

The crypto-economy and tax practitioner competencies: an Australian exploratory study

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Abstract

This study examines how tax practitioners are responding to clients participating in the crypto-economy, with a particular focus on the *Tax Agent Services Act 2009* (Cth) Code of Professional Conduct. Employing both interview and survey methodologies, the study investigates crypto-economic activities undertaken by clients and gathers practitioner perspectives on several issues. These include current regulation and guidance as well as the implications for practitioner skills and competencies, applying the law, acting lawfully, and ascertaining client's affairs. The findings have key implications for tax reform, particularly relevant given the Board of Taxation's review into digital assets and transactions.

Keywords: blockchain, crypto-economy, cryptoassets, tax practitioners, TASA, code of professional conduct, competency, knowledge, Australian Taxation Office, tax compliance, web guidance

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1. INTRODUCTION

As the world progresses towards increased digitalisation, there is a need to continually reflect on the lag between digital transformation and complex regulations (Inspector-General of Taxation (IGT), 2018), whilst also ensuring the continued maintenance of taxpayer rights, equity, and fairness (Bentley, 2019) within the context of public accounting and advisory services. Schmitz and Leoni (2019) explicitly called for the need to examine the level of technological understanding and skill sets needed by practitioners to serve clients who make use of blockchain technology. This study is one such response.

We agree that there is a fundamental need to better understand how practitioners are responding to this digital technology, what issues practitioners and clients are facing, and how this is impacting on the behavioural and social outcomes between these parties. This ultimately leads us to question the implications for the necessary skills and roles in professional practice in a digital economy, stemming from the codes of professional conduct, such as the *Tax Agent Services Act 2009* (Cth) (TASA 2009) Code of Professional Conduct (TASA Code). Such connectedness between emerging technology and ethics is a key issue within the accounting and auditing profession (see, for example, Nguyen et al., 2023; International Ethics Standards Board for Accountants (IESBA), 2022).

For the tax profession specifically, the Australian Treasury (2023) noted that over 1 million Australian taxpayers were expected to lodge their 2022 income tax returns with crypto-related activities. This followed the Senate Select Committee on Australia as a Technology and Financial Centre (previously known as the Senate Select Committee on Financial Technology and Regulatory Technology) Final Report (2021) (Bragg Report) reporting that close to 25% of Australian taxpayers have either held or hold cryptoassets. Whilst a ‘crypto winter’ has led to significant declines in market capitalisation since 2022, there remains a need to ensure regulatory frameworks are fit for purpose in a digitalised economy. As Australian Treasury (2023, p. 6) describes:

To capitalise on ... opportunities and ensure consumer and business trust and confidence in the crypto ecosystem, regulation is required. This includes both clarifying where existing regulation applies, as well as ensuring that any additional regulation is appropriately robust, fit-for-purpose, and can keep pace with the rapidly evolving ecosystem.

Despite the increase in activities within the crypto-economy, the lag between digital transformation and regulation (IGT, 2018) may extend to regulations and skills required for professional accountants to discharge services and act in the public interest (Schmitz & Leoni, 2019) – this includes taxation professionals. There are calls for better blockchain literacy in the industry so the links between the digital blockchain technology and regulatory-advisory practices are more widely understood, along with both the challenges and efficiencies that blockchain can bring (Tech London Advocates & The Law Society, 2020).

This is an exploratory study designed to provide insights into the challenges and impacts on the technological skills required by tax practitioners when providing blockchain-related advisory services to clients. Initially, a set of semi-structured interviews were carried out to examine the state of play across a cohort of Australian accounting and tax practitioners. This was to garner a foundational understanding of the blockchain space

generally and provide insight into not only the variety of activities becoming pervasive across the participants client base, but also to gain a foundational understanding of the issues and actions such professionals were taking. Through the semi-structured interviews, a set of propositions were established which formed the basis of a survey instrument to assess more broadly the key activities, challenges and issues developing with respect to blockchain technology. The survey targeted Australian tax practitioners specifically.

As such, this study fosters a greater understanding of the skills and knowledge requirements of tax practitioners, which are not well articulated in the academic or professional literature (Schmitz & Leoni, 2019) with respect to the TASA Code (Devos & Kenny, 2017). In doing so, this study addresses concerns associated with blockchain-related literacy in the field by identifying the educational needs (both technical and theoretical) of accounting and taxation practitioners in the business and advisory services industry.

The remainder of this article is structured as follows. First, this study presents a brief overview of the Australian tax regulatory context with respect to the crypto-economy. Then, in section 3 the TASA Code and relevant code items are introduced and discussed before leading into the research design in section 4. Section 4 outlines the interview and survey methods employed and then section 5 presents the findings and discussion thereof, breaking down the analysis into: the crypto-economy and client activities (section 5.1); regulation and guidance: fit for purpose? (section 5.2); perspectives with respect to tax practitioner skill and competencies (section 5.3); perspectives with respect to tax practitioners applying the law (section 5.4), and perspectives with respect to tax practitioners acting lawfully and ascertaining client's affairs (section 5.5). Section 6 concludes.

2. BACKGROUND TO TAXING THE CRYPTO-ECONOMY IN AUSTRALIA

Whilst the Australian legal system has developed over many decades and significant sources of tax law are derived from case law and legislation, for taxpayers and tax practitioners to interpret the tax consequences for crypto-economic activities, the Australian Taxation Office (ATO) plays a significant role. Whilst there is no bespoke taxing regime for crypto activities, there have been minor targeted amendments to existing tax laws. These have largely focused on (1) removing double taxation in certain circumstances for the goods and services tax (GST), and (2) ensuring that cryptoassets will not fall within the foreign currency regime.¹ Otherwise, taxpayers and tax practitioners are expected to interpret existing tax principles and so look for ATO guidance to understand the administrator's interpretation.

Depending on the format of the ATO guidance, there can be varied levels of protection in relying on such guidance. For example, tax determinations provide legally binding² advice for taxpayers and offer protection across underpaid tax, penalties, and interest. General ATO guidance such as website material does not offer protection from underpaid tax (ATO, 2022). In contrast, unless it is the applicant who is relying on a private binding ruling (PBR),³ those who review published PBRs (edited versions of

¹ Both amending the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

² Legally binding on the ATO.

³ Comparable to tax determinations, PBRs are legally binding advice that protect against underpaid tax, penalties and interest (ATO, 2022).

PBRs) have no protection whatsoever. Although Australia was one of the earliest jurisdictions to introduce formal guidance for crypto activities (PwC, 2021), the fast pace at which crypto activities are evolving means that numerous aspects of the more complex crypto-economy do not have formal (i.e., neither legally binding nor protective) tax guidance or the process is not yet enacted (see listing in PwC, 2021; 2022).

Unlike traditional investment activities, cryptoasset transactions are treated as barter transactions, requiring a frequent conversion of value to Australian dollars (fiat currency) leading to potential unintended gains or losses as values fluctuate. As Morton and Curran (2022b, p. 5) summarise:

Instead of the traditional barter context, transactions are made on a contemporary digital, distributed technology platform (blockchain). The increasing popularity and familiarity of transacting with cryptocurrencies by Australians, raises issues not only for the declaration of income earning activities and consequential tax obligations, but also their use as a means of payment.

Although debated within the sector, cryptoassets are considered a form of property within the scope of the CGT regime⁴ and not considered to be foreign currency.⁵ For non-business taxpayers, cryptoassets will often be held on capital account with the CGT regime applying.

The decision in *Seribu Pty Ltd and Commissioner of Taxation (Taxation)* [2020] AATA 1840, 111 ATR 882 (*Seribu*) reinforced the stance that bitcoin was not a foreign currency. However, El Salvador's decision in 2021, and that of other countries, to recognise bitcoin as legal tender creates renewed concern that bitcoin may fall within the foreign currency regime for tax purposes (Morton & Curran, 2022a). Despite the government's position that foreign jurisdictional activity would not alter the characterisation of bitcoin, legislation was introduced in late 2022 to return to the status quo: reaffirming the 2014 position (Chalmers & Jones, 2022). The legislation explicitly altered the definition of foreign currency within the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) by way of amending the definition of digital currencies within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act) as well as enabling further restrictions by way of including the power to make regulations to make further exclusions. Importantly, the amendment allows for centralised government-issued digital currencies to continue to fall within the foreign currency regime, therefore

⁴ *Income Tax Assessment Act 1997* (Cth) s 108-5(1)(a) (ITAA 1997). See also ATO, 'Income tax: is bitcoin a CGT asset for the purposes of subsection 108-5(1) of the Income Tax Assessment Act 1997?', Taxation Determination TD 2014/26, [7].

⁵ See ATO, 'Income tax: is bitcoin a "foreign currency" for the purposes of Division 775 of the Income Tax Assessment Act 1997?', Taxation Determination TD 2014/25. The mere fact that cryptoassets can be treated as equivalent to money or transacted with at a higher frequency than share investments, creates complexities in tax compliance. For example, where taxpayers donate cryptoassets rather than money and seek a deduction under Division 30, there is a need to assess factors such as length of time the assets have been held for, whether the assets were purchased or acquired in some other way as well as the value of the assets. Depending on the circumstances, the taxpayer may be denied a deduction, may be able to claim based on the lesser of purchase price or market value or require an ATO valuation (see Morton & Curran, 2021).

recognising a particular use of the technology for governments. The *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* (Cth) was enacted in June 2023.

In contrast, for business taxpayers who hold cryptoassets for the purpose or sale in exchange in the ordinary course of business, those cryptoassets will be treated as trading stock.⁶ However, not all business taxpayers will hold cryptoassets as trading stock: some may simply accept cryptoassets as a payment for goods and services (ATO, 2020). As per well-established principles, the value of property paid is taken in lieu of fiat currencies.

For those business taxpayers registered for GST, since an amendment to the definition of digital currency under section 195-1 of the GST Act in 2017, cryptoassets such as bitcoin, Ether and Litecoin are not subject to GST and hold an equivalence to money. In this instance, no additional GST consequences arise (or double taxation) occurs through using digital currency for the sale or purchase of goods and services. GST in these instances applies to the goods or services. Where the taxpayer is in the business of buying and selling digital currency, the transactions are treated as financial supplies. However, non-fungible tokens, stablecoins and initial coin offerings are not considered to be digital currency (ATO, 2023). As a result, such supplies can be either taxable, input taxed, or GST-free (ATO, 2023).⁷

Moreover, where an employer provides cryptoassets, such as bitcoin, to employees, only when it is part of a valid/effective salary sacrifice arrangement, the cryptoassets will be treated as a property fringe benefit (ATO, 2020).⁸ Following ordinary principles therefore, consequential impacts occur with respect to relative liabilities for withholding and superannuation obligations, including whether the cryptoassets are included in the determination of ordinary times earnings (OTE) (Cameron, 2020; Bevacqua et al., 2022).

With continual advancements in the blockchain economy, the execution of complex smart contracts enables more complex property ownership, credentialling and governance. For example, traditional financial products are seeing their decentralised equivalents emerge (decentralised finance, 'DeFi'), and opportunities for 'liquidity providers' and 'yield farming' arising through a multitude of platforms. Similarly, decentralised autonomous organisations (DAOs) create new forms of decentralised entities and governance structures.⁹ DAOs raise significant issues for legal, tax, and

⁶ ITAA 1997, s 118-25, sets aside the CGT provisions where the trading stock provisions apply. See ATO, 'Income tax: is bitcoin trading stock for the purposes of subsection 70-10(1) of the Income Tax Assessment Act 1997?', Taxation Determination TD 2014/27, [14].

⁷ According to the ATO (2023), the supply of a stablecoin will be input taxed (unless GST-free), the supply of an NFT will be taxable (unless GST-free), the supply of an initial coin offering where a security or derivative, will be input taxed (unless GST-free) and the supply of an initial coin offering where it gives a right or entitlement to goods or services, will be taxable (unless GST-free). Note the issues around GST-free generally relate to the normal GST rules that sales to non-residents are GST-free rather than input taxed, which can be difficult to ascertain for the crypto-economy given the pseudo-anonymous nature of participants (ATO, 2018a).

⁸ See also ATO, 'Fringe benefits tax: is the provision of bitcoin by an employer to an employee in respect of their employment a fringe benefit for the purposes of subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986?', Taxation Determination TD 2014/28.

⁹ Although there are numerous definitions of DAOs (Tse, 2020; Sims, 2019; Hassan and de Filippi, 2021), the Bragg Report describes DAOs as '... a new category of organisation that operates on decentralised blockchain infrastructure, whose operations are pre-determined in open source code and enforced through smart contracts': Senate Select Committee on Australia as a Technology and Financial Centre (2021, p. 75,

moral obligations (see for example, Tse, 2020; Sims, 2019; Hassan & De Filippi, 2021). The resulting tax implications raise further uncertainty and challenges for taxpayers and tax practitioners (see for example Pirovich, 2022). The Bragg Report (2021) highlights that the most common position is that DAOs are partnerships, which in turn raises issues for the infinite number of participants (therefore partners) that could not only be personally liable for the organisation's debts but also have moral culpability for the actions of such decentralised infrastructure.

Overall, the ATO has made it abundantly clear that it is concerned with the lack of compliance when it comes to the disclosure of crypto activities by taxpayers in their tax returns. Since 2019, the ATO has had cryptoassets within the data-matching program. The ATO (2019a) describes putting crypto activities under the 'microscope' as part of their data-matching program, writing to 100,000 taxpayers regarding their tax compliance on the matter. Their efforts have focused on gathering data from exchanges and the taxpayer.

Whilst also working closely with the Australian Transaction Reports and Analysis Centre (AUSTRAC) as well as the Australian Securities and Investment Commission (ASIC), the ATO has already broadened its data-matching program to include crypto activities from the 2014-15 income year (ATO, 2021; 2019b). The ATO obtains relevant data from designated service providers (DSPs) and matches that against taxpayer records (ATO, 2021). Numerous third party cryptoasset 'tax calculators' have been released to the market to assist both taxpayers and tax practitioners meet their compliance requirements (Bevacqua et al., 2022).¹⁰

A key narrative derived from the Bragg Report (2021) is the recognition of the benefits of robust policy reform in respect of digital assets to aid in consumer protection and the promotion of investment as well as market competition. The Report highlighted the worldwide challenges in establishing appropriate regulatory frameworks, whilst balancing dynamism and competitiveness to ensure Australia's place for digital business. It is also noteworthy that there is a broader narrative within international tax jurisdictions over the push towards global taxation regimes for a digitalised economy, including the introduction of taxing rights and a global minimum tax as part of the OECD/G20 BEPS two-pillar solution¹¹ (Bragg Report, 2021; see also, OECD, 2021; Bevacqua et al., 2022).

The Bragg Report (2021) tabled several recommendations for the government's consideration. Of particular relevance is Recommendation 6, recommending that the CGT regime be amended so that CGT events are only triggered when they 'genuinely result in a clearly definable capital gain or loss' in relation to digital asset transactions. This has been considered by many as lacking specificity – particularly what would be considered 'genuine' and 'clearly definable' (Morton, 2021). Whilst the government acknowledged the challenges with tax compliance, this recommendation was only *noted* (Australian Treasury, 2021). Instead, the Board of Taxation (BoT) was tasked with a broader review of the taxation of digital assets and transactions. At the time of writing,

citing RMIT academics' submission [Allen, Berg, Davidson, Lane, MacDonald, Morton and Potts], Submission 67, p. 13).

¹⁰ E.g., third parties include but are not limited to Cryptotaxcalculator.io/au and Koinly.io/au.

¹¹ Note that these particular issues are beyond the scope of this article.

Treasury is awaiting the final report from the BoT, which is now due to be released in February 2024.

Given the dearth of literature on blockchain relating to tax practitioners, there are calls to examine technological understandings and skill sets related to emerging blockchain technology (Schmitz & Leoni, 2019; Kend & Nguyen, 2020). This project responds to those calls as a second phase of research. We seek to better understand how tax practitioners are responding to this digital technology when providing blockchain-related tax advisory services to clients, particularly in being able to comply with codes of professional conduct such as the TASA Code.

3. TASA CODE OF PROFESSIONAL CONDUCT

There are extant concerns that emerging technologies can impact adherence to professional codes of ethics (see for example Nguyen et al., 2023; IESBA, 2022). Specific to Australian tax practitioners, since the introduction of the TASA Code, tax and Business Activity Statement (BAS) agents are required to comply with the key principles around (1) honesty and integrity, (2) independence, (3) confidentiality, (4) competence, and (5) other responsibilities: section 30-10 of TASA 2009. Within these key principles, there are 14 Code Items. The rationale underlying the TASA Code is to enhance tax practitioners' ethics and behaviour (Devos & Kenny, 2017). Both the public and client base expects a high level of service and attention to detail from tax practitioners (Devos & Kenny, 2017). If a practitioner breaches the TASA Code, penalties and sanctions may be imposed, such as the tax practitioner's registration being terminated (see for example Tax Practitioners Board (TPB), 2021a). Our study, therefore, focuses on how the following five key principles of the TASA Code are impacted by blockchain-related activities.

3.1 Code Item 4: You must act lawfully in the best interest of your client

As part of the principle of independence, practitioners are required to follow Code Item 4.¹² The duty is comparable to that of a fiduciary duty; however, the relationship between the practitioner and client is not a fiduciary one (TPB, 2021a). The scope of a practitioner to act in the best interest is limited by the terms and circumstances of the engagement,¹³ but is not wholly contractual (TPB, 2021a). In reflecting on relevant judicial decisions, the TPB (2021a, p. 13) summarises numerous characteristics as potentially relevant in determining the scope of the practitioner's duty, including whether there is a 'dependency or vulnerability on the part of the client that causes them to rely on the registered tax practitioner for the taxation services...'.¹⁴

As such, practitioners ought not be influenced by personal and other interests and are obliged not to promote personal interests nor personally profit without authorisation and accounting to the client (TPB, 2021a). Moreover, tax practitioners are only required to act in the best interest of the client to the extent that they act consistently with the law (TPB, 2021a; Explanatory Memorandum to the Tax Agent Services Bill 2008, p. 54). The Explanatory Memorandum to the Tax Agent Services Bill 2008 goes on to exemplify the balance between the client's best interests and contravening the law, in that whilst it may be perceived as being in the best interest to reduce a client's taxable

¹² TASA 2009, s 30-10(4).

¹³ E.g., via 'letter of engagement, report, advice or other communication' (TPB, 2021a, p. 14).

income, the tax practitioner cannot do so if it means claiming something that is not an allowable deduction (see Example 3.5 of the Explanatory Memorandum to the Tax Agent Services Bill 2008, p. 54).¹⁴ The role of a tax practitioner is a critical element in a system of voluntary compliance (Marshall, Armstrong & Smith, 1998). Tax practitioners have a duty to both their clients and government to ensure accurate tax filing and administration of the law (Erard, 1993).

3.2 Code Item 7: You must ensure that a tax agent service provided on your behalf is provided competently

The TPB (2021a) refers to competence, with respect to registered tax practitioners, as involving someone who is capable, fitting, suitable or sufficient to provide a tax agent service. Ultimately it requires someone with the skill, ability, and knowledge to be able to perform those services in a professional manner. The TPB (2021a) goes on to canvas the important principles which highlight the competence characteristic. These principles include the failure of a tax agent to comply with their own tax obligations, committing certain offences (including tax evasion) under the tax law, failing to complete and submit annual returns or even committing multiple less serious offences, which can all point to an agent not being a fit and proper person (TPB, 2021a).

An important aspect of competence for tax agents is that they must also operate within their level of expertise. In this regard, the Explanatory Memorandum to the Tax Agent Services Bill 2008 (para 140) indicates that if the work required of the tax agent is beyond their expertise, they should seek that expert advice or assistance or refer the work. (e.g., obtain a legal opinion). Whilst skill and knowledge can be gained through private study and research, the tax practitioner must be able to satisfy the TPB that they are competent to give the relevant advice (the Explanatory Memorandum to the Tax Agent Services Bill 2008, para 140).

There have also been numerous cases before the courts where the relevant principles of competence have been established and confirmed (TPBa, 2021). One important issue to reflect upon is the self-assessment nature of income tax compliance. With the purported accuracy of tax returns coming under question through the ATO audit process, for tax agents it is critical that they make sufficient enquiries to ascertain the taxpayer's affairs to confirm the correct application of the law at first instance.¹⁵

3.3 Code Item 8: You must maintain knowledge and skills relevant to the tax agent services you provide

Section 30-10(8) of the TASA 2009 encompasses a very broad perspective and can be interpreted in a variety of ways:

The TPB is of the opinion that it requires tax practitioners to maintain 'continuing awareness, understanding and up to date knowledge of relevant, technical, legal and business developments' in their area of practice, to act diligently in accordance with applicable technical and professional standards,

¹⁴ This can be further illustrated in the case of *Burnett and Tax Practitioners Board* [2014] AATA 687; 99 ATR 456 (see Woellner, 2021, p. 480).

¹⁵ See *Burnett and Tax Practitioners Board* [2014] AATA 687.

maintain knowledge and skills and an appropriate level, and exercise reasonable care in providing their tax services (Woellner, 2021, p. 485).¹⁶

Certainly, the challenge in running a practice and at the same time having to constantly update and maintain tax knowledge and skills makes it difficult for many practitioners. This is where the practitioner needs to be aware of their capacity and only provide services that they can confidently deliver. The obligation to stay up to date only applies to the tax area in which they are providing services. The availability and sophistication of modern technology assists practitioners (Woellner, 2021) in this regard; however, the onus is still upon them to adapt and change as required.

An example of the failure to stay up to date was illustrated in the case of *Comino and Tax Agents' Board of New South Wales* [2009] AATA 766, 77 ATR 595 (*Comino*). The tax agent had been convicted under section 8C of the *Taxation Administration Act 1953* (Cth) of serious taxation offences, for failure to lodge personal income tax returns and quarterly business activity statements. Handley DP and Creyke SM noted ([2009] AATA 766, [34], quoted in TPB, 2021a):

Mr Comino acknowledged that he had experienced problems with the introduction of the GST and that this had been a factor in the late lodgement of business activity statements. Given the importance of tax agents keeping up to date with the relevant law in order to fulfil their responsibilities in properly advising clients, Mr Comino's acknowledgement, while a frank admission, does not give the Tribunal confidence in his ability to keep abreast of the changes in the law, especially since the problems with business activity statements occurred in 2006/2007, and the introduction of GST occurred in 2000.

It is noted that the TPB Explanatory Paper indicates that where there have been major changes in law which do occur from time to time, that further training and continued professional education hours will be required.

3.4 Code Item 9: You must take reasonable care in ascertaining a client's state of affairs

Code Item 9 requires the tax practitioner to take reasonable care in ascertaining a client's state of affairs: sub-section 30-10(9) of the TASA 2009. This duty appears to reflect the common law duty, with an additional range of statutory consequences (TPB, 2019). Without a set formula to establish reasonable care, the TPB (2019) states that the starting point in this duty is to exercise professional judgment, utilising the practitioner's knowledge, skills, and experience.

This is a difficult proposition for tax practitioners as the concept and scope of 'reasonable care' is not readily amenable to precise or inflexible prescription.¹⁷ Further the TPB (2019, para 8) guidance speaks of the standard of 'reasonable care' as that generally required of a registered agent who is a 'competent and reasonable person, possessing the knowledge, skills, qualifications, and experience that a registered agent

¹⁶ The TPB also provides the rationale for the requirement that agents undertake prescribed continuing professional education (CPE) annually.

¹⁷ See *Birdseye v TPB* [2021] AATA 1011 as cited in Woellner (2021, p. 487).

is expected to have, in the circumstances'. A key question is, how far should a tax agent go in gathering and confirming the taxpayer's information being true and correct?

The TPB (2019, para 17) provides the following answer, suggesting:

Code item 9 does not require registered agents to 'audit', examine or review books and records or other source documents to independently verify the accuracy of information supplied by their clients. However, there may be circumstances (see paragraphs 13 to 16) where a registered agent may not automatically discharge their responsibility in particular cases by simply accepting what they have been told by their clients.

They must make a reasonable enquiry which would be expected of them in their professional capacity.

This notion is further supported (as set out in TPB, 2019, para 9) by APES 110 Code of Ethics for Professional Accountants and APES 220 Taxation Services, where the Accounting Professional and Ethical Standards Board (APESB) indicated that professional competence and due care is fundamental and that:

This principle requires a member 'to maintain professional knowledge and skill at a level required to ensure that a client or employer receives competent professional services ... and act diligently in accordance with applicable technical and professional standards'. This requires, among other things, the exercise of sound judgment in applying professional knowledge and skill in the performance of such a service (TPB, 2019, para 9, citing APES 110, sections 100.5 and 130; APES 220, paras 3.11 to 3.17).

There have also been several cases which have demonstrated the consequences of tax practitioners failing to take reasonable care. In the case of *Su and Tax Practitioners Board* [2014] AATA 644, 2014 ATC 376, lodging tax returns based on fraudulent instructions without verifying client information was a clear case of lack of reasonable care. In further cases including *Logic Accountants and Tax Professionals Pty Ltd and Tax Practitioners Board* [2021] AATA 676, *Norman and Tax Practitioners Board* [2021] AATA 848 (*Norman*) and *Yvonne Anderson and Associates Pty Ltd and Tax Practitioners Board* [2020] AATA 4022, which involved taxpayers claiming work-related expenses, it was also evident that the tax practitioner had failed to take adequate professional care (Woellner, 2021). Failing to ask for substantiation of the claims made and a lack of time on behalf of the practitioner were just excuses and rejected by the AAT (see *Norman*) (Woellner, 2021).

3.5 Code Item 10: You must take reasonable care to ensure that taxation laws are applied correctly

Finally, Code Item 10 states that 'you must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client'.¹⁸ Like Code Item 9, Code Item 10 does not extend the common law

¹⁸ TASA 2009, s 30-10(10).

duty where a tax practitioner provides advice; instead it establishes an additional range of possible statutory consequences under the TASA 2009 (TPB, 2017, para 5).¹⁹

An important aspect of this Code item is that it requires registered agents to take 'reasonable care' to ensure the correct interpretation and application of the law. Therefore, incorrect interpretations and/or applications of the law may not necessarily amount to a breach of the TASA Code (TPB, 2017, para 11). It is not possible for a tax practitioner to necessarily be able to ascertain the correct application of the law in every circumstance due to the volume and complexity and this is recognised. However, the TPB (2017) notes that if the tax practitioner applied the taxation laws incorrectly to the circumstances of a client and did not take reasonable care to determine the correct taxation treatment in the circumstances, this will likely be considered a breach of the TASA Code (see TPB, 2017, para 12).

In this particular case, the terms of the engagement letter under which the tax practitioner is operating are critical (Woellner, 2021). The level and scope of the advice needs to be clearly communicated at the outset. This would be evidenced in all communications including emails and telephone calls (TPB, 2017, paras 14-16). It also requires a practitioner to exercise a professional approach which typically involves not only referring to relevant legislation, cases and rulings but also seeking an opinion or legal advice where the situation is beyond their level of expertise (TPB, 2021a; Woellner, 2021).

4. RESEARCH METHOD

This exploratory study provides insights into the technological skills required by tax practitioners when providing blockchain-related advisory services to clients. This study applies a mixed-method approach (Carpenter et al., 1994), including semi-structured interviews to explore the state of play for practitioners (Phase 1), followed by a survey methodology to reaffirm interview themes developed (Phase 2).

4.1 Semi-structured interviews

In Phase 1 of this study, we conducted semi-structured interviews with 12 accounting and taxation practitioners to gain in-depth insights into the issues faced in the field broadly. Following Qu and Dumay (2011) and Richards and Morton (2020), the interview methodology allowed for interpretations and perceptions to be obtained that can be unique and sometimes incommunicable due to the social world of interviewees.

Interview participants were identified through their roles as Australian accounting and tax practitioners working in Australian advisory service firms. We used professional networks of the researchers to identify participants. Interviews were conducted and recorded in Microsoft Teams between August 2021 and October 2021. The same researcher led all interviews to ensure consistency (Devos et al., 2023b). Interviewees were provided with the interview guide and consent forms ahead of time. Interviewees were given the opportunity to review their de-identified transcription. Interviewees received no reward for participation.

¹⁹ See TPB (2017, paras 18-20) for more information on the consequences for failing to comply with Code Item 10.

We interviewed 12 participants with 75% and 25% of interviewees being male and female respectively and the majority aged between 40-49. We note that there is a high representation from Victoria, as well as a low representation of female participants (25%). The latter is comparable to prior research (see for example Devos & Kenny, 2017; Devos et al., 2023a) and more generally the TPB Annual Report statistics on the tax profession (TPB, 2021b), although noting Phase 1 interviewees represent not only the tax profession itself, but the broader business sector. Table 1 summarises interviewee participants.

Table 1: Interview Participant Overview

Interview Number	Duration (HH:MM:SS)	Age Range	Gender	Role*	Affiliation	Location
1	00:32:22	40-49	Female	Partner	CAANZ	VIC
2	00:32:04	40-49	Male	Practitioner	CPA	VIC
3	00:51:15	40-49	Male	Consultant	Other	VIC
4	00:17:38	60-69	Male	Practitioner	Multiple	VIC
5	00:39:30	40-49	Male	Practitioner	Multiple	VIC
6	00:21:35	60-69	Male	Practitioner	IPA	VIC
7	00:56:03	40-49	Male	Practitioner	CAANZ	QLD
8	00:35:48	30-39	Male	Manager	Other	NSW
9	00:26:11	18-29	Male	Manager	Other	VIC
10	01:15:57	50-59	Female	Practitioner	Multiple	VIC
11	00:34:20	30-39	Male	Practitioner	CAANZ	VIC
12	00:23:31	30-39	Female	Practitioner	Multiple	WA

*Generic roles have been used, such as ‘Partner’ and ‘Manager’.

The interviews focused on open-ended questions covering (i) the practitioner’s role; (ii) the blockchain-related activities being undertaken; (iii) regulation, and (iv) the technical skills and knowledge required. Interview data were then coded and analysed. From this, a set of propositions were established forming the basis of the online survey instrument to further explore themes across crypto-economic activities and the role of tax practitioners pursuant to the key TASA Code items (as outlined in section 3).

4.2 Survey instrument

Phase 2 of this study involved the use of a survey instrument to tax practitioners across Australia to examine and test the findings (Nardi, 2018; Devos & Kenny, 2017; Devos et al., 2023a) illuminated from Phase 1 of this project. In addition to demographic information with respect to the tax practitioners, information with respect to clients’ blockchain-related activities and the level of agreement that the current regulatory framework is fit for purpose, a set of propositions were developed covering themes across the TASA Code (practitioner skills and competencies, applying the law and acting lawfully and ascertaining client's affairs): see Appendix A. These propositions were tested using 5-point Likert scaling (strongly agree to strongly disagree). Tax practitioners also had the opportunity to comment at each stage of the survey, leading to both quantitative and qualitative data collection.

The electronic survey was distributed to Australian tax practitioners of at least 18 years of age, who have had at least one client who has undertaken activities in the crypto-economy. In doing so, we use a form of purposive sampling, where the recruitment of participants reflects the knowledge about the area of investigation.

Prior research shows that response rates can be low (Devos & Kenny, 2017; Attwell & Sawyer, 2001; Marshall et al., 2006; Gupta, 2015). Due to the emerging nature of blockchain technology, unknown statistics on tax practitioners with clients that undertake blockchain-related activities, as well as the continued impacts of the Covid-19 pandemic on response rates (as seen in Devos et al., 2023a) we anticipated a lower response rate compared with prior research involving tax practitioners. In response, we ensured an expansive dissemination program to recruit sufficient participants to meet a minimum viable threshold.

Dissemination of the survey instrument included the researchers' professional networks, including direct email to existing contacts held by researchers, via LinkedIn posts and Twitter tweets etc.; professional body e-newsletters and/or emails, at their discretion; and publicly listed tax practitioner emails, obtained from online yellow pages and tax practitioner websites.

The survey was open for an extended period, between July 2022 and November 2022. A total of 281 responses were received. On reviewing survey data, 52 responses were eliminated due to:

- (i) not progressing, previewing the survey only (n = 3);
- (ii) not meeting the requirements of the survey, established via the screening questions (n = 16), and
- (iii) insufficient progress (less than 10% complete) or duration (less than 120 seconds) (n = 33).

The final sample size forming the basis of the analysis is therefore 229: Table 2. Of the final sample, missing data ranged from 1-59, resulting in observation-sizes per question ranging between 170 to 228.

Table 2: Survey Sample and Elimination Spread

Name of variables	Elimination reasons	Number of dropped records	Sample size
Survey total			281
Distribution channel	Preview	3	278
Screening questions	18 & agents	2+14	262
Progress & duration	< 10% or < 120s	33	229
Total		52	229

Of the practitioners surveyed, most practitioners are aged between 30 and 60 years (76%), with slightly higher representation being male (58%) compared to female (41%). The majority are in New South Wales (40%), followed by Victoria (20%) and Queensland (18%): Table 3 in Appendix D. With respect to their time spent on tax-related matters, more than half of participants (54%) spend 75-99% of their time on tax-

related issues. Whilst participants are frequently associated with numerous professional associations, the most frequent associations were Chartered Accountants Australia and New Zealand (CAANZ) (cited 104 times), CPA Australia (cited 82 times) and The Tax Institute (TTI) (cited 43 times).

Moreover, the majority (49%) have 11-25 years of tax experience. The majority are also either sole practitioners or from small firms of two to five partners (74%). For the clientele tax practitioners attend to, whilst it is not entirely realistic to silo practitioners' client bases into a single category, most participants responded that their main clientele were SMEs (70%), followed by employed persons (16%) and self-employed persons (8%).

4.3 Limitations

The sample of tax practitioners was not totally representative of the wider practitioner population which makes it difficult to extrapolate the results. Given the focus is on those practitioners with clients who have participated in the crypto-economy, purposive sampling inherently restricts generalisability. In addition, a limitation of self-reports is the possibility of non-response bias and in this case the issue of socially desirable response bias of the tax practitioners (Devos & Kenny 2017). Inaccurate and incomplete responses impact the results as does the problem of honesty and misinterpretation of questions (Roberts, 1998). Nevertheless, to address the presence of non-response bias the survey responses along with the interview data allowed for meaningful analysis which provided some assistance in improving the validity of the overall findings.

Furthermore, the technology and related activities are both evolving at a significant pace and subject to volatility (bear, bull market shifts), and therefore we recognise that the timing of interviews and survey dissemination respectively may have a limiting effect on the broader generalisability.

More generally, this research focuses on tax practitioners. As such, whilst there is an increasing number of taxpayers lodging their tax returns using myTax (e.g., see Harb, Morton & Narayanan, 2023), they are beyond the scope of this study.

5. FINDINGS AND DISCUSSION

5.1 The crypto-economy and client activities

We acknowledge from the outset that the level of participation and awareness differs between practitioners with respect to clients' crypto-related activities. Both interviews and surveys reveal a diversity in practice. As such, in contemplating the technological understanding and skill sets needed by practitioners to service client who make use of blockchain technology (Schmitz & Leoni, 2019), we inherently recognise a continuum from the crypto-economy having limited to no impact on practitioners and/or their clients to those who are at the forefront of servicing crypto-focused clients. This is similarly impacted by the level of complexity and/or frequency of those crypto activities. Thus, consideration of terms and circumstances of engagement are critical (TPB, 2021a) as well as the generalisability of these findings.

For interviewees, 2021 appeared to be a turning point, with a 'wave' of crypto activity becoming evident for tax practitioners. The stereotypical 'crypto-client' is predominantly the younger demographic – mainly those in their 20s, often male and

often more likely to take risks.²⁰ Whilst their activities can be lucrative – where the client knows what they are doing – many practitioners describe client activity as ‘dabbling’, equivalent to gambling:²¹

...But this last tax season, yeah, I'd probably say 20% of my returns, people are dabbling. And they're not dabbling big bucks, right? ... you can hear the frustration in my voice. They're doing like \$10 trades... And to me, they're buying it like a Tatts lotto ticket, but that's just my interpretation, which makes it very frustrating for me as a practitioner to say, ‘Do you know each one of these is a separate CGT event and different taxing point for you?’. [Interviewee]

Whilst there are opportunities in the space, it is not necessarily a ‘gold rush’ for all participants within the crypto-economy and substantial concern exists over the lack of regulation and uncertainty. There is incredible uncertainty stemming from risks, volatility, regulation, market immaturity and scams. Moreover, the pace at which the crypto-economy is moving is high – comparable to when the internet came along.²²

Whilst it is considered to have potential, the space is described as noisy, full of superlatives and vested interests:

... [O]bviously people are very tied to the specific assets that they invest in. And if there's negative things to be said about some of those assets, again, they can be quite aggressive or really forceful on things. And similar if they have a specific asset that they are a massive fan of. So I see this particularly in the Bitcoin space, they then really talk down the other assets that actually are providing potentially real world utility, strong business backing, strong real world value to their customer base and doing that through the decentralisation of a token, but will be considered, by certain people, as you'll hear the terms like ‘shit coins’ thrown around all the time. And it's often used because I'm trying to push a token that I'm heavily invested in or that I believe in, and I don't want all these others coming through. [Interviewee]

The crypto-economy as a result is aiding the deeper analysis of activity and investment – beyond that of traditional or conventional financial activities; however, to be able to do so requires adequate technical skills and education. As one interviewee described reflecting on the exposure to original tax issues being faced, ‘*sometimes you don't know what you don't know*’ [Interviewee]. Another summed it up as:

...[F]irstly, understanding the practical regime within which you're operating, what is blockchain, how does it operate? Secondly, applying the tax law to an area that is unknown. And thirdly having a system to track... [Interviewee]

²⁰ This raises an important consideration of the taxpayers who seek the assistance of tax practitioners or in contrast self-lodge via myTax, the frequency for the latter of which is increasing (see Harb et al., 2023). Whilst over 1 million taxpayers are expected to be lodging tax returns with crypto activities in 2022 (Australian Treasury, 2023), what proportion will do so via a tax agent?

²¹ This is consistent with recent UK research that indicates that whilst the crypto-economy is becoming increasingly mainstream, it is most bought for gambling purposes: Financial Conduct Authority (2021) cited in Australian Treasury (2023).

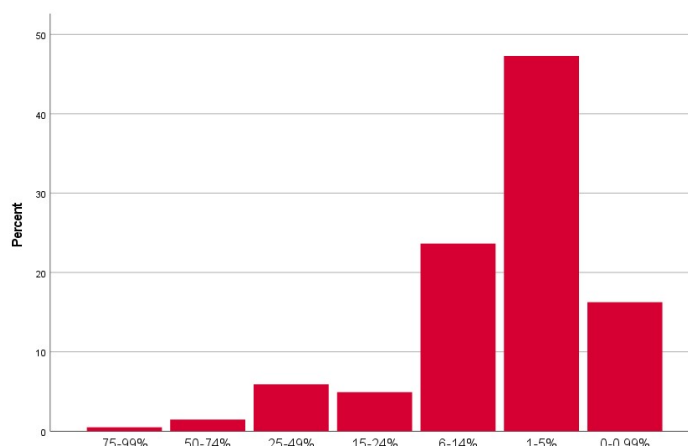
²² A similar position was noted by Australian Treasury (2023); see studies by Iansiti and Lakhani (2017) and De Filippi and Wright (2018).

Taxation issues span a variety of issues, including novel issues, the complexity in understanding what the product attributes are and understanding the scope of engagement (and when a lawyer is needed, when to ‘lose’ clients, or not to engage).

5.1.1 *The impact of the crypto-economy on tax practitioners*

Surveyed tax practitioners indicated most often that they are spending 1-5% of their tax-related work time on blockchain-related matters (47%), followed by 6-14%: Figure 1. Whilst this indicates for most tax practitioners that crypto clients represent the minority of workload, this is not unexpected. For example, if we take the statistic that 25% of Australians hold or have held cryptoassets (Bragg Report, 2021 or Australian Treasury, 2023 data on expected number of impacted tax returns), this will not be dispersed equally across all tax practitioners due to a multitude of demographic factors, as well as recent ATO data²³ on the dispersion of taxpayers lodging by way of tax agents (64%), self-lodging via myTax (36%) and paper-based returns (0.6%) for the 2021 tax year (see for example Harb et al., 2023).

Fig. 1: Percentage of Tax-Related Work Time Spent on Blockchain-Related Activities



Note: 26 participants did not disclose. Percentages are based on those who responded to this question.

Similarly, surveyed tax practitioners have indicated that their clients are spending 1-5% of their taxable income (33%) – or more broadly that the majority are spending up to 14% of their taxable income (65%) – on blockchain-related activities: shaded rows in Table 4.

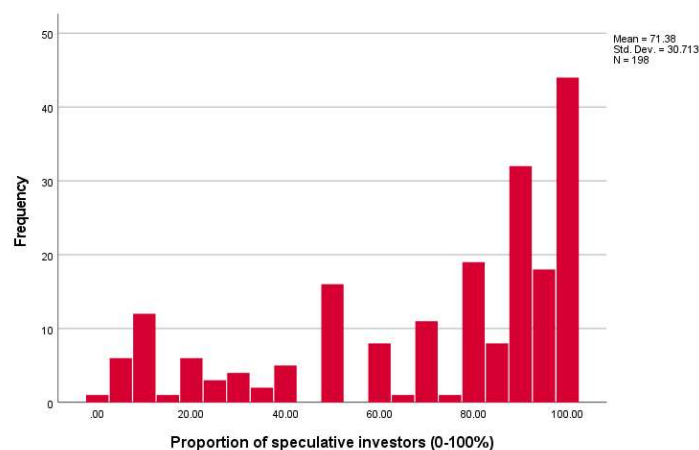
²³ Available at: <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2020-21/?anchor=IndividualsStatistics#IndividualsStatistics>.

Table 4: Proportion of Taxable Income Clients Are Spending on Blockchain-Related Activities

Average Proportion	N	%	Cumulative %
100%	1	.5	.5
50-74%	2	1.0	1.5
25-49%	7	3.5	5.0
15-24%	19	9.5	14.5
6-14%	40	20.0	34.5
1-5%	66	33.0	67.5
0-0.99%	23	11.5	79.0
Prefer not to say/I am not sure	42	21.0	100.0
Total	200	100.0	

Note: 29 participants did not disclose. Percentages are based on those who responded to this question.

We also note that whilst most surveyed tax practitioners describe their main client base as SMEs, tax practitioners have indicated that 71% of their clients would be described as speculative investors (median = 85%): Figure 2. This somewhat reinforces the nature of client activities outlined in section 5.1 (see also Financial Conduct Authority, 2021; Australian Treasury, 2023). However, for many, despite the speculative nature, we posit that the proportion is somewhat comparable to the superannuation guarantee contribution rate (10.50% for 2023), thus it cannot be considered necessarily trivial. The label of speculation or gambling should not be construed as trivial.

Fig. 2: Proportion of Clients Characterised as Speculative

Note: 31 participants did not disclose.

The five most common blockchain-related activities practitioners reported their clients to be undertaking were concerned with: (1) cryptoasset investment and/or trading, followed by (2) moving cryptoassets between wallets and /or exchanges; these were most notable in the findings, followed by (3) crypto staking; (4) crypto as trading stock and (5) airdrops: Figure 3 in Appendix D (see also Table A2 in Appendix B).

Consistent with this was the five most common tax issues arising from client activities being: (1) whether the activity falls within ordinary income or CGT provisions; (2) cryptoasset trading (capital account); (3) record keeping; (4) cost base valuation, and (5) cryptoasset trading (revenue account) and investor or trader characterisation: Figure 4 in Appendix D (see also Table A3 in Appendix C).

As can be seen, there are inherent overlaps across common categories of tax issues. We see strong foundations with respect to the capital-revenue distinction (do the CGT provision apply?), followed by specific sub-issues therein (for capital characterisation: determining Australian dollar cost base, gains, discounting, etc.; for revenue characterisations: issues around employee benefits) and with overarching concerns over appropriate record keeping and substantiation, as well as managing client engagement.

As will be elucidated in the subsequent sections, tax practitioners are finding the compliance work particularly time consuming without the commensurate benefit. In setting the scene for findings set out next, it is important to note that not all clients are considered to fully understand the activities they pursue within the crypto-economy. Combined with problematic tracking and record keeping, tax practitioners are therefore being placed in a challenging position to ensure tax compliance requirements are met, including with respect to the professional conduct.

Assistance from third party applications and exchanges does not resolve in full the challenges practitioners and taxpayers face. Critically, whilst blockchain technology is described as an open, transparent ledger technology, for the purposes of tax compliance, a gap remains. For practitioners to attempt to ‘close the gap’, a significant compliance burden on both practitioners and taxpayers is experienced. There is a challenge with respect to time and value, the reliability and availability of information, the capacity for clients to provide adequate information and to meet substantiation requirements.

5.2 Regulation and guidance: fit for purpose?

In engaging with practitioners, we are finding there is a genuine concern that current tax laws and current guidance are not fit for purpose for the digital economy. This is negatively impacting not only taxpayers but tax practitioners.

Interviewees indicated that existing tax law is ‘*inadequate*’, ‘*lacking*’, ‘*unclear*’, ‘*murky*’, and ‘*emerging*’. Similarly, interviewees also viewed ATO guidance as ‘*inadequate*’, ‘*too broad*’, ‘*not timely*’, ‘*too simplistic*’, ‘*not definitive*’, ‘*not responsive*’, ‘*quite negative*’. Moreover, according to some interviewees, the ATO lacks appropriate communication and the prefill data is not sufficiently accurate. These perceptions extend to the guidance that PBRs can offer, due to the concern over the level

of redacted fact patterns. This is despite the acknowledgement that PBRs are specific to applicants only and do not yield protection nor precedential value.²⁴

For basic activities, interviewees indicated that the current regulatory framework is workable. However, as the complexity increases, the law begins to stretch. There is a significant cost-benefit issue playing out. This creates a high level of uncertainty, as one Interviewee summed up on the point of PBRs:

...[T]here's so much of the fact patterns being redacted that we can't even make any reasonable decisions on that even. So where does that leave us with providing advice to our clients, which is ultimately what we're talking about here? What are we doing with giving advice to our clients in these spaces? Because there is so much uncertainty. So then what do we do? We go for a PBR for everyone. [Interviewee]

Practitioners are seeking all forms of guidance to support their understanding and provision of advice to clients in this space.

The consequences of a slow moving, conservative government includes the potential for Australians to be missing out (opportunity cost, economic activity going elsewhere), and impact on reputation and credibility of market, security, and trust. Such perspectives reflect current observations by Treasury (2023). However, cautiousness is vital – otherwise there is a fundamental risk of enacting problematic or rushed solutions. Reflecting on Bentley (2019) we need to ensure taxpayer rights, equity and fairness are maintained. A part of this is technological neutrality and understanding the extent of ‘novel’ within the crypto-economy. There is lag between digital transformation and complex regulation (IGT, 2018) for a reason.

Similarly, we find that of the surveyed tax practitioners, the majority found that neither the existing tax law (legislation, precedent) (63.5% disagree/strongly disagree), current ATO guidance (56.2% disagree/strongly disagree) nor prefilling data (72.4% disagree/strongly disagree) are fit for purpose with respect to crypto-related activities: Figure 5 and Table 5 in Appendix D.

Record and data capturing are a fundamental challenge to tax practitioners. Tax compliance becomes particularly onerous when the clients do not necessarily understand the consequences of their activities, nor are prepared to pay for the time it takes to make sense of these. The timing of the ‘crypto winter’ meant that many indicate higher levels of losses are either being experienced or anticipated to be experienced through 2023.

Whilst for more simple activities there may be less problems with tax compliance, most surveyed tax practitioners have an issue with the current state of affairs. There is a real concern of non-compliance, whether intentional or unintentional:

²⁴ Note it is acknowledged that PBRs can only be relied on by the applicant it relates to and not by tax practitioners or taxpayers: See ATO, ‘Publication of edited versions of written binding advice’, Law Administration Practice Statement PS LA 2008/4. However, with the publication of PBRs, as reflected in this project, tax practitioners can view these to gain insights on particular issues with the awareness that versions do not reflect changes in law or changes in the way the Commissioner applies the law (ATO, 2018b). The ATO is clear that they cannot be relied upon as precedent or used to determine how the ATO applies the law with no protection and contents not binding on the Commissioner (ATO, 2018b).

Coordinating accurate tax data without using a specific software AND having someone knowledgeable to review the data is next to impossible. We have picked up significant errors by other accountants attempting to prepare this information manually. Accounting for crypto NFT businesses holding as trading stock and with high volume of trades/transactions from NFT secondary sales is very difficult and time consuming! [Surveyed Tax Practitioner]

One avenue of improved certainty and guidance is with respect to increasing the prefilling data with respect to crypto-related activities. When it comes to prefilling data, it is important to clarify that there is merely a statement to confirm ‘*your client has some cryptocurrency transactions*’ [Surveyed Tax Practitioner]. If prefilling data was more detailed, that would assist tax practitioners in ensuring complete records are being provided and therefore more effective tax compliance. This is particularly the case where clients are reported to have denied disposals have occurred or where they ‘forget’ to provide information until queried:²⁵

[The] ATO provide absolutely no details in prefilling data. Many taxpayers engage in crypto trading as a kind of sport or gambling activity – trying to convert transactions – if there are any records – into capital gains or losses in \$A is in many cases a practical impossibility. [Surveyed Tax Practitioner]

More generally, concern was raised that ATO data collection is too narrow, focusing mainly on exchanges. Sufficiently broad ATO data collection, third party calculators and exchange reports are considered an important component of tax administration, particularly where tax practitioner fees are creating key challenges. In this respect, regulatory requirements could focus on standardising reporting:

Based on the onerous reporting requirements one would have expected better transaction tracking to be pushed directly from the ATO, giving taxpayers an effective and endorsed way of providing data is important to effective tax administration. [Surveyed Tax Practitioner]

The time taken to review and calculate the CGT liabilities associated with blockchain activities is extensive. Our clients do not understand the complexities and as a result, do not appreciate the fee we raise for our time. A common ground arrangement is for them to use a crypto tax calculator, and provide the reports to us to review and assist with the calculations. [Surveyed Tax Practitioner]

There was also recognition of the challenges in any prefill or report displaying the correct information: ‘*collection of everything would be way too cumbersome*’ [Surveyed Tax Practitioner]; ‘*Prefilling data is pointless and creates a question to work out a tax income which 90% is a loss and is prohibitively expensive to work out*’ [Surveyed Tax Practitioner].

Along with data collection and reporting, tax practitioners indicated that there needs to be guidance that is both clear and practical. The broad guidance lacks practical, specific examples to aid in the compliance process, which can be complex and cumbersome. Guidance for particular regulatory contexts is not well developed, such as guidance specific to self-managed superannuation funds (SMSFs) and what investments are

²⁵ Issues around clients providing adequate information are considered further in section 5.5.

permitted. Fundamental to this is the complexity in the crypto-economy, which ‘ATO information is only just starting to recognise...’ [Surveyed Tax Practitioner].²⁶

Very little practical examples are floating around to confirm the ATO guidance is correct at law. Current ATO guidance doesn't dive into specifics of the various activities and broadly just applies CGT principles and doesn't really expand on the income side. [Surveyed Tax Practitioner]

However, there is concern that web guidance, which is more readily updated, does not have the same standing as formal ATO guidance such as tax determinations. Moreover, the alignment between tax determinations, web guidance and PBRs was raised:

For example, PBRs that state NFTs are like Bitcoin therefore the Bitcoin guidance applies shows their lack of interest in flexing their interpretations to make things work. [Surveyed Tax Practitioner]

The ATO needs to expand the definition of a hobby in my opinion. [Surveyed Tax Practitioner]

There is a clear dichotomy, in that sufficient time is really needed for appropriate reform; however there is urgent need now for compliance solutions and or transitional support. Thus, there is a clear delineation between the burden from an administrative perspective and tax reform perspective:

While the existing regulation and guidance is incredibly limited, I would also prefer regulators to move slower and more informed in order to achieve broad, well-considered and reasonable legislation instead of rushed and uninformed bad legislation. [Surveyed Tax Practitioner]

We reflect here on the notion presented by Flanagan and Clarke (2007) that rules and regulation can provide necessary but not sufficient conditions for practice. For practitioners to interpret rules effectively, they are obliged to develop both sound ethical judgment and technical skills (Cheffers & Pakaluk, 2005). Reluctance combined with the need to revert to superiors has been noted (Leung & Cooper, 1995). What is observed with respect to the crypto-economy is the consideration of the tax profession as a holistic system²⁷ – bringing together technological advancements and key stakeholders to enable an effective system to achieve the required outcomes of the tax system.

We now outline findings with respect to tax practitioner skills and competencies.

5.3 Perspectives with respect to tax practitioner skills and competencies

In engaging with tax practitioners via electronic survey, we tested a set of propositions based on interview data findings with respect to the impact of blockchain-related client activities and tax practitioner skills and competencies: Figure 6 and Table 6 in Appendix D.

Related to our findings with respect to the ATO guidance being fit for purpose, we find that the lack of blockchain-related guidance is making it difficult for tax practitioners to

²⁶ This is despite Australia's standing with respect to guidance being issued: see section 2 of this article.

²⁷ Similar considerations are noted regarding the TASA Code in Devos et al. (2023a; 2023b).

comply with the TASA Code (67.8% agree/strongly agree). With this in mind, we reflect upon the distinct sets of knowledge and/or skills between taxation and blockchain technology among tax practitioners and clients. Most surveyed practitioners agree that there can be a knowledge and/or skills imbalance, in that clients may be experts in blockchain and practitioners in taxation, however the two can be difficult to reconcile (75.8% agree/strongly agree). However, from the qualitative comments we received and discussed, a strong theme is that tax practitioners recognise that clients delving into the crypto-economy are not necessarily experts in blockchain nor understand the ramifications of their activities therein. There is a strong theme, therefore, that when it comes to tax compliance – non-compliance may not be intentional.

Flowing from this we find that substantial agreeance over the balance needed in understanding blockchain technology and/or blockchain terminology, whilst being able to communicate tax technical to clients (88.7% agree/strongly agree). Reflective of this was the concern that often the tax practitioner may be the last ‘to know’ in respect to educating the client and being reactive – as opposed to proactive. This fundamentally goes to the role of the tax practitioner with respect to the crypto-economy.

Key knowledge in blockchain technology and how it works is generally seen as a necessary for tax practitioners to be able to apply tax principles (71.6% agree/strongly agree). This proposition was particularly strong for the age group 30-39 (80.5% agree/strongly agree). Tax practitioners mostly agree that they do not necessarily have adequate skills and/or knowledge in blockchain technology (78.5% agree/strongly agree). Independent investigation and ‘hands-on’ experience in blockchain technology was found to be valuable for professional judgment and being confident in applying the tax law correctly (76.4% agree/strongly agree). This is critical in that practitioners also find it to be challenging to upskill in blockchain and taxation (76.9% agree/strongly agree). Opportunities for hands-on experience therefore may assist in the necessary skills development.

Inherently, crypto-economic activity can be described as a niche area with respect to compliance. Despite this, however, we present evidence that without adequate experience and understanding of this space, there is a genuine risk to tax compliance:²⁸

When tax practitioners don't have experience with crypto they are ignorant to the tax complications and calculate CGT based on proportion of AUD value withdrawn opposed to calculating CGT on each trade as it relates to the AUD value at the time of the trade. [Surveyed Tax Practitioner]

Very niche industry that has dragged into many unsophisticated investors where both the practitioner and the client don't understand what they are doing. [Surveyed Tax Practitioner]

In my experience the lack of knowledge in tax practitioners is a problem. They don't understand the complexities involved so just take the information at face value without research or ensuring all underlying data has been captured. [Surveyed Tax Practitioner]

²⁸ Therefore, reinforcing the call by Schmitz and Leoni (2019) with respect to examining the skill sets required by practitioners and the relevance of government resources examining the crypto-economy (Treasury, Board of Taxation).

These perspectives echo the Explanatory Memorandum to the Tax Agent Services Bill 2008 in that tax practitioners must operate within their level of expertise. If the work required is beyond this, they should seek expert advice, or at a minimum gain that skill and knowledge through private study and research. This returns to the issues of the terms and circumstances of the engagement (TPB, 2021a). Whilst Woellner (2021) highlights the availability and sophistication of modern technology in assisting practitioners, for the crypto-economy the technology is the central focus thus creating the challenges to ensure awareness and understanding, challenging the notions of relevant technical, legal, and business developments.

Moreover, we reflect on Handley DP and Creyke SM in *Comino*²⁹ on the issue of the introduction of the GST system, the importance of keeping up to date and fulfilling responsibilities is critical. Without such up to date knowledge, there is a lack of confidence in the tax practitioner's ability. Inherently, any new change or novel development that relates to a tax practitioner's services can require further training and continued professional development.

We do however note that whilst we see strong agreeance, it is recognised that not all practitioners perceive crypto activities as problematic from a tax compliance point of view. Perspectives can range from '*monumental*' to '*simple*' (albeit time consuming): '*Principles may be fine for 1 or 2 trades; not scores of trades*'.

This may be reflective of the variety and volume of crypto activities being undertaken and therefore presented to practitioners; however one school of thought presented is that practitioner time being spent on crypto-economic activities may play a role:

Blockchain Technology and Taxation knowledge aren't difficult to reconcile where the accountant has a strong knowledge of the technology and the applications; as with any client relationship it's about the ability to relate to the client on their level. [Surveyed Tax Practitioner]

One respondent noted that knowledge of the crypto-economy gives an advisor an *edge* but is not *necessary*. Moreover, reflective of other grey areas of tax law, it is about taking a reasonably arguable position:

It is likely that, like other investment options, knowledge of how the underlying technology works can be helpful and provides an edge when advising but is not necessary for the bulk of the tax work involved. [Surveyed Tax Practitioner]

... [A] lack of guidance doesn't mean I can't advise what I think the correct position is – if ultimately a different view is taken by the ATO or courts I just need to be able to show that the position taken was not unreasonable. [Surveyed Tax Practitioner]

To some, it is understanding the '*lingo*' of the crypto-economy.

Despite this, the strong findings support the notion that the impact of the crypto-economy with respect to tax practitioner skills and competencies is a genuine concern. Like all areas of the tax profession, there is a constant need to update knowledge; however the challenge in appropriate training and education opportunities on this area

²⁹ See section 3.3 of this article.

is noted. The profession is calling for training and guidance and is raising the concern that for the crypto-economy, there are significant shortfalls. This is particularly the case given the vast array of activities emerging – *‘it is a whole field of knowledge in itself’* – which evolve and change at a fast pace:

I have been immersing myself to gain knowledge due to clients developing a DAO but each seminar I attend seems to be the same people saying the same things as no real answers from Aust govt. [Surveyed Tax Practitioner]

One area of concern persistently raised relate to SMSFs. It is therefore not surprising we are seeing a small cohort of practitioners dedicating their practices to the crypto-economy – to gain that ‘edge’. This reflects a contrast between those arguably more proactive or embedded within the crypto-economy and with those awaiting guidance from key stakeholders (i.e., reactive to professional bodies, CPD providers, ATO etc.):³⁰

If practitioners want to practice in this area of tax, they need to want to educate and do professional learning in this area. Very easy to do, just need to want to do it. [Surveyed Tax Practitioner]

As part of this, practitioners rely on professional networks for support and guidance. This is particularly pertinent when there is general agreeance over the benefit of practical, hands-on experience, such as practitioners describing that *‘in order to understand it, I had to open a trade account myself’* or *‘Crypto is a nightmare for tax practitioners who have not participated in it themselves’*. However, this is a controversial space.

We also reflect on the newness for tax practitioners in engaging clients in this space. Accuracy or issue can often only be deciphered through audits, penalties, and the courts (see for example, TPB 2021a as detailed in section 3.2 of this article). Perspectives here are self-reported and thus are inherently limited by response bias. Part of this is the uncertainty practitioners may feel on the future unknowns regarding audit of crypto clients. Fundamentally, this interrelates to the role of the ATO in administering the law and clarity around guidance.

Reiterating findings presented in the previous section are calls for simplifying compliance, as well as the provision of practical guidance. As one practitioner noted, *‘it is also hard to find a balance between reconciling crypto transactions correctly for client and keeping the cost low for the client’* [Surveyed Tax Practitioner]. Compliance is prohibitive due the time necessary. Reflective of the unsophisticated investors active in this space, client activities have been described as otherwise simple.

The concern that arises from this, is the risk of superficiality. Some strong opinions are noted here:

From my experience with colleagues – there is a large knowledge gap. Many have no ideas of crypto asset treatments. I am concerned for those who only do the basic reading of what the ATO has put out there and don't delve into the

³⁰ This is somewhat unsurprising given Leung and Cooper (1995) on the reluctance of accountants to resolve ethical issues and referring to superiors for consultation. Here, the effectiveness is perceived as ethical judgment combined with technical skills (see Cheffers & Pakaluk, 2005) – the latter the most challenging aspect and in need of confirmation. For those more knowledgeable, the greater competencies and skills enable ethical decision-making despite the uncertainties in the interpretation of the law.

transactions. Relying on client's downloaded csv files is definitely not sufficient! [Surveyed Tax Practitioner]

For anyone but the most basic blockchain investor (i.e., has used a centralised exchange only) most tax practitioners will not have the sufficient industry understanding of the various mechanics of blockchain tools, strategies and transactions to adequately advise clients in this space. [Surveyed Tax Practitioner]

We now present findings with respect to tax practitioners applying the law.

5.4 Perspectives with respect to tax practitioners applying the law

In engaging with tax practitioners via an electronic survey, we tested a set of propositions based on interview data findings with respect to the impact of blockchain-related client activities and tax practitioner applying the law: Figure 7 and Table 7 in Appendix D.

Consistent with findings with respect to having the knowledge and skills required to comply with the TASA Code, the lack of blockchain-related guidance makes it difficult for tax practitioners to comply with the law (72.3% agree/strongly agree). Whilst we find that there is an indication that basic activities are not so problematic, transactions on blockchain are creating unique tax issues that tax practitioners have not necessarily been exposed to before (80.1% agree/strongly agree).

Critically, taking reasonable care to ensure that taxation laws are applied correctly requires more than using the summary crypto-currency reports, they cannot replace professional judgment (80.1% agree/strongly agree).

Moreover, as the findings in section 5.2 indicate, applying tax law principles to blockchain-related activities is more about learning how the ATO interprets the application of tax law rather than the law itself (72.8% agree/strongly disagree). This is a particularly pertinent finding, especially when most tax practitioners agree that the broad nature of income tax law means it is more about how you learn to apply it rather than the law not being fit for purpose (67.4% agree/strongly agree). From a tax policy / tax reform perspective, these findings in conjunction with the issues presented in section 5.2 on data gathering and the role of the ATO are critical for policy-makers. Importantly, the ATO's interpretation of the law in its rulings and guidelines is not the law itself. There is a clear need for practitioners to have resolution to the administration of the law – law reform itself can and ought to take the necessary time.

It is important to recognise that whilst there is a strong feeling that much of the activities can be characterised as gambling or speculative, tax practitioners are split on whether client activities result in paying a lot of tax (50% agree/strongly agree, whilst 29.4% are in the middle). These findings raise the concern over the administrative burden in complying and the corresponding benefit to the taxpayer (paying appropriately for the complex compliance) when the tax revenues do not necessarily reflect the relative complexity of complying. We however note the timing of this survey coincides with the 'crypto winter', therefore an increased likelihood of loss realisation across this compliance cycle.

Contrasting perspectives indicate that, on the one hand if you have the information to apply the law, it can be simple – however on the other hand – no one really knows to

what extent the treatment applied is correct. The lack of certainty for tax compliance requirements is problematic. Tax practitioners raised the issue that there needs to be support now to manage the existing uncertainties and unknowns to mitigate stress and unnecessary tax debts.³¹ As the TPB (2021a) and Woellner (2021) note, exercising professional approaches includes referring to relevant legislation, case law, and tax rulings, as well as seeking legal advice or opinions where the facts and circumstances go beyond the tax practitioners' level of expertise. For the latter, understanding when the practitioner cannot engage is critical.

Despite the ATO being one of the earliest jurisdictions to introduce formal guidance for crypto activities (PwC, 2021), as indicated through these findings there is an issue of practical guidance and practical examples. This too requires consistency across avenues of guidance and other published materials to help minimise 'wasted' – and unbillable – time:

In an ideal world, understanding the reasons behind any tax law would mean that someone would be able to apply the principle in any relevant situation, but in practice the ATO's private rulings may set conflicting precedents between the application of the law and the ATO's own theoretical tax rules. Actual cases involving blockchain / crypto that have gone through the court system / the ATO's private rulings are probably still very few in number as the technology is a recent development, so precedents that outline a clear legal view may be hard to come by. However in the meantime, it may be of benefit to everyone involved to have clear theoretical rules and guidelines, which are accompanied by clearly written examples showing slightly different scenarios and their different outcomes. [Surveyed Tax Practitioner]

Tax practitioners in this respect appreciate the role of the ATO in its interpretation of current legislation; however, more could be done to aid in clarifying guidance – and for the guidance to cover a variety of activities, including issues around substantiation:

The sheer level of trades – in non-SA – makes the ATO guidelines far removed from the reality of tax return preparation. As tax agents, we do our best with what's available to us, but I feel that's often very approximate; what self-preparers are declaring would most likely bear little resemblance to reality. [Surveyed Tax Practitioner]

Through these findings, we see a reiteration of the problem around quality of data being made available and the pace for which the crypto-economy is moving. Tax practitioners are similarly wary that even the Board of Taxation's review of digital assets and transactions could easily become outdated by the time it is released (now expected in February 2024).

The third party reports are one avenue to resolve some of the issues with respect to complexity in this space – clarifying or creating certainty in what from the perspective of the tax practitioner in performing their services amounts to taking reasonable care:

³¹ Thus, reinforces perspectives that to interpret the rules effectively requires practitioners to develop sound ethical judgment combined with technical skills – practitioners are learning what a 'reasonable' person would do (Cheffers & Pakaluk, 2005) – here, novel circumstances are being presented within the crypto-economy.

Because it is all on-chain... the future for the profession is using software tools to calculate and report transactions – The accountant should then just code the transactions appropriately... [Surveyed Tax Practitioner]

The capacity to ensure compliance with respect to clients in this space is also described as reliant on third party software, with some indicating they require their crypto clients to use software. Otherwise, it is *'too hard to track manually'* [Surveyed Tax Practitioner] and *'...if you analyse every transaction you would die before it was completed'* [Surveyed Tax Practitioner].

A critical element in applying the law is that reasonable care is taken (TPB, 2019). Where an 'incorrect' interpretation or application occurs, this does not necessarily amount to a failure to take reasonable care (TPB, 2019). Given the current uncertainties, there are unknowns regarding whether interpretations and application of law for crypto activity may ultimately be 'incorrect'. With time, it is expected that the audit process by the ATO will create lessons learned as what amounts to the 'correct' interpretation of the law (in the eyes of the administrator) or via the courts.

Fundamental to these challenges is the need to ensure that the terms and conditions of engagement are clearly articulated between the client and the tax practitioner (see TPB, 2021a; Woellner, 2021). Moreover, the evidence of such is equally critical (TPB, 2019).

We now present the findings with respect to tax practitioners acting lawfully and ascertaining client's affairs.

5.5 Perspectives with respect to tax practitioners acting lawfully and ascertaining client's affairs

In engaging with tax practitioners via electronic survey, we tested a set of propositions based on interview data findings with respect to the impact of blockchain-related client activities and tax practitioner acting lawfully and ascertaining client's affairs: Figure 8 and Table 8 in Appendix D.

Unsurprisingly given the previously presented findings, documentation gathering is increasingly important to ensure a reasonably arguable position for client's blockchain-related activities (93.7% agree/strongly agree) and the ATO could improve the quality of data matched prefill information (85.8% agree/strongly agree). On this point, the ATO is well positioned with respect to encouraging tax compliance, as tax practitioners perceive the risks of the ATO data matching program as encouraging compliance for those blockchain-related activities (81% agree/strongly agree).

The majority see the ATO letters to clients (via tax practitioners) as prompting conversations and compliance (66.5% agree/strongly agree). However, it is important to note that despite one of the key benefits of blockchain technology being transparency, it can be difficult to ensure clients are providing appropriate information with respect to their on-chain activities (88.7% agree/strongly agree). This goes to earlier findings with respect to what data is being captured and matched by the ATO and the breadth of activities occurring on chain.

Reflecting this quasi-transparency, tax practitioners tend to agree that if the client was motivated not to declare crypto-related income, they can deliberately evade both the tax system and tax practitioners' attempts to understand the client's blockchain-related activities (62% agree/strongly agree whilst 21% are in the middle). The more varied

responses here may be linked to the distinction identified with respect to non-compliance stemming from intentional or unintentional factors. Whilst clients can be unwilling to provide evidence on their blockchain-related activities (60.3% agree/strongly agree whilst 22.7% are in the middle), a mixed position was held that clients can be unwilling to lodge tax returns once their tax position arising from their blockchain-related activities is ascertained (45.2% agree / strongly agree whilst 29.4% are in the middle).

As the TPB (2019) notes, establishment of the client's state of affairs begins with taking reasonable care – professional judgment, knowledge, skills and expertise. Issues with respect to competencies have been considered already. Findings highlight the need to reflect upon the perspectives of the tax practitioner and the perspectives of the client. In this regard, as already highlighted, there is substantial uncertainty over the client's understanding of the technology and relevance to tax compliance:

While some clients are trying to avoid any liability (thinking crypto is untraceable), more don't provide the information as they don't understand the system or think because they have lost their money that it's not relevant.
[Surveyed Tax Practitioner]

Thus, consideration of any potential non-compliance being intentional or unintentional and what this indicates for the current regulatory context is critical. This reflects not only what the ATO can do in its administration with limited resources, but also the extent of taxpayers' activities within the crypto-economy. The engagement with the client, as well as their understandings and motivations are critical:

...ATO use data provided to them, they don't make data so don't lay data quality at their feet. Remove 'crypto' from the concept of evading income. A motivated client will do this regardless. The same goes for motivation to provide evidence.
[Surveyed Tax Practitioner]

The problem is just how much can happen without a client's active involvement – e.g., if you'd just held onto bitcoin but forgotten you had it, you'd have been involved and received so many airdrops – most clients are not techy so it is not that they would be actively evading – they just wouldn't know that they have a copy of coins on the ETHW chain, or this or that other chain because of the hard fork or consensus split... [Surveyed Tax Practitioner]

For tax practitioners, there is a fundamental trust in the client providing all necessary information – this is not necessarily different for crypto from any other aspect of the tax compliance system. The question arises as to how far should a tax practitioner go in gathering and confirming the taxpayer's information as being true and correct? (See section 3.4 of this article.) What amounts to a reasonable enquiry that would be expected of the tax practitioner in their professional capacity? What level of knowledge and understanding of the technology is necessary to ascertain this?

The problem is that the novel activities that can occur – with technology described as transparent – are yet to be fully realised. A distinction though needs to be carefully considered between ignorance and ignoring the law:

Many clients don't understand the transactions so are unsure of what is required to be given to the tax agent. There are also some who were misled into believing

their crypto trading was anonymous and no one would know about it. [Surveyed Tax Practitioner]

On this perspective, we reiterate the duties of the practitioner extending beyond the client to the greater community and therefore the law (Explanatory Memorandum to the Tax Agent Services Bill 2008). We reiterate the concern over the extent to which the client is dependent on the tax practitioner for lawful guidance (TPB, 2021a). The practical reality that crypto clients are described as younger raises a key concern over the next generations of taxpayers and their engagement with and experience of the tax system.³² A critical element of the voluntary tax compliance system is the tax practitioner (Marshal et al., 1998; see also Erard, 1993).

Rather than clients seeking to mislead or be unwilling to provide information to practitioners, challenges in the ascertaining of client affairs can include: (i) non-existent or inadequate reporting for substantiation; (ii) difficulties in collating information from multiple sources (e.g., exchanges, wallets, protocols), or (iii) lack of ability to continue to access transactional information. Or more simply, following confusion, these activities get put into the ‘*too hard basket*’ and therefore ignored. The ATO needs to note why tax practitioners can be overwhelmed and this is likely to vary dependent on market dynamics:

Most clients made a loss for 2022, so I don't personally believe a fear of extra tax payable motivates them withholding information this year, it is just the sheer complexity and (even enormous volume of low-value transactions), and even perhaps embarrassment of their true losses that seem to leave us without reliable, usable, verifiable data from the client. [Surveyed Tax Practitioner]

Moreover, third party software aggregators will not necessarily get it right. There is a fundamental need for practitioners to use judgment and be alert to the possibility of increasing margins of error:

Crypto tax software are not able to give accurate results when several exchanges/wallets are used, with transfers between them. In fact some of the reports I have seen have over-reported or under-reported the profits/losses in a massive way – they don't even pass the common sense test. They may be able to handle cases where users stick to the one exchange and have simpler transactions, but not complex cases. Crypto reporting really needs to step up to handle the complexity of this space and for heavy users. [Surveyed Tax Practitioner]

Thus, the combination of uncertainty from both perspectives creates ‘*tricky conversations*’. In contrast with share trading activities, there can be a sense of no real value being added:

In general they don't have the records, or can't understand their records, rather than recklessness. Can be a two-edged sword where sometimes you don't want to ask as it makes your job harder for a fee sensitive client with no real value add for either in the relationship. [Surveyed Tax Practitioner]

³² Noting that this project does not capture those taxpayers self-lodging via myTax (see Harb et al., 2023).

However, many tax practitioners indicate most clients are willing to provide the requisite information – once conversations are held: *‘clients rarely remember to disclose their blockchain activities unless directly asked’* [Surveyed Tax Practitioner]. Disclosure often occurs following the examination of the prefill report. This creates challenges in managing workflows,³³ as can backlogs from increased workloads, with practitioners *‘trying to fit in their reports in an already fully booked diary’* [Surveyed Tax Practitioner], as well as delays as clients *‘tend to disappear for weeks before providing’* [Surveyed Tax Practitioner].

For some clients, they are described as treating it like a lotto ticket and *‘their reluctance to comply with the law comes after the fact because it’s too hard/time consuming for them to find the information we request’* [Surveyed Tax Practitioner]. For others, they want to remain under the radar. Whether it is a lack of understanding, or unwillingness to disclose and recognise the cost of compliance, there is a fundamental challenge to the tax compliance function:

Clients generally do not understand what they are doing. We had one client that said [they] had no sales (i.e., [they] did not draw money out of the account) but when we looked at [their] Crypto reports, [they] had more than 70 sales let alone purchases. It took hours to work out and they are not willing to pay for that. [Surveyed Tax Practitioner]³⁴

Those that choose to do the wrong thing – irrespective of whether this is specific to crypto activities – will continue to do so. Those under-reporting crypto activities are likely to do so making use of the current lack of scope covered by the ATO data collection activities.³⁵ It is important to recognise that if the taxpayer is evading their obligations, it is not the tax practitioner that is at fault.

Finally, we briefly examine the potential demographic factors at play within the survey results.

5.6 Demographic considerations

With respect to the regulation and guidance being fit for purpose, we find that overall surveyed tax practitioners aged between 60 to 69 tend to have a stronger opinion (average of all perspective at 78% disagree/strongly disagree) that the current regulation and guidance is not fit for the purpose with respect to blockchain-related activities. However, with respect to experience, we do not observe variation based on the years of tax experience. This suggests that perceptions may be an age – rather than experience – related variation. Although we also find that overall, the less time practitioners spent on the tax-related matter (25-49% of their working time spent on tax-related matter), the more they tend to view that the current regulation and guidance is not fit for the purpose (average of all perspective at 93% disagree/strongly disagree). On this basis, we query whether there is an element of knowledge and skill development with the level of activity. The more practice in the space, the more familiar and comfortable the practitioner becomes in applying existing tax law principles. However, this appears to

³³ Recall Devos and Kenny (2017) highlight the expectation of a high level of service and attention to detail, by both the public and client base.

³⁴ Gender of client removed from quotation.

³⁵ For example, the extent to which exchanges are reporting as well as the extent to which activities within the crypto-economy are beyond exchanges.

be a temporal consideration rather than overarching years of experience consideration. We should reflect on the inherent pace at which the technology is evolving.

Other potential variation stems from gender and the area of practice. We find that overall, female practitioners tend to have a stronger view that regulation and guidance is not fit for purpose compared to male practitioners. We also find those practitioners who identify SMSFs as their main clientele category tend to have a stronger opinion that the regulation and guidance is not fit for the purpose compared with those who identify other type of clients. This could relate to the specific regulatory context SMSFs face.

With respect to perspectives on practitioner skills and competencies, when we examine more closely the demographic factors across the surveyed sample, we find, that overall surveyed female tax practitioners have a stronger opinion (strongly agree) on all propositions with respect to tax practitioner skills and competencies (see Table 6 in Appendix D). With respect to perspectives on practitioner skills and competencies, other possible factors that may impact this include having SMSFs and SMEs as core clientele and firms with two to five partners.

With respect to applying the law and gender, female practitioners were observed to have a higher percentage (average of all perspectives 78%) of agree/strongly agree compared to male (average of all perspectives 67%) except for the proposition that the broad nature of income tax law means it is more about how you learn to apply it rather than the law not being fit for purpose. On this proposition, the perspectives were reasonably similar between male and female practitioners.

With respect to acting lawfully and ascertaining client affairs, we note that the age group 18 to 29 years appears to have the strongest, most consistent level of agreeance (average of 80% agree/strongly agree) while the average of all other age groups is 70%. We observe generally that all of the age groups are most agreeable with respect to the proposition that documentation gathering is increasingly important to ensure a reasonably arguable position for client's blockchain-related activities (average of 95% agree/strongly agree).

Finally, we again observe preliminary findings with respect to gender in that female practitioners expressed a higher percentage of agree/strongly agreed (average 75.8%) on all perspectives with respect to acting lawfully than male (average 67%), except for the proposition that where the client was motivated not to declare crypto-related income, they can deliberately evade both the tax system and tax practitioners' attempts to understand the client's blockchain-related activities.

Our findings suggest that practitioner demographics may play a role in perceptions with respect to the crypto-economy and the Australian tax system. We suggest that further research is warranted to examine age and gender factors that may influence perceptions of the tax system. Moreover, further research within the SMSF space is warranted to examine the regulatory challenges this cohort faces with tax (and superannuation) compliance.

6. CONCLUSION

This study presents findings exploring the response of tax practitioners to clients participating in the crypto-economy with a particular focus on the TASA Code. Overall, in collating tax practitioner perspectives, we reaffirm a majority position that there is a

lack of clear, specific guidance with respect to the broad activities being carried out by clients within the crypto-economy. This is despite Australia generally being reported as having strong guidance to support the tax compliance function.

The perspectives in this project suggest that the current guidance available is making tax compliance challenging for tax practitioners (and taxpayers). Whilst practitioners are required to learn how to apply existing tax laws to evolving activities, practitioners often lack knowledge and skills in blockchain. From the perspective of tax practitioners surveyed, this presents a risk to tax practitioners' compliance with the TASA Code. However, this can vary between tax practitioners, depending on the level and complexity of crypto activities being undertaken by clients. With this comes a fundamental need to reflect on the terms and circumstances of engagement (see for example TPB, 2021a) as well as the shifting demographics of taxpayers.

There can be a knowledge and/or skills imbalance, in that clients may be experts in blockchain and practitioners in taxation. These can be difficult to reconcile. However, this assumes that clients are sufficiently knowledgeable of blockchain technology and their activities. Tax practitioners have the difficulty in making sense of client activities, often only becoming evident once the question is asked or the prefill report viewed. These challenges increase when the clients may not necessarily be forthright. These situations can create difficult decisions for tax practitioners. However, to some extent intentional and unintentional non-compliance is nothing new.

As some tax practitioners are embracing this emerging space, they may be proactive and act as change agents. However, some tax practitioners are hesitant and awaiting profession-level response. As there is an increasing demand, there develops a need for competencies. Tax practitioners need to be cognisant of the skills and expertise required and whether they ought to engage and what that means for the future capacity to meet the needs for an increasingly digitalised society.

The crypto-economy is creating a need for bespoke expertise and skills. These can be challenging for formal educators to meet the needs of eager tax practitioners. The challenge relates to adaptivity, responsiveness, and in-depth learning. It is necessary to have sufficient practical guidance and hands-on experience to allow tax practitioners to gain an appropriate appreciation of the vast array of activities being undertaken and the extent to which these can be captured by current reporting mechanisms. Moreover, the ATO's proactivity is similarly required as it can be about understanding how the ATO interprets the law not just the law itself, particularly when formal tax regulation lags.

Whilst this research is not completely representative of the broader tax profession, the tax practitioner perspectives present important empirical findings for the taxation of the crypto-economy and related regulatory frameworks in operation. Future evidence-based research ought to consider the taxation implications in respect of demographic traits of both the tax practitioner and taxpayer in order to gain further understandings of variation in perceptions. For example, this research suggests there may be an age – or generational – factor from a tax practitioner perspective; however the more frequent the practice, the more familiar and comfortable practitioners become with the work. Given the emerging nature of this speciality, tax practitioners are yet to gain learnings from ATO audit activity. This warrants further consideration. Given the problems around disclosure by clients considered, there is further consideration of the implications of the challenges participants face in the crypto-economy on tax morale and therefore tax compliance for a digital generation of taxpayers.

This study fosters a greater understanding of how tax practitioners are responding to the crypto-economy, particularly in being able to comply with codes of professional conduct such as the TASA Code. These findings have key implications for regulators in managing the administration of the tax system as well as considerations towards tax reform and the voluntary nature of the tax compliance system. For Australian tax practitioners, this is particularly relevant given the Board of Taxation's review into digital assets and transactions and following the Bragg Report (2021).

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APPENDIX A

Table A1: Proposition Set

With respect to tax practitioner skills and competencies
• Key knowledge in blockchain technology and how it works is necessary for tax practitioners to be able to apply tax principles. • Tax practitioners do not necessarily have adequate skills and/or knowledge in blockchain technology. • It can be challenging for tax practitioners to upskill in blockchain and taxation. • Independent investigation and hands-on experience in blockchain technology is valuable to be able to use professional judgement and be confident in applying the tax law correctly. • There is a balance in needing to understand blockchain technology and/or blockchain terminology, whilst being able to communicate tax technical to clients. • There can be a knowledge and/or skills imbalance, in that clients may be experts in blockchain and practitioners in taxation, however the two can be difficult to reconcile. • The lack of blockchain-related guidance makes it difficult for tax practitioners to comply with the TASA code of professional conduct.
With respect to applying the law
• Transactions on blockchain are creating unique tax issues that tax practitioners have not necessarily been exposed to before. • The broad nature of income tax law means it is more about how you learn to apply it rather than the law not being fit for purpose. • Applying tax law principles to blockchain-related activities is more about learning how the ATO interprets the application of tax law rather than the law itself. • Client's declaring blockchain-related activities typically do not result in the client paying a lot of tax. • Taking reasonable care to ensure that taxation laws are applied correctly requires more than using the summary crypto-currency reports, they cannot replace professional judgement. • The lack of blockchain-related guidance makes it difficult for tax practitioners to comply with the law.
With respect to acting lawfully and ascertaining client's affairs
• ATO Letters to clients (via tax practitioners) prompts communication with tax practitioners and subsequent compliance. • The ATO could improve the quality of data matched prefill information. • The risk of the ATO data matching program with respect to blockchain activities encourage compliance. • Documentation gathering is increasingly important to ensure a reasonably arguable position for client's blockchain-related activities. • Clients can be unwilling to lodge tax returns once their tax position arising from their blockchain-related activities is ascertained. • If the client was motivated not to declare crypto-related income, they can deliberately evade both the tax system and tax practitioners attempts to understand the client's blockchain-related activities.

-
- Despite the transparency of blockchain-related activities, it can be difficult to ensure clients are providing appropriate information with respect to their on-chain activities.
 - Clients can be unwilling to provide evidence on their blockchain-related activities.
-

APPENDIX B

Table A2: Common Blockchain-Related Activities that Clients Undertake

Rank	Common blockchain activities	N	%	% Cases (n=202)
1	Cryptoasset investment and/or trading	194	25.2	96.0
2	Moving cryptoassets between wallets and/or exchanges	145	18.9	71.8
3	Crypto staking	84	10.9	41.6
4	Crypto as trading stock	71	9.2	35.1
5	Airdrops	66	8.6	32.7
6	NFTs	48	6.2	23.8
7	Crypto mining	36	4.7	17.8
8	Chain Splits/forks	25	3.3	12.4
9	DeFi (derivatives and liquidity pools)	21	2.7	10.4
10	Cryptoasset bridging and/or wrapping	15	2.0	7.4
11	Crypto as remuneration	12	1.6	5.9
12	DeFi (lending, flash loans etc)	11	1.4	5.4
13	DAOs	11	1.4	5.4
14	Donating crypto	9	1.2	4.5
15	Play to earn (P2E), or ‘GameFi’	6	0.8	3.0
16	Trading bots	6	0.8	3.0
17	Crypto as governance	2	0.3	1.0
18	Cryptoassets as digital twins	1	0.1	0.5
	Other	6	0.8	3.0
	Total	769	100.0	380.7

Note: 27 participants did not disclose. Percentages are based on those who responded to this question.

APPENDIX C

Table A3: Common Tax Issues that Arise from Client's Blockchain-Related Activities

Rank	Common Tax Issue	N	%	% Cases (n=200)
1	Whether activity falls within ordinary income or CGT provisions	138	14.5	69.0
2	Cryptoasset trading (capital account)	128	13.5	64.0
3	Record keeping	123	12.9	61.5
4	Cost base valuation	113	11.9	56.5
=5	Cryptoasset trading (revenue account)	100	10.5	50.0
=5	Investor or trader?	100	10.5	50.0
7	CGT Discounting	48	5.0	24.0
8	Lost or stolen crypto	44	4.6	22.0
9	Special asset class and treatment (personal use)	43	4.5	21.5
10	FIFO	35	3.7	17.5
11	Crypto and GST	24	2.5	12.0
12	International tax issues	14	1.5	7.0
13	Special asset class and treatment (collectables)	9	0.9	4.5
14	Crypto and super and/or PAYG	8	0.8	4.0
15	Crypto and FBT	6	0.6	3.0
16	Crypto and withholding taxes and/or royalties	6	0.6	3.0
	Other	12	1.3	6.0
	Total	951	100.0	475.5

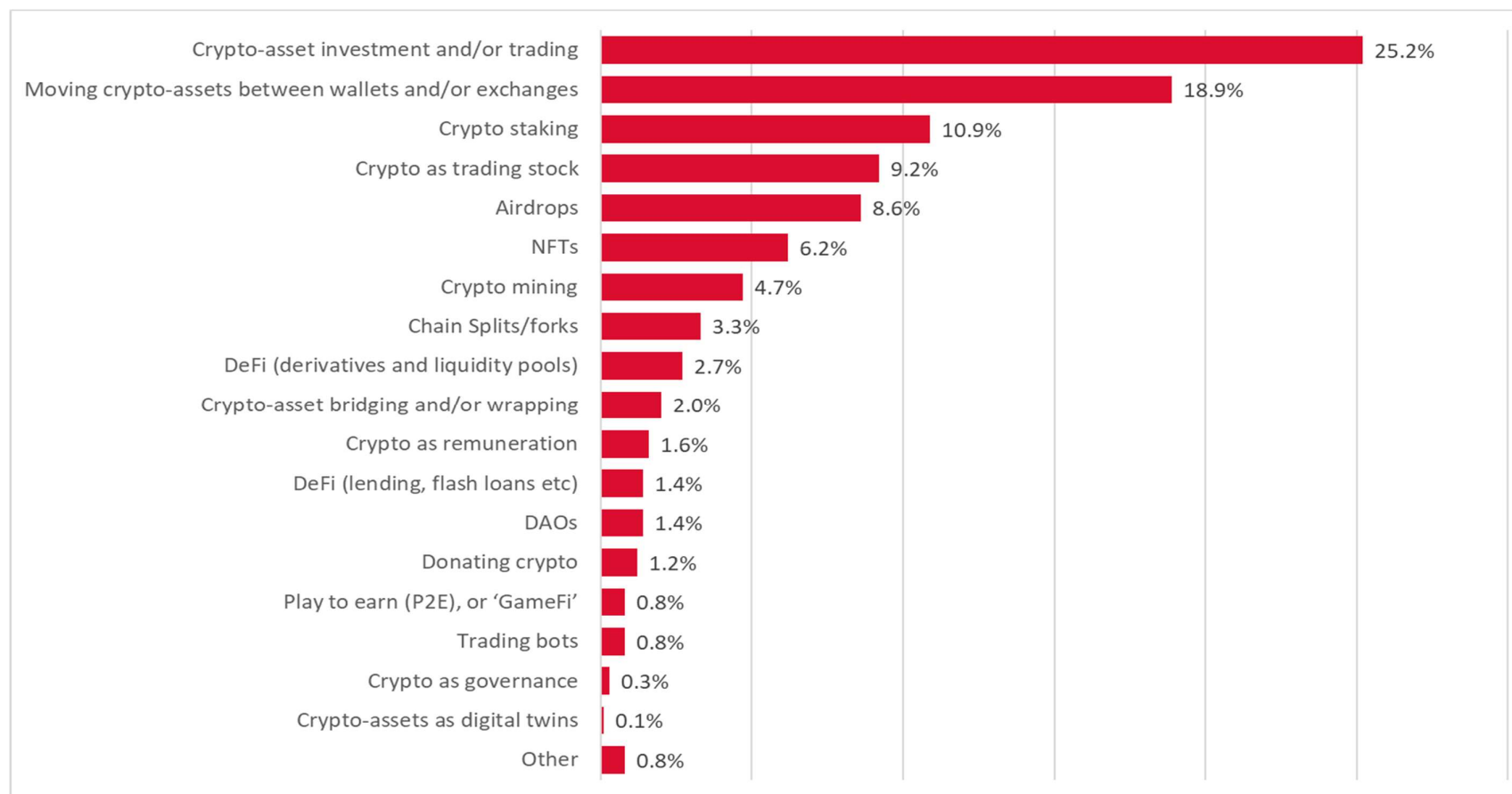
Note: 29 participants did not disclose. Percentages are based on those who responded to this question.

APPENDIX D

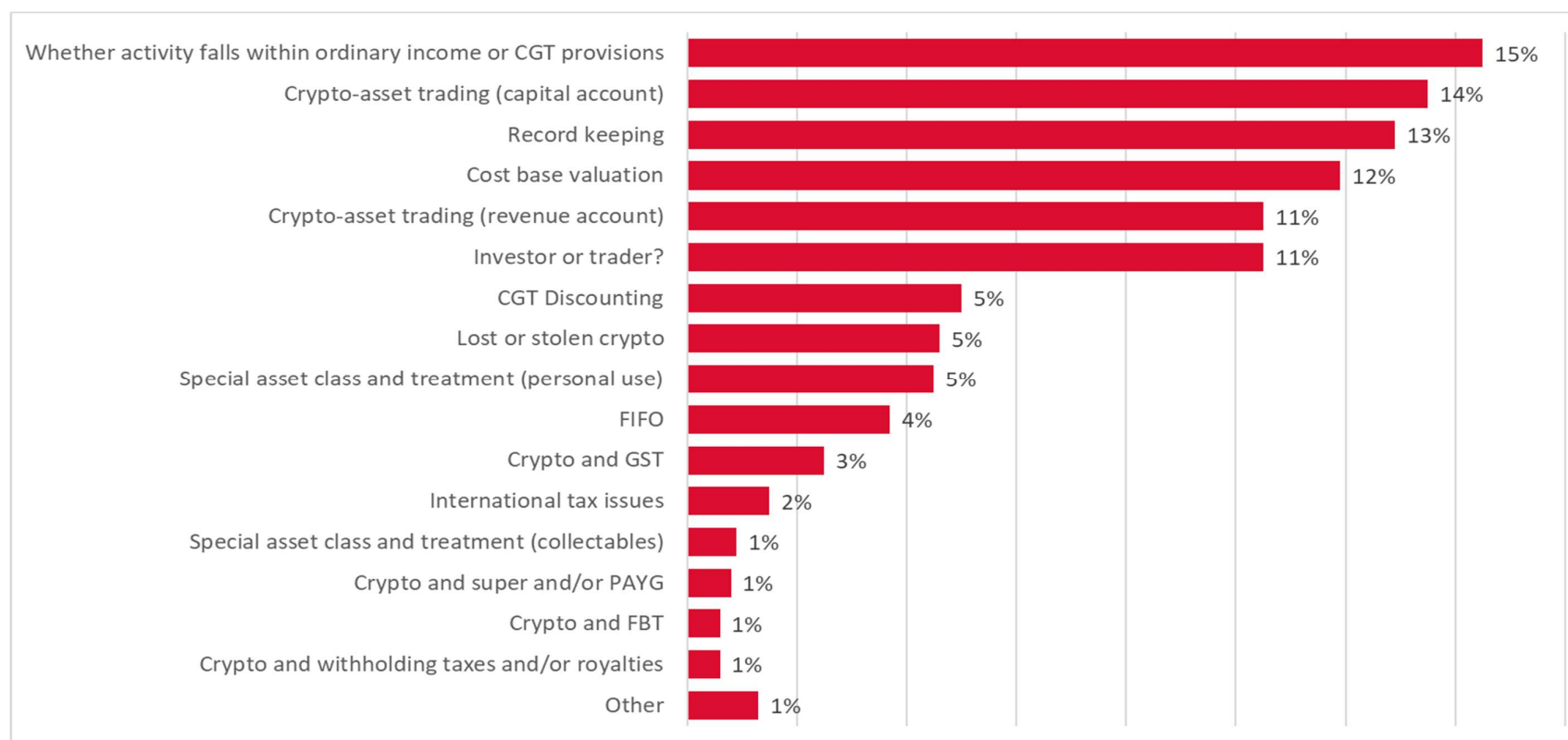
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Table 3: Survey Participant Demographics

Description	N	%	Description	N	%
Age			Office you currently work in		
18-29	28	12.2	Sole practitioner	80	34.9
30-39	54	23.6	2-5 partners	89	38.9
40-49	61	26.6	6 or more partners	14	6.1
50-59	57	24.9	Directors	24	10.5
60-69	23	10.0	Management role	6	2.6
> 70	3	1.3	Tax consultant/agent	14	6.1
Total	226	98.7	Other	2	0.9
<i>Missing</i>	<i>3</i>	<i>1.3</i>	Total	229	100.0
Gender			Percentage of working time spend on tax-related matters		
Male	130	56.8	0-24%	1	0.4
Female	92	40.2	25-49%	6	2.6
Prefer not to say	3	1.3	50-74%	60	26.2
Total	225	98.3	75-99%	124	54.1
<i>Missing</i>	<i>4</i>	<i>1.7</i>	100%	38	16.6
			Total	229	100.0
State or territory			Year of experience working in Taxation		
VIC	46	20.1	0-5 years	27	11.8
NSW	92	40.2	6-10 years	37	16.2
ACT	2	0.9	11-15 years	43	18.8
QLD	41	17.9	16-20 years	35	15.3
WA	28	12.2	21-25 years	36	15.7
TAS	1	0.4	26-30 years	13	5.7
SA	16	7.0	31-35 years	19	8.3
Other	2	0.9	36 years or more	19	8.3
Total	228	99.6	Total	229	100.0
<i>Missing</i>	<i>1</i>	<i>0.4</i>			
Professional association(s)			Client categories		
CPA Australia (CPA)	82	35.8	Employed persons	36	15.7
Chartered Accountants Australia and New Zealand (CAANZ)	104	45.4	Self-employed persons	18	7.9
The Tax Institute (TTI)	43	18.8	Small medium business (SME)	161	70.3
The Institute of Public Accountants (IPA)	31	13.5	Large business	5	2.2
National Tax and Accountants Association (NTAA)	31	13.5	Other	4	1.7
Tax & Super Australia	14	6.1	Self-managed super fund (SMSF)	5	2.2
SMSF Association	7	3.1	Total	229	100.0
Other	10	4.4			
Not a member of a professional association	12	5.2			

Fig. 3: Common Blockchain-Related Activities that Clients Undertake

Note: 'Other' includes for example operating exchanges/wallets, NFT horse racing, Initial Coin Offerings (ICOs), and one practitioner who indicated 'money laundering' as the common blockchain activity. Note that inherent overlaps are present across categories.

Fig. 4: Common Tax Issues that Arise from Client's Blockchain-Related Activities

Note: The 'Other' category includes issues with respect to: *Calculations*: calculating gains, conversion to \$A; *Classifications and interpretations*: classification for TOFA, Div. 6C and CFC purposes, personal use asset exemption, collectables, staking rewards as taxable income based on market value of the time token rewards were issued; *Report Data*: interpreting statements, client disclosure issues, lack of data on reports; *Client/practitioner*: tax management/planning/optimisation, clients being overwhelmed and not wanting to deal with the tax return; *Legality*: crypto trading to money launder; *Other*: incidental amounts.

Fig. 5: Perspectives with Respect to Regulation and Guidance: Levels of Agreeance as to Regulation and Guidance Being Fit for Purpose

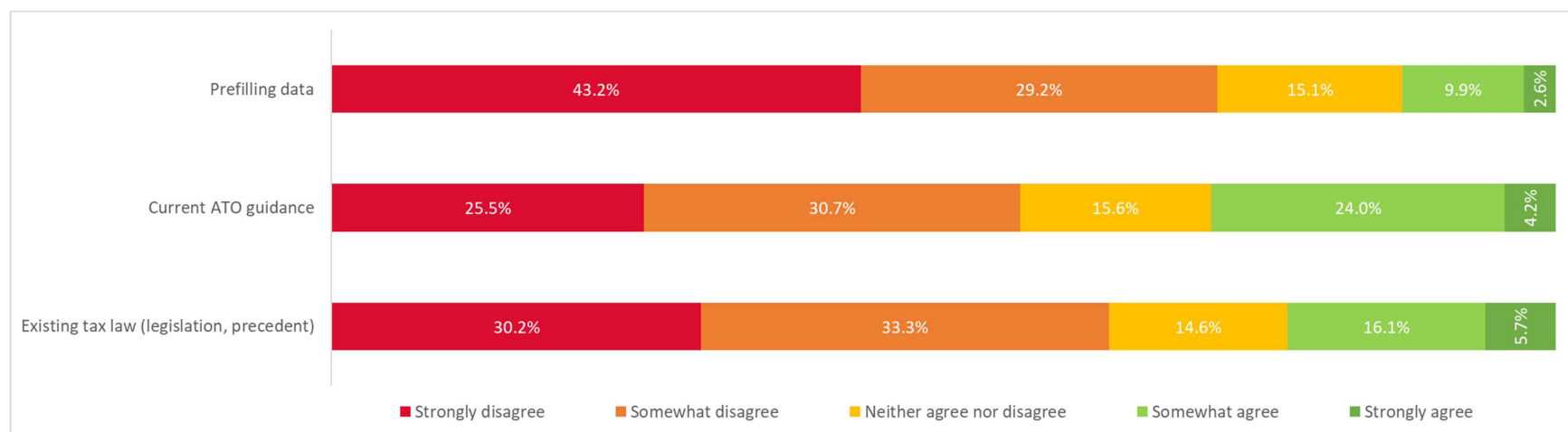


Table 5: Perspectives with Respect to Regulation and Guidance: Levels of Agreeance as to Regulation and Guidance Being Fit for Purpose

Regulation & guidance	N	Mean*	SD	Min	Max	Majority Position
Prefilling data	192	1.99	1.10	1	5	Disagree prefilling data is fit for purpose
Current ATO guidance	192	2.51	1.22	1	5	Disagree current ATO guidance is fit for purpose
Existing tax law (legislation, precedent)	192	2.34	1.23	1	5	Disagree existing tax law is fit for purpose

*Likert scale ranging from 1 meaning strongly disagree to 5 meaning strongly agree.

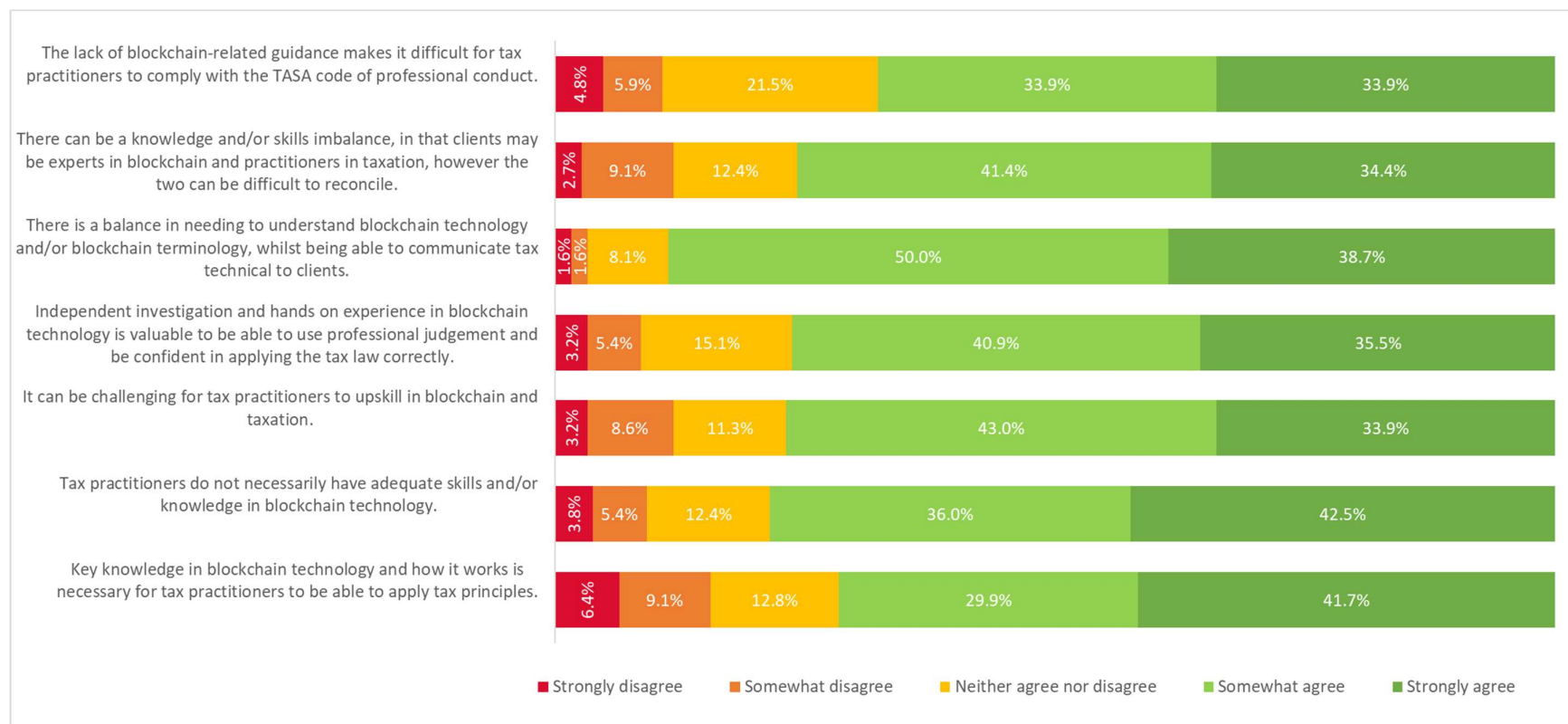
Fig. 6: Perspectives with Respect to Tax Practitioner Skills and Competencies: Levels of Agreeance

Table 6: Perspectives with Respect to Tax Practitioner Skills and Competencies: Levels of Agreeance

Tax practitioner skills and competencies	N	Mean *	SD	Min	Max	Majority Position
The lack of blockchain-related guidance makes it difficult for tax practitioners to comply with the TASA code of professional conduct	186	3.86	1.10	1	5	Agree
There can be a knowledge and/or skills imbalance, in that clients may be experts in blockchain and practitioners in taxation, however the two can be difficult to reconcile	186	3.96	1.04	1	5	Agree
There is a balance in needing to understand blockchain technology and/or blockchain terminology, whilst being able to communicate tax technical to clients	186	4.23	0.79	1	5	Agree
Independent investigation and hands-on experience in blockchain technology is valuable to be able to use professional judgement and be confident in applying the tax law correctly	186	4.00	1.01	1	5	Agree
It can be challenging for tax practitioners to upskill in blockchain and taxation	186	3.96	1.04	1	5	Agree
Tax practitioners do not necessarily have adequate skills and/or knowledge in blockchain technology	186	4.08	1.05	1	5	Agree
Key knowledge in blockchain technology and how it works is necessary for tax practitioners to be able to apply tax principles	187	3.91	1.22	1	5	Agree

*Likert scale ranging from 1 meaning strongly disagree to 5 meaning strongly agree.

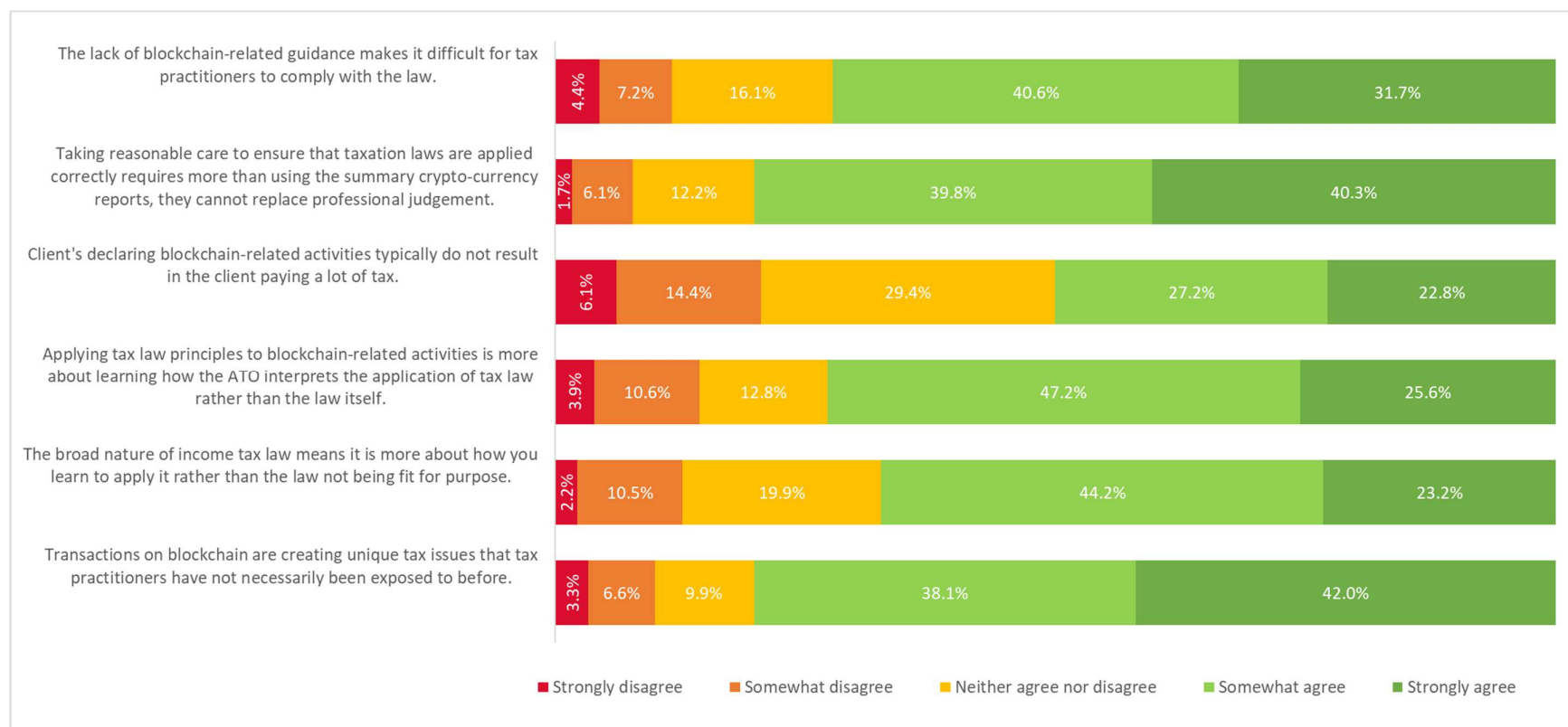
Fig. 7: Perspectives with Respect to Applying the Law: Levels of Agreeance

Table 7: Perspectives with Respect to Applying the Law: Levels of Agreeance

Applying the law	N	Mean *	SD	Min	Max	Majority Position
The lack of blockchain-related guidance makes it difficult for tax practitioners to comply with the law	180	3.88	1.08	1	5	Agree
Taking reasonable care to ensure that taxation laws are applied correctly requires more than using the summary crypto-currency reports, they cannot replace professional judgement	181	4.11	0.95	1	5	Agree
Client's declaring blockchain-related activities typically do not result in the client paying a lot of tax	180	3.46	1.17	1	5	Neutral → Agree
Applying tax law principles to blockchain-related activities is more about learning how the ATO interprets the application of tax law rather than the law itself	180	3.80	1.06	1	5	Agree
The broad nature of income tax law means it is more about how you learn to apply it rather than the law not being fit for purpose	181	3.76	1.00	1	5	Agree
Transactions on blockchain are creating unique tax issues that tax practitioners have not necessarily been exposed to before	181	4.09	1.04	1	5	Agree

*Likert scale ranging from 1 meaning strongly disagree to 5 meaning strongly agree.

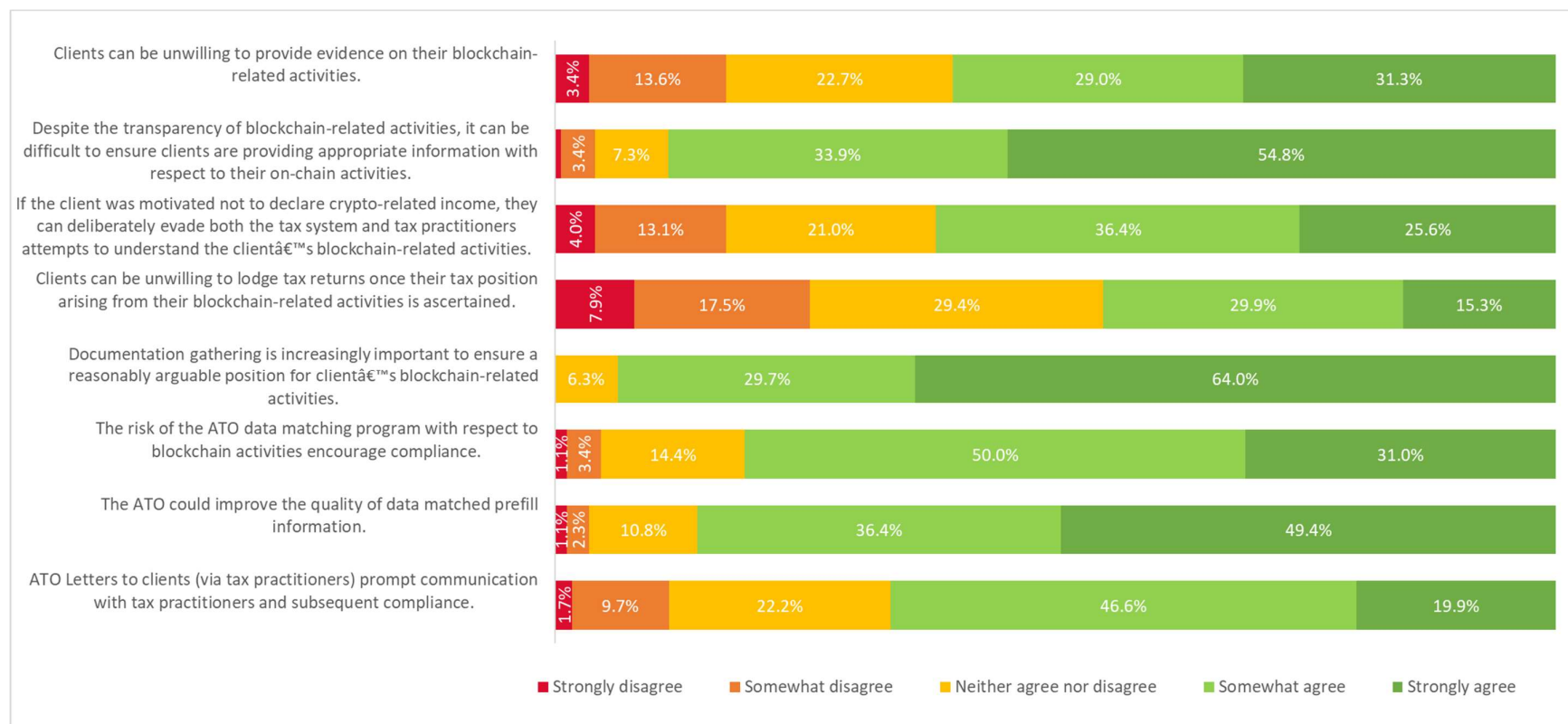
Fig. 8: Perspectives with Respect to Acting Lawfully and Ascertaining Client's Affairs: Levels of Agreeance

Table 8: Perspectives with Respect to Acting Lawfully and Ascertaining Client's Affairs: Levels of Agreeance

Tax practitioner skills and competencies	N	Mean *	SD	Min	Max	Majority Position
Clients can be unwilling to provide evidence on their blockchain-related activities	176	3.71	1.15	1	5	Agree
Despite the transparency of blockchain-related activities, it can be difficult to ensure clients are providing appropriate information with respect to their on-chain activities	177	4.39	0.81	1	5	Agree
If the client was motivated not to declare crypto-related income, they can deliberately evade both the tax system and tax practitioners attempts to understand the client's blockchain-related activities	176	3.66	1.11	1	5	Agree
Clients can be unwilling to lodge tax returns once their tax position arising from their blockchain-related activities is ascertained	177	3.27	1.16	1	5	Neutral → Agree
Documentation gathering is increasingly important to ensure a reasonably arguable position for client's blockchain-related activities	175	4.58	0.61	3	5	Agree
The risk of the ATO data matching program with respect to blockchain activities encourage compliance	174	4.06	0.83	1	5	Agree
The ATO could improve the quality of data matched prefill information	176	4.31	0.84	1	5	Agree
ATO Letters to clients (via tax practitioners) prompt communication with tax practitioners and subsequent compliance	176	3.73	0.95	1	5	Agree

*Likert scale ranging from 1 meaning strongly disagree to 5 meaning strongly agree.