, this would not result in any meaningful benefit to tax authorities due to the complexity of the information and the nature of the virtual assets. For instance, many taxpayers use virtual assets as a means of exchange and consequently may transact in the asset multiple times per day. To report on a transaction-by-transaction basis would be overwhelming and potentially unhelpful to the authorities based on volumes alone.

We recognize, however, that there may be times when the authorities will want more detail. In those circumstances, we suggest that they request additional data as needed through appropriate means. This ensures that administrative burdens associated with producing transaction-level details are closely aligned with revenue enforcement efforts of tax authorities.

b. **Cost Basis Reporting**

With regard to cost basis reporting, as noted above, this is not currently required in the traditional markets under CRS. We see little value in requiring that data only for virtual assets.

Separately, the market infrastructure does not currently support basis reporting. Exchanges typically know the cost basis of any asset purchased on their exchange but will not have information for any assets transferred to them. This information can be requested from the taxpayer\(^9\) but, in some cases, the virtual assets were purchased so long ago that information is unavailable and/or the taxpayer did not keep reliable records. Even transfers between custodians are not accompanied by transfer statements with cost basis information. We query the value of cost basis reporting for virtual assets when such a change has not been required for global securities markets.

c. **Aggregate Reporting**

A more effective approach to reporting would be to focus on sale of virtual assets for fiat which would qualify as gross proceeds currently reportable under CRS. Reporting on these transactions does not require the FI to make any interpretational judgments as to whether the transfer of virtual assets was a taxable sale. It also allows the FI to report a monetary value in the aggregate. If there is a desire to require reporting of transactions between FIs even in the absence of a realization event or a change in beneficial owner,\(^9\) A system that relies on self-certification of basis, however, reduces the effectiveness of reporting by third-parties.
or to require year-end reporting of account balances, then we would suggest considering whether any such reporting should be in units of each virtual asset rather than fiat currency value. Reporting in units of virtual asset would eliminate distortions associated with fluctuations in asset value, or uncertainty in actual value, arising from (a) virtual assets that trade as pairs where one or neither has a fiat value on the exchange, or (b) competing industry pricing sources that use different pricing methodologies (e.g., weighted average pricing\(^\text{10}\) versus pricing based on actual sales).\(^\text{11}\)

**F. Due Diligence ("DD") Rules Across Jurisdictions**

The customer identity/tax residency information VASPs collect today depends on the VASP’s involvement in the provision of other, more traditional, financial services to customers, the regulatory requirements to which the VASP is subject (which vary by jurisdiction(s) where the VASP is a tax resident or operates), the transactions in which the VASP’s customers engage, and the virtual assets with which the customers are involved.

In addition to CRS or U.S. Foreign Account Tax Compliance Act ("FATCA") reporting, some VASPs are subject to other tax reporting obligations, which vary by jurisdiction. For example, in Australia, the Australian Taxation Office requires data collection and reporting by cryptocurrency-designated service providers, including identification of Australian tax residents. In addition, many VASPs qualify as “money transmitters” or other regulated non-bank entities subject to AML compliance laws and must verify the identity of their customers, a process which may involve the collection of Taxpayer Identification Numbers (“TINs”) or other documents (e.g., government issued identity documents such as driver's licenses or passports) that suggest tax residency.

Given these existing obligations, we do not see a need for any changes to CRS due diligence requirements, except that it must be clear that the requirements allow DD to be conducted in a paperless, automated, and mobile environment. This is a trend evident not only in blockchain and distributed ledger technology related industries, but in financial systems globally.

**G. Interim Safe Harbor for Good Faith Compliance**

The virtual asset ecosystem is continually, and rapidly, evolving. Different virtual assets may fall under different regimes based on their governance structure, custody of underlying assets, and issuing/exchanging/transfer entity, and other factors. While the OECD and member countries study these issues and make determinations on appropriate information reporting, we suggest that countries provide a safe harbor to companies making a good faith effort to comply with its CRS obligations under one


reporting regime relevant to its business model until that clarity is provided in domestic legislation.

**H. Conclusion**

The Chamber is supportive of expanding the CRS regime to include virtual assets within its scope, with certain modifications to permit unit (rather than valuation) reporting as well as acknowledging the growth of digital DD. The existing CRS reporting regime’s focus on providing aggregate information on financial asset values and aggregate transactions allows for an exchange of useful information across borders without burdening FIs with complex cross-border tax rules. This framework has proven to be a useful tool for increasing tax transparency. We see no reason to impose a higher burden on the treatment of virtual assets and VASPs compared to traditional financial assets and FIs.

Finally, we stress that the virtual asset industry should be permitted appropriate transition time to adapt to these requirements, much like what was provided for traditional FIs.

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The Chamber is pleased to serve as a resource to the OECD and Working Party No.10 on these matters, and we look forward to working with you to consider and address them.

Very truly yours,

Amy Davine Kim