

**Written Submission for the Pre-Budget Consultations  
in Advance of the 2023 Federal Budget**

**Submitted By: The Fair Tax Treatment for Responsible  
Digital Asset Mining Coalition**

**Submitted To: The Standing Committee on Finance**

**October 2022**

**Overview of Recommendations**

**Recommendation 1:** Finance Canada should pause implementation of the proposed new subsection 188.2(4) of the *Excise Tax Act* that deems that any person providing property or services as a fee, reward or payment (the mining payment) to another person for digital asset mining services, those services are provided to the other person “otherwise than in the course of commercial activity” and, consequently ineligible for ITCs.

**Recommendation 2:** That Finance Canada should consult with the digital asset mining industry to better understand the industry, the services being performed and compensated through payment in digital tokens, the myriad use cases and businesses built on blockchain technologies and determine how taxation and/or other regulations and government policy tools might be used to ensure financial stability, national security and the continued growth of this thriving technology sector in Canada.

**Recommendation 3:** The Canada Revenue Agency should continue to allow all ITC claims for the “commercial activities” of digital asset mining companies operating in Canada, while the above-described consultations are taking place.

## **ISSUE**

On February 2, 2022, without advance notice to industry, the Department of Finance (Finance Canada) proposed an amendment to the Excise Tax Act – GST/HST (and QST in Quebec) legislation -- that declares that digital (crypto) asset mining is not a “commercial activity” in Canada and, as such, the companies engaged in digital asset mining were no longer eligible to receive Input Tax Credits (ITCs) for the value added taxes (GST, HST, QST) paid on mining inputs (i.e. computer and IT technology, energy costs, professional, consulting fees, etc.).

This unprecedented tax proposal creates a hidden tax that increases the cost of important equipment and conducting digital asset mining operations by 5% - 15%, making Canada a significantly less competitive jurisdiction to conduct these commercial operations.

Finance Canada has provided no reasonable explanation of the policy analysis or rationale that led to this proposal, even though, denying ITCs to the sector is completely at odds with the fundamental principles that underly Canada’s GST, arbitrary and highly prejudicial to a specific commercial sector of the Canadian economy.

## **BACKGROUND**

The regulation of digital (crypto) assets and digital asset mining activities have grown as an area of interest for governments around the world since the launch and trading of Bitcoin and Ethereum in 2008 and 2013, respectively. In the the past decade, Finance Canada began work to clarify the tax treatment of digital assets.

In May 2019, Finance Canada released draft legislation to amend the definition of “financial instrument” for the purposes of GST/HST/QST. The category of “virtual payment instruments” was added to the Excise Tax Act - the GST/HST/ legislation - and came into force in summer 2021.

“Virtual payment instruments” are defined as property that is a digital representation of value, that functions as a medium of exchange and that exists only at a digital address of a publicly distributed ledger.

As ‘virtual payment instruments’ and a “financial instrument” for GST/HST/QST purposes, the trading of virtual payment instruments or using them to pay for goods and services would be treated as an exempt or zero-rated supply depending on the residence of the other party (i.e., zero-rated where the other party is not resident in Canada and the supplier is a financial institution, but exempt otherwise). Further, digital asset mining services provided to non-residents of Canada would continue to be zero-rated.

Tax experts and industry watchers and supporters generally accepted this clarification which did not address the activities undertaken to produce digital assets known as digital “crypto” asset mining, although Finance Canada indicated that it was working on the tax treatment of this new and growing sector.

On February 2, 2022, Finance Canada proposed further amendments to the Excise Tax Act, this time to define “cryptoasset mining” for GST/HST/QST purposes.

By these “clarifying” amendments, Finance Canada proposes to declare that digital asset mining is not a “commercial activity” in Canada and, as such, the companies engaged in digital asset mining are not eligible to receive credits for the taxes paid on mining inputs (i.e. computer and IT technology, energy costs, commercial rents, professional and consulting fees). Further, even digital asset miners in Canada who provided their mining services to non-residents will be denied ITCs if they share in the mining pool.

Proposed new subsection 188.2(4) deems that any person providing property or services as a fee, reward or payment (the mining payment) to another person for digital asset mining services, those services are provided to the other person “otherwise than in the course of commercial activity” and, consequently ineligible for ITCs.

### Fundamental GST Principles

GST is firmly anchored in the principal that the tax applies to personal consumption, not production or business inputs. The reason is simple. Canadian tax policy is meant to encourage economic growth and innovation and the competitiveness of Canadian businesses on the global stage.

GST is supposed to be agnostic. It does not judge commercial activity for its merits or demerits, whether it should be legal, or not, or whether and how it should be regulated. It is concerned only with how it should be taxed in accordance with accepted and established GST policy.

The fundamental principle that underpins Canada’s GST is that all activity undertaken to gain or produce income in Canada is a “commercial activity” and is taxable.

The GST paid on any goods or services that go into this commercial activity is recoverable as an input tax credit by the commercial enterprise. With very limited exceptions, only end consumers of goods or services in Canada pay GST that is not recoverable. Consumers outside of Canada do not pay GST on exported Canadian-made goods and services.

By taxing only personal consumption in Canada and not production, the GST avoids the problem of double taxation inherent in taxing productive activities and, thereby, promotes the global competitiveness of Canadian businesses.

The proposed new tax rule for digital asset mining is unprecedented and represents a complete derogation of this fundamental GST principle, by:

- Arbitrarily declaring that digital (crypto) asset mining activities are not commercial activities and that, consequently, the businesses that are engaged in these activities cannot claim ITCs on the goods and services that make digital asset mining possible
- Directly harming the financial viability and global competitiveness of Canada's digital asset mining industry by, effectively, imposing a hidden, unrecoverable, tax on its productive commercial activities
- Using GST policy to discourage the viability and growth of an entire new sector of Canadian commercial activity

These facts alone makes the proposal contained in the new subsection 188.2(4) of the *Excise Tax Act* bad GST policy.

### *A Growing Canadian Industry*

In the early days, mining activities were informal, undertaken mostly by enthusiast working on unspecialized consumer hardware and excited by the potential of this new technology. Today, the shape and size of the global digital asset mining industry has been transformed.

The companies participating in or supporting this sector represent more than \$2 billion market capitalization and growing. These companies have invested more than \$1 billion in Canada in the past three years and are set to invest another \$1 billion in Canada by 2025 on new jobs, state-of-the-art technology, the purchase of clean Canadian energy. These companies pay millions of dollars each year in corporate and payroll taxes, and invest directly to support the communities in which they operate.

Digital asset mining operations have been a draw for investment in remote Canadian communities that often have the kinds of climate conditions and access to clean energy that are ideal for digital asset mining operations. The benefits of industrial level power infrastructure and world-class internet access that digital asset miners require are being shared with local communities, giving them access to services and opportunities that they would otherwise lack.

Digital asset mining companies in Canada are repurposing and refurbishing old commercial buildings that have been abandoned by traditional industrial and manufacturing industries that have closed or moved their operations, and their jobs, to off-shore markets.

Digital asset mining companies in Canada are investing in the fibreoptic digital infrastructure required to operate their mining facilities, while connecting the remote communities in which they operate with high-speed internet access.

Digital asset mining companies in Canada are hiring and training workers who are acquiring highly sought after technical skills that are transferrable across the industry today and will be increasingly in demand as the blockchain industry continues to grow.

Deeming the digital asset mining activity these companies are engaged in to be “not commercial” is an absurdity.

There are other, better options to bring tax clarity to digital asset mining activities that are internally consistent with good GST policy. Finance Canada has already made the analogy to traditional resource mining by defining the activities that produce digital assets as “crypto asset mining”. It is an apt analogy.

### Digital “Gold mining” analogy

The best analogy for GST purposes of digital asset mining is the mining and refining of precious metals like gold, platinum, and silver. Both forms of mining rely on significant capital investments in infrastructure, equipment, technology, innovation, skilled workers and access to clean Canadian energy to operate. The only meaningful difference between precious metals and digital tokens is that one is a tangible financial instrument while the other financial instrument only exists virtually.

Under the Excise Tax Act, conventional resource mining and refining operations have access to ITCs, with all input costs treated as incurred in the course of “commercial activity” – meaning the mining company can claim in put tax credits on all GST/HST/QST paid out. There is no compelling reason why digital asset mining should be treated differently from conventional resource mining. Both commercial operations ‘extract’ resources that have high value in the marketplace. For one, the extracted resources are tangible. For the other the extracted resources are digital.

Treating digital asset mining this way, for GST purposes, would encourage growth, investment, job creation, rural development and innovation of this industry in Canada, rather than push the industry to move off shore and invest in other jurisdictions with dirty energy, dubious corporate governance and oversight and without regulatory certainty or effective rule of law.

Eliminating ITCs from activities related to digital assets mining is diametrically opposed to a fundamental principle of GST. GST is not to be imposed on business inputs. Good GST policy creates and supports economic growth and ensures that businesses in Canada are not at a competitive disadvantage globally.

### The Digital Mining Coalition

The Fair Tax Treatment for Responsible Digital Asset Mining Coalition is an informal coalition of companies working in and supporting Canada’s nascent digital asset mining industry.

The 26 companies that are participants in the Digital Mining Coalition include both public and private companies with an operational focus on digital asset mining and

infrastructure development for the digital asset ecosystem. Together, they maintain diverse and rapidly growing commercial operations across all major provinces in Canada. In addition to companies that 'mine' digital assets, the Digital Mining Coalition is also supported by the municipalities where they are located and organizations that supply equipment, expertise and services to support digital asset mining activities and the broader digital asset ecosystem.

All the Coalition participants and their respective member companies share the industry's conviction that the proposal to declare digital asset mining as "otherwise than in the course of commercial activity" and deny ITCs for businesses engaged in digital asset mining is contrary to the fundamental principles of the Excise Tax Act, is without precedent in the *Excise Tax Act*, is arbitrary and without justification, is prejudicial to an entire new industry, will discourage continued investment and growth in that industry, and will encourage companies already established in Canada to invest in their operations outside Canada in other jurisdictions.

For more information regarding foregoing

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