

June 28, 2019

Sales and Excise Tax Division  
Tax Policy Branch  
Department of Finance Canada  
90 Elgin Street  
Ottawa, Ontario  
K1A 0G5

Attention: Mr. Phil King, Director General, Sales and Excise Tax Division, Finance Canada

Via email: [fin.gsthst2019-tpstvh2019.fin@canada.ca](mailto:fin.gsthst2019-tpstvh2019.fin@canada.ca)

Dear Phil,

**Re: Submission regarding the May 17, 2019 Goods and Services Tax/Harmonized Sales Tax Draft  
Legislative Proposals**

Chartered Professional Accountants of Canada (CPA Canada) is writing to summarize our concerns and suggestions on the Department of Finance Canada's (Finance Canada) May 17, 2019 draft Goods and Services Tax/Harmonized Sales Tax (GST/HST) legislative proposals. Unless otherwise noted, all references are to the excise tax act (ETA).

CPA Canada supports Finance Canada's ongoing and continuing efforts to improve and refine GST/HST legislation and its associated regulations and appreciates the opportunity to contribute to this consultation process. A copy of our submission will also be forwarded to the Canada Revenue Agency (CRA) as we have been in discussions with them on the draft legislative proposals.

***About CPA Canada***

CPA Canada and its legacy bodies have represented the views of professional accountants for many years as part of our mission to act in the public interest. CPA Canada works together with the Canada Revenue Agency (CRA) toward making the administration of the Canadian tax system world-class. CPA Canada also regularly recommends tax policy positions to the federal government that we believe would improve the Canadian tax system. Our more than 217,000 professional accountants work in all sectors of the economy, in Canada and abroad. Many of them are tax intermediaries who taxpayers count on to represent their interests with integrity and competence, and to help them comply with Canada's complex tax laws.

CPA Canada's Commodity Tax Committee (CTC) is comprised of representatives from various accounting and legal firms. The committee provides input to CPA Canada on indirect tax, customs and trade policy and



administration issues in Canada, with the objective of improving the indirect taxation system for all Canadians. The members of the CTC are:

- Rosemary Anderson, Thorsteinssons LLP
- Danny Cisterna, Deloitte
- Sania Ilahi, EY LLP
- Simon Proulx, KPMG LLP
- Mario Seyer, PricewaterhouseCoopers LLP
- Shelley Smith, BDO Canada LLP
- Heather Weber, MNP LLP
- Christina Zurowski, Grant Thornton LLP

### ***Introduction***

CPA Canada has reviewed the draft legislation and welcomes many of the proposed changes. This submission will therefore focus on one main area of concern - the proposed GST/HST treatment of virtual currencies. Our concerns can be summarized as follows:

- Including a “virtual payment instrument” (VPI) in the definition of financial instrument could result in entities who transact in VPI to be financial institutions and result in other consequential impacts;
- There is a risk that existing and new forms of virtual currencies will not meet the definition of a VPI; and,
- Further clarity is required on the GST/HST treatment of cryptocurrency mining activities.

### ***Including a “virtual payment instrument” (VPI) in the definition of a financial instrument could result in entities who transact in VPI to be financial institutions and result in other consequential impacts***

The Proposals amend the subsection 123(1) definition of a financial instrument by including a “virtual payment instrument” (VPI) in new paragraph (f.1). This effectively exempts the supply of cryptocurrencies for GST/HST purposes where the definition of VPI is met.

On one hand, such treatment is welcomed, as it eliminates the risk that transactions involving the supply of VPI are double taxed.

However, the proposed treatment of a VPI as a financial instrument could result in entities who use VPI as a money equivalent to be financial institutions for GST/HST purposes. Impacted entities could end up having an unintended reduction of input tax credits (ITCs) where they are otherwise engaged exclusively in commercial activities. Further, they will be required to follow the other rules that specifically apply to financial institutions and unnecessarily complicate their compliance (e.g. filing of the annual information return).

***Recommendation:*** CPA Canada recommends that where a VPI is used as a form of money, it be treated as money as opposed to a financial instrument. This can be achieved by amending paragraph (n) of subsection



*123(1) definition of “financial service” to add “or a VPI” after “money”, so that using a VPI as consideration for a taxable good or service would not be considered a “financial service”.*

#### *Other consequential impacts*

If Finance Canada proceeds with the Proposals as drafted and the use of VPI becomes more widespread, we have identified potential concerns and questions, which include the following examples:

- Would the acquisition or disposition of a VPI be considered a “separate fee or charge for a financial service” under paragraph 149(1)(b)? Could a person become a financial institution under paragraph 149(1)(b) simply by making all its purchases using a VPI?
- Would a payment for a purchase of a good to a non-resident by a financial institution using a VPI be considered an exported financial service under VI-IX-1?
- Would a merchant who is 100% in commercial activity but who only accepts VPIs as payment be entitled to claim ITCs? Are the inputs of the merchant attributable to the sale of goods or to the acquisition of the VPIs?

We encourage Finance Canada to consider each of these (and other) issues and their consequences to taxpayers/registrants, including the potential negative impact of deeming certain entities to be financial institutions.

#### **Risk that not all existing and future forms of virtual currencies will meet the definition of a VPI**

Under the proposed definition, a *virtual payment instrument* must:

- be a digital representation of value;
- function as a medium of exchange; and
- only exist at a digital address of a publicly distributed ledger.

Excluded from this definition is:

- property that confers a right to:
  - be exchanged or redeemed for money or specific property or services; or
  - be converted into money or specific property or services
- property that is primarily for use within or as part of, a gaming platform, an affinity or rewards program or a similar platform or program.

We are concerned that many virtual currency to virtual currency supplies (i.e. supplies involving trading of virtual currencies) may be taxable transactions (i.e. the supply of certain excluded virtual currencies may inadvertently trigger tax when used as money). This is because it appears that many of the more common examples that function as ‘money’ are excluded from the definition such as:

- Utility tokens – confer a right to be exchanged for, or converted into, various goods or services rather than a specific good or service.

- Libra (Facebook coin) – grants the holder the right to convert the coin into various services offered by Facebook. Libra is proposed to start as a permissioned blockchain<sup>1</sup> which is not a publicly distributed ledger and therefore will not meet the proposed definition of a VPI.
- Stablecoins – digital coins “backstopped” or anchored by a hard currency or other asset.
- Gaming platform coins – the device can be used as money to purchase non-game purchases such as voting on community topics and supporting developers which are not additional consideration for rights related to a particular game.

Also, if the Proposals are implemented as drafted, we believe that significant issues will continue to arise if non-VPI cryptocurrencies are used as methods of payment.

For example, a non-registrant individual in Ontario who purchases 100 non-VPI cryptocurrency “units” for \$100.00 CAD pays \$13.00 CAD in HST. If a good is then purchased online for 88.50 units, the individual would pay 11.50 units in HST. The individual effectively pays 28% in unrecoverable HST on a \$88.50 CAD purchase.

Where this same individual is a registrant, ITCs for both the purchase of the units and the good could be claimed. However, the individual would have to collect the HST on the disposition of the 100 units from the online merchant. The merchant may not be ready nor willing to pay the HST on the acquisition of the units. As such, the individual may be required to remit 13/113 of the consideration received for the supply of the units (insofar as the supply of units is treated as tax-inclusive). This is an unfair result as the individual effectively pays \$100.00 CAD for a \$88.50 good.

***Recommendation:** CPA Canada suggests that the Proposals provide further clarity on the treatment of non-VPI cryptocurrency exchanges. We recommend that the consideration for business to business non-VPI exchanges should be deemed to be nil, similar to the barter between registrants rule in subsection 153(3). For business to consumer exchanges, a rule should be introduced so that GST/HST applies in a manner similar to that for gift certificates under section 181.2.*

We are also concerned that with the ever-changing nature of virtual currencies the list of virtual currencies that would be a VPI is too narrow. For example, the definition requires that the ledger must be “publicly-distributed”. We understand that not all ledgers are publicly distributed but rather have some restrictions on access such as being available only to members within an industry or even members of the public at large with a notional additional qualification such as free Facebook membership. Some financial institutions are developing internal cryptocurrencies as secure methods of payments, using ledgers that may or may not be publicly distributed.

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<sup>1</sup> See [Libra White Paper 02 Introducing Libra](https://libra.org/en-US/white-paper/#introducing-libra) at: <https://libra.org/en-US/white-paper/#introducing-libra>



***Recommendation:** CPA Canada recommends amending the Proposals to allow for the ability to prescribe additional VPI that does not otherwise meet the definition.*

***Further clarity is required on the GST/HST treatment of cryptocurrency mining activities***

The proposed amendments do not address the GST/HST treatment of cryptocurrency mining activities. We understand this is an area still being contemplated by Finance Canada. As you consider the GST/HST treatment of cryptocurrency mining activities, we would like to offer some of our thoughts.

It is our view that the validation of blockchain is an activity that most closely resembles the mining for gold from a GST/HST perspective. The validation of a blockchain is a computation-intensive process, often requiring a significant investment of time and money, just as it is for miners of precious metals. The exploration for gold does not necessarily lead to a financial instrument, depending on what is found and whether the extracted minerals are refined to a particular level of purity. Similarly, the validation of a blockchain does not necessarily lead to a financial instrument, especially if the blockchain is not part of a virtual currency system (e.g., it is for a ledger or a smart contract system), or if it is part of a virtual currency system that is not a VPI.

Given the similarities, it is our view that the GST/HST treatment of cryptocurrency mining activities should parallel that of precious metal mining/refining activities. As mining/refining for and the first sale of refined precious metal is considered a commercial activity, we feel that a person engaged in cryptocurrency mining should also be considered a “commercial activity” under subsection 123(1). In particular, section 3 of Part IX of Schedule VI could be amended to incorporate VPI.

Just as it would not be appropriate to deny ITCs to gold miners or refiners simply because of the nature of the metal they happen to mine for or refine, we feel that it would be unfair to deny ITCs to the blockchain miners simply because they validate VPI blockchains instead of other types of blockchains. Neither gold miners nor blockchain miners are “consumers” as defined in subsection 123(1), insofar as they are not individuals, nor are they financial institutions. As such, they should not bear the economic burden of the GST/HST. Furthermore, the beneficiary of a miner’s activity is not an individual or consumer. As such, allowing ITCs in respect of mining activities will not result in any GST/HST leakage.

Finally, the zero-rating of refined gold allows ITCs to be claimed by the miner and/or refiner without tax being charged on the first sale of the refined gold. As a result, there is little or no unrecoverable GST/HST embedded in the creation of a precious metal. Given the similarities to creating a VPI, it is not clear to us why there should be tax embedded in the creation of a VPI.

The mining of virtual currencies is a relatively new but growing industry. As discussed at our recent meeting, many miners are using a significant amount of equipment and electricity as part of their operations. Although there may be some who are doing mining as a sideline, this does not mean that there are not larger operators who are operating a bona fide commercial business.



***Recommendation:** We believe it is important for Canada to adopt specific legislation on cryptocurrency mining activities. As Canada continues to consider this, we recommend that Finance Canada consult with key stakeholders in this industry, to better understand their processes and how their businesses operate, and the possible implications of the various taxation models. We would be happy to help organize a discussion group if that would be helpful.*

We would be pleased to discuss our comments with you in further detail, and we would welcome the opportunity to work with you in the ongoing development of these new rules. We thank you for the opportunity to provide comments to the proposed legislative and regulatory amendments and we look forward to continued collaboration on efforts to improve and refine the GST/HST legislation.

Yours truly,

A handwritten signature in black ink, appearing to read "Heather Weber".

Heather Weber, CPA, CGA

Chair, Commodity Tax Committee  
Indirect Tax Services Leader, MNP LLP

A handwritten signature in blue ink, appearing to read "Bruce Ball".

Bruce Ball, FCPA, FCA  
CPA Canada, Vice President, Taxation

Cc:

- CPA Canada Commodity Tax Committee (CTC)
- Danielle Lafèche, Director General, Excise and GST/HST Rulings Directorate, Canada Revenue Agency
- Jennifer Ryan, Director General, GST/HST Directorate, Canada Revenue Agency