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Her Majesty's Revenue & Customs

By email to financialproductsbai@hmrc.gov.uk.

31 August 2022

Dear Sir/Madam

Re: The taxation of Decentralised Finance involving the lending and staking of cryptoassets

We welcome the opportunity to provide input to this HMRC consultation paper ascertaining whether administrative burdens and costs could be reduced for taxpayers engaging in Decentralised Finance lending and staking, and whether the tax treatment can be better aligned with the underlying economics of the transactions involved. The EMA represents FinTech, BigTech and technology firms engaging in the provision of alternative digital payment services, including the issuance of e-money, e-money tokens, and cryptoassets. Our members include leading payments and e-commerce businesses providing online payments, card-based products, electronic marketplaces, and increasingly cryptocurrency exchanges and other cryptocurrency related products and services. The EMA has been operating for over 20 years and has a wealth of experience regarding the regulatory framework for electronic money and payments. A list of current EMA members is provided at the end of this document. We have a monthly cryptoasset working group that meets to discuss issues of regulatory significance for the cryptoasset sector.

We would be grateful for your consideration of our comments, which are set out below.

Yours faithfully

A handwritten signature in black ink that reads 'Thaer Sabri'. The signature is written in a cursive style with a long horizontal stroke at the end.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA Response to Consultation:

Question 1:

HMRC would like more information about the UK DeFi lending and staking sector. Please provide any information you hold that is relevant to the following questions. Where appropriate, please summarise data using appropriate ranges or categories, rather than providing only totals or minima and maxima.

- **How many DeFi lending and staking platforms are you aware of that are based in the UK? What is the approximate value of their assets?**
- **Approximately how many UK-based individuals engage in DeFi lending and staking, and how much do they lend/stake?**
- **How many non-UK-based individuals are served by UK platforms and what amounts do they invest?**
- **How frequently do individuals transact, and what is the duration of each lending or staking transaction?**
- **Approximately what percentage of UK-based individuals engaging in DeFi are serviced wholly or mainly by UK platforms? Where else are the platforms UK individuals use commonly based?**

Question 2:

Bearing in mind that UK individuals are subject to the same tax treatment for DeFi lending and staking wherever the platforms they use are located, does the current tax treatment make the UK less attractive to platforms as a place to do business? If so, which jurisdictions are favoured and why?

The UK could be seen as a less attractive place to do business, when rules create situations where transactions are treated as “disposals”, despite the effective economic ownership of the cryptoassets being retained. This creates a tax liability despite no gain being realised.

The approach to tax in the UK could also give rise to significant administrative burdens, with the requirement to record and report individual transactions (as opposed to net gains and losses), alongside the need to determine and record the market value of assets at each step in the transaction.

Some jurisdictions have benefited from introducing a less onerous cryptoasset tax framework for individuals. Portugal treats all proceeds from individual cryptoasset transactions as exempt from capital gains tax, income tax and VAT. Singapore similarly does not subject individual crypto transactions to any tax. Switzerland, meanwhile, treats cryptoasset profits as exempt from capital gains tax, while applying income tax. This could provide some context for the UK approach.

Question 3:

Approximately what proportion of DeFi lending and staking transactions give rise to disposals for tax purposes under the current rules?

Question 4:

Of the transactions giving rise to the disposals, what proportion would fall within the (i) Repo rules and (ii) Stock Lending rules, if cryptoassets were treated as securities?

Question 5:

Do you favour changes to the current rules?

Yes, we are in favour of changing the current rules, as they could contribute to making the UK less attractive for both platforms and individuals.

The UK Government has outlined its plan to become a “global hub” for cryptoassets – in order for this vision to be achieved, a key ingredient is an appropriate and technology friendly tax framework is put in place, for DeFi lending and staking and for cryptoasset trading as a whole.

Question 6:

Do you consider Option 1 to be a suitable model for DeFi lending and staking transactions? If appropriate, should the Repo, the Stock Lending or both regimes be expanded to apply to DeFi transactions?

We do not consider Option 1 to be a suitable model for DeFi lending and staking transactions. This is because classifying cryptoassets as ‘securities’ is not appropriate, resulting in the introduction of disproportionate obligations, restrictions and rules.

Question 7:

Do you consider Option 2 to be a suitable option? Should the new rules be modelled on the Repo rules or the Stock Lending rules, or would both sets of rules be needed to cater for different contractual arrangements?

Option 2 may provide a basis for developing a more tailored tax treatment of DeFi lending and staking. It could for example remove from the scope of Capital Gains Tax certain lending and staking activities, without requiring cryptoassets to be classified as ‘securities’. The Repo and Stock lending rules have proven to be effective in scenarios where transfers and transactions of an asset do not amount to the disposal of all economic rights.

The rules under the Repo and Stock regimes however, have been designed specifically with securities transactions in mind and would thus require development to provide for an appropriate approach for the variety of transaction types that Defi lending and staking may give rise to. As such, our preference is for Option 3 (as outlined below).

Question 8:

Do you consider Option 3 to be a suitable option? What are its pros and cons?

We are supportive of Option 3 as the most suitable option for the taxation of DeFi lending and staking. This is because it would create a new, custom-built, fit-for-purpose approach to taxing DeFi lending and staking, meaning it can be designed to incorporate the variety of transaction types which may occur under this activity.

It would also allow for the transfer of cryptoassets for lending and staking to be seen a ‘no gain no loss’ transaction, by treating the disposal value as matching the acquisition cost. Thus, a Capital Gains Tax gain or loss would only arise when cryptoassets are disposed of in a non-lending or staking transaction.

The adoption of Option 3 would remedy the current issues in taxation of DeFi lending and staking, in particular around treating transactions where economic right is retained as a 'disposal'. It would also allow for a tax framework which is forward-looking and appropriate, taking into account the growth of the DeFi sector as a whole. It could also go some considerable way to making the UK a more attractive jurisdiction, both for platforms and individuals, and consequently help achieve the Government's vision of a UK global hub for cryptoassets.

Question 9:

Are there alternative approaches to the taxation of DeFi lending and staking that have been adopted by other jurisdictions that the government could consider? If so, please provide more details and reasons.

Question 10:

Besides the options outlined above, are there any further options for change that the government could consider?

We are supportive of the UK considering new approaches to the taxation of cryptoassets as a whole, particularly for individuals, alongside the much-needed consideration of updating the tax rules for DeFi lending and staking.

The current tax framework creates a large administrative burden, and is less favourable than that of some other competing jurisdictions.

A number of jurisdictions, particularly in Europe, have introduced favourable tax rules for cryptoasset trading, including exempting crypto profits from capital gains tax, alongside favourable tax rules for cryptoasset firms and platforms. This has prompted firms to express a preference for these jurisdictions creating both economic and development opportunities.

Question 11:

How could the government be confident that any proposed rules would not discriminate in favour of users of DeFi services?

List of EMA members as of August 2022:

- [AAVE LIMITED](#)
- [Account Technologies](#)
- [Airbnb Inc](#)
- [Airwallex \(UK\) Limited](#)
- [Allegro Group](#)
- [American Express](#)
- [ArcaPay Ltd](#)
- [Azimo Limited](#)
- [Banked](#)
- [Bitpanda Payments GmbH](#)
- [Bitstamp](#)
- [BlaBla Connect UK Ltd](#)
- [Blackhawk Network Ltd](#)
- [Boku Inc](#)
- [Booking Holdings Financial Services International Limited](#)
- [CashFlows](#)
- [Circle](#)
- [Citadel Commerce UK Ltd](#)
- [Contis](#)
- [Corner Banca SA](#)
- [Crypto.com](#)
- [Curve](#)
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- [ECOMMPAY Limited](#)
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- [ePayments Systems Limited](#)
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