



Comments on the OECD Consultation Document: “Crypto- Asset Reporting Framework”

Coinbase Global, Inc.
29 April 2022

ABOUT COINBASE

Coinbase Global, Inc. (“Coinbase”) is the parent company of one of the largest global platforms for customers to buy, sell, hold and trade crypto-assets. Our mission is to increase economic freedom in the world. We build safe, trusted, easy-to-use technology and financial infrastructure products and services that enable any person or business with an internet connection to discover, transact, and engage with crypto-assets and decentralized applications. Our products provide access to the crypto economy in more than 100 countries and serve as a critical infrastructure layer to Web3. Customers that start with us grow with us as they experience the benefits of crypto-based products for investing, staking, spending, borrowing and transacting in crypto in a growing number of use cases. Today, our platform enables approximately 89 million retail users, 11,000 institutions, and 210,000 ecosystem partners to engage with crypto-assets.

EXECUTIVE SUMMARY

Coinbase welcomes the opportunity to submit comments and provide its views on the OECD Consultation Document: Crypto-Asset Reporting Framework (“CARF”). As noted by the OECD, financial markets have experienced significant technology developments that are having a major impact on investment and payment practices. The development of cryptography and distributed ledger technology is increasing the number of financial market participants beyond traditional financial intermediaries and central administrators. The OECD has expressed concern that Crypto-Assets,¹ which can be transferred and held without the intervention of traditional financial intermediaries, are not reportable under the Common Reporting Standard (CRS). The lack of a central authority with visibility into the transactions has led to the perception that Crypto-Asset users are exploiting the lack of transparency to underreport their income. This requires the modernization of reporting rules to provide authorities with tools they need to ensure users are accurately reporting their income.

The G20 requested the OECD create a stand-alone framework for the automatic exchange of information on Crypto-Assets. The proposed framework ensures that Crypto-Asset transactions are brought into information reporting rules. The CARF mirrors many of the reporting requirements of the CRS regime and introduces sweeping new third party information reporting requirements for Crypto-Assets that far exceed the CRS reporting obligations imposed on traditional financial assets and market participants. The rationale for the CARF is that income can be earned from Crypto-Assets without the use of traditional financial intermediaries and this poses novel

¹ The term “Crypto-Asset”, “digital asset”, and “cryptocurrency” will be used interchangeably throughout this document. It should be noted that there are no standard definitions used by all tax authorities or regulators; the use of “Crypto-Asset” is not intended to endorse any definition.

challenges for tax authorities in ensuring efficient tax administration and compliance. Under the CARF, information reporting will be required on a wide range of crypto-asset transactions facilitated by a Reporting Crypto-Asset Service Provider.

The CARF should provide a framework equivalent to financial asset reporting and allow a nascent industry time to develop systems that are capable of supporting the complex products and transactions within its ecosystem. We understand that tax administrators need transparency and are supportive of providing them with quality data that will allow them to ensure taxpayer compliance with their tax obligations. Our comments are centered on the need for the development of effective, efficient and pragmatic standards that provide for:

1. Phased implementation;
2. Parity with financial institutions subject to CRS; and
3. Conformity with FATF principles.

To date, we have actively participated in the OECD consultation process and have endeavored to provide useful and constructive comments. The CARF was published on 22 March 2022 with a comment deadline of 29 April 2022, this short period to provide comments is inadequate for a document that proposes to impose significant requirements on a developing market. We urge you to take sufficient time to develop a phased implementation roadmap and a proportionate compliance framework for the sector that delivers actionable data for the governments without stifling the industry and adversely affecting consumer and market behavior.

COINBASE COMMENTS

1. Phased Implementation

The CARF imposes significant tax information reporting obligations on most crypto-asset transactions. Specifically, reporting will be required on the following transactions:

- exchanges between Crypto-Assets and fiat currency
- exchanges between one or more forms of Crypto-Assets
- “Retail Payment Transactions” – which covers the use of Crypto-Assets as payments for goods and services
- transfers of Crypto-Assets

Reporting Crypto-Asset Service Providers must track and report granular transactional data (user demographics, aggregate payments reported on each crypto-asset and the different currencies that are accepted as payment for its purchase). Many of these data points are not currently required to manage existing account relationships. Consequently, service providers will need to develop systems to collect and store this information. The CARF will require market participants to make numerous technical and operational modifications prior to its implementation.

The OECD and participating jurisdictions need time to issue and refine regulations with the aim of designing a system that is “common” across all relevant participating jurisdictions. Reporting Crypto-Asset Service Providers need time to develop, modify and test their systems to ensure effective tax information reporting. As a result, the OECD should approach implementation of CARF as an agile and iterative process. With this in mind, the development and implementation of the CARF should be designed as a phased roadmap allowing time for adjustments and

modifications based on feedback from the affected parties (governments and Reporting Crypto-Asset Service Providers).

We propose two phases for implementation focusing first on the relatively mature portions of the Crypto-Asset market, specifically:

- **Phase 1:** cryptocurrency-transactions executed on centralized crypto-exchanges and other regulated entities.
- **Phase 2:** crypto currency-transactions occurring on decentralized platforms utilizing smart contract technology and emerging categories of Crypto-Assets such as, (i) derivatives in the form of crypto-contracts and (ii) NFTs.

Within each phase, the OECD should provide time for feedback and suggestions about what is working both from the perspective of the Reporting Crypto-Asset Service Provider and the participating jurisdiction. This will benefit both Reporting Crypto-Asset Service Providers and participating jurisdictions.

We recommend that Phase I should be effective not sooner than 18 months after the adoption of the framework in participating jurisdictions. Modification of systems cannot begin until the requirements are finalized and define the parameters for compliance. If the new requirements take effect prematurely, Reporting Crypto-Asset Service Providers will not be able to comply with the new requirements resulting in participating jurisdictions receiving unreliable information.

Participating jurisdictions will need this time to issue legislation and supporting regulations. Additionally, tax authorities may need to obtain funding and modify their technology to utilize the information effectively and efficiently. The recommended phased implementation and effective dates will allow Reporting Crypto-Asset Service Providers and participating jurisdictions to focus their time and resources on the most developed aspects of the Crypto-Asset marketplace.

Phase 2 should be implemented after Phase 1. It is important to note that decentralized finance (DeFi) is an emerging technology that allows financial transactions to be processed in a peer to peer manner on a public blockchain, combining a front end user interface application and smart contract technology. Despite its rapid growth it is still in the early phases of development. DeFi needs time to mature prior to imposing information reporting requirements that may stifle innovation and prevent new entrants to the market. NFTs are in a similar situation. While some NFTs have high value and visibility, most do not. Valuations are difficult if not impossible to obtain and while all NFTs in theory have the ability to be exchanged most in practice are not. The industry requires time to build systems capable of differentiating the different use cases for NFT use and methodologies to accurately value them.

It should be noted that the implementation of FATCA and CRS required six years. FATCA required four years. The CRS required two years, in part, because it closely mirrored the FATCA framework. CRS was developed with the benefit of the comments provided for implementing FATCA. CARF can be developed with the benefit of the lessons learned by FATCA and CRS however, the industry and technology is new and requires an iterative and agile approach.

2. Parity with Financial Institutions Subject to the CRS

The CARF applies more onerous tax due diligence and reporting obligations on Reporting Crypto-Asset Service Providers. The following observations highlight significant disparities between the CRS and CARF as well as suggestions to more closely align these reporting regimes.

- **Due Diligence Considerations**

- **Documentation Expiry:** The CARF requires self-certifications to be renewed every 36 months or sooner if there has been a significant change in circumstances that causes the self-certification to be unreliable. Financial institutions under CRS, are permitted to rely on an otherwise reliable self-certification indefinitely so long as there has not been a significant change in circumstances. The CARF documentation standards should align with CRS. This will prevent Reporting Crypto-Asset Service Providers that are also CRS Reporting Financial Institutions from having to apply two standards to their self-certification procedures. Any self-certification collected under CRS even if provided for a Crypto-Asset user should not have the 36 month rule applied.
- **Pre-Existing Account Procedure:** CARF requires Reporting Crypto-Asset Service Providers to obtain a reliable self-certification from pre-existing Crypto-Asset users within 12 months of a participating jurisdiction's implementation of rules. Reporting Crypto-Asset Service Providers should have the option to perform an electronic search of pre-existing Crypto-Asset user records to determine the reportable jurisdictions under the concept of a 'pre-existing account', similar to the CRS. The consequence of this is that a self-certification should only be required for a pre-existing Crypto-Asset user where the Reporting Crypto-Asset Service Provider is unable to determine the tax residency of a pre-existing Crypto-Asset user. Additionally, a risk based approach to documenting pre-existing Crypto-Asset users should be available. Pursuant to the CRS, pre-existing accounts with a low value only require an electronic records search for specific indicia (participating jurisdictions, hold mail etc.). If no indicia is identified then the account is not subject to reporting until there was a change in circumstances.

- **Reporting Considerations**

- **Aggregate Reporting:** Pursuant to the CRS, financial institutions are obligated to report aggregated interest and dividend payments in addition to the financial account balance or value. There is no obligation under CRS to report specific assets that produce the interest or dividend income or that make up the balance or value in an account. The CARF requires gross-proceeds reporting on an asset-by-asset basis whenever there is a transaction (e.g. a Crypto-Asset is acquired or disposed of in exchange for fiat or another Crypto-Asset). We believe that effective tax information reporting can be achieved through aggregate reporting without the additional need and burden to report transaction type or Crypto-Asset type.
- **Acquisition Reporting:** Pursuant to the CRS, the acquisition of a financial asset is not subject to reporting. Reporting Crypto-Asset Service Providers should not be required to report Crypto-Asset acquisitions by their Crypto-Asset users. This is a novel approach in the CARF. Typically, tax authorities focus tax information reporting on transactions involving an income realization and recognition event.

3. CONFORMITY WITH FATF PRINCIPLES

Consistent use of terms across overlapping regulatory regimes allows affected organizations to more efficiently and effectively comply with similar obligations. CARF should seek to conform its requirements and definitions to those contained in FATF.

Moreover, the CRS builds on AML/KYC standards established by the FATF 2012 Recommendations. CARF relies on AML/KYC standards established by the FATF 2019 Recommendations. FATF 2019 has not been implemented in all jurisdictions. This alone will mean that the CARF will not be standardized between participating jurisdictions if all participating jurisdictions have not implemented the FATF 2019 Recommendations. This disparity becomes more apparent when a Reporting Crypto-Asset Service Provider is also a CRS Reporting Financial Institution.

- **Definitional Distinctions:** An immediate limitation to the CARF is the broadly defined term: Crypto-Asset. A Crypto-Asset under CARF includes a digital representation of value that relies on a cryptographically-secure distributed ledger or a similar technology to validate and secure transactions. The CARF's definition is broader than the related FATF definition of a "virtual asset," which includes a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. Given the dependencies between the CARF and FATF the same definitions should be used.
- **Self-Certification & Account Blocking:** CARF requires Crypto-Asset service providers to obtain a self-certification from all Crypto-Asset users, with certain exclusions, and if not provided, refuse to effectuate relevant transactions. The collection of a self-certification is outside of the scope of FATF. If a Reporting Crypto-Asset Service Provider has satisfied FATF requirements, but failed to collect a self-certification with respect to a Crypto-Asset user, it is unreasonable to expect that providers will refuse to effectuate relevant transactions for an otherwise compliant Crypto-Asset user. Crypto-asset users should be reported to all participating jurisdictions in which there are relevant indicia. Tax Authorities have the ability to legislate punitive withholding and other penalties on non-compliant Crypto-Asset users. Accordingly, Crypto-Asset service providers should not be required to block accounts when they have complied with their FATF obligations.
- **Low risk assets:** Eliminating low risk assets from due diligence and reporting obligations provides tax authorities with filtered tax information that can inform tax authority risk assessments. FATF provides the ability for jurisdictions to set a reportable threshold, while CARF does not. For instance, low risk assets, such as stablecoins and other coins are not designed to deviate from a defined value and therefore are not expected to generate gain for income tax purposes. On this basis, low-risk assets should be eligible for an exemption or be subject to a de-minimis threshold similar to FATF.

ADDITIONAL CONSIDERATIONS

As noted above, there are significant steps that the OECD can take to ensure an efficient, effective and pragmatic CARF implementation process. Use of conforming standards and harmonization with existing requirements will improve the likelihood of successfully implementing CARF while

limiting any unnecessary barriers to the steady growth and adoption of Crypto-Assets. We would appreciate the OECD's consideration of the following additional observations:

- **Complexity leads to variations in implementation:** The CRS was intended to be “common” however, there is significant variation based on local market conditions, maturity, insufficient tax authority systems, etc. The CARF is more complex than the CRS. Under CRS local tax authorities created additional requirements and variations in the reporting schema as a result of system limitations and local market considerations. We would expect even more variation in the Crypto-Asset market thereby undermining the notion of a common framework.
- **Consumer Awareness:** Income tax terminology is generally derived from its use and context. Compliance rates are highest when terms and requirements are clear and simple to understand. In the context of the CRS, account holders are frequently confused by the terminology and standards which has led to erroneous information being reported to tax authorities. This lack of understanding, is due in part, to the lack of standard self-certifications with instructions. For example, the definitions of tax residency and non-financial entities continue to create challenges in the market. The CRS provides a similar standard yet taxpayers are still confused. The CARF notes that reportable jurisdictions are expected to help taxpayers determine their residence and status. Experience with the CRS demonstrates that more standardized detailed guidance is required to ensure effective reporting. Clear examples and guidance should be provided by the OECD and participating jurisdictions to Crypto-Asset users to increase the accurate completion of self-certifications. For instance, a participating government could sponsor standard online questionnaires or forms with instructions to facilitate Crypto-Asset users in determining their tax residency and CARF status.
- **Utility of Data Reported:** The CARF requires the reporting of granular transactional data. It is unclear how all of the required data points will be utilized by tax authorities to monitor and enforce compliance. Commentary on the utility of data collected for FATCA and CRS underscores the need to tailor the required data to that which can be effectively utilized.²
- **Payment for goods and services:** The CARF requires reporting of Crypto-Assets used to purchase goods and services. This reporting applies to the purchaser as well as the merchant receiving payments. Cash transactions are not subject to any rule like this: it is a significant departure from what is required under FATCA and CRS. The practical difficulties of collecting self-certifications and reporting regular purchases of goods and services are self-evident. The OECD should reconsider this requirement until it determines which transactions pose a significant risk of tax avoidance or evasion.

² See. Tax Analyst interview of 13 April 2022 with the IRS (Charles Rettig), the 7 April 2022 TIGTA report <https://www.treasury.gov/tigta/auditreports/2022reports/202230019fr.pdf>. “[The], IRS has all this FATCA information they've not been able to use,” were waiting for the funding.”; He also made the point that while information reporting for virtual currency would be well received if they do not receive funding just building a bigger haystack to be out in the yard, and by itself those haystacks are not impactful. Certainly, there's a deterrent effect any time you have information reporting, but you don't burden people just to create a deterrent effect.; EU Report of 26 January 2021 on the effectiveness of CRS data https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf Exchanging tax information in the EU: solid foundation, cracks in the implementation The European Court of Auditors EU found that (Item 68 page 31) that of the 150 items of tax information received for 2016 over 60 pieces of information were disregarded without risk analysis and justification and that only 45 resulted in further tax related actions. In this case institutions implemented systems and processes to report a substantial amount of data and only a small portion resulted in actionable data.

- ***A technology-neutral framework:*** In an effort to achieve a technology-neutral framework, the CARF should focus on the characteristics of the Crypto-Asset and the taxation of that asset, not the technology used to make the asset available.

Thank you for the opportunity to comment on this important framework. We appreciate your consideration of our comments and recommendations. If you have any questions, please feel free to contact us and we will be glad to discuss or assist in any way. We look forward to working with you on this important initiative.

Very truly yours,

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