



The DAO Policy Trilemma

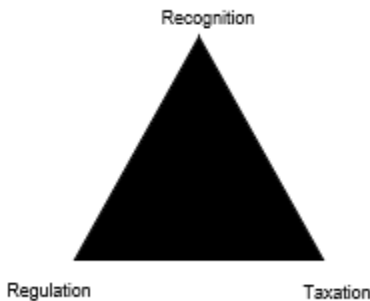
Recognition, Regulation, and Taxation of DAOs

DAOstar, v0.1 (draft), April 2024

DAO*

Executive summary

Most legislative attempts to attract large DAOs to register in a jurisdiction have not been successful, nor have they incentivised DAO creation and participation by their citizens, nor have they encouraged foreign persons to move and do business in their jurisdiction.



These existing attempts have fallen short (at least to date) because they have failed to address the **DAO Policy Trilemma**. Giving DAOs a form of legal **recognition** leaves out two other major problems: the **regulation** and **taxation** of a DAO and its activities. When regulation and taxation are left unresolved, the intended policy outcome of attracting DAOs to register in a jurisdiction falters because regulatory risks and taxation uncertainty remain and could be heightened.

Each attempt to solve the recognition problem has required a DAO to register in the jurisdiction, which undermines the global utility of the technology, even if all jurisdictions had a DAO entity. Even registering in a few jurisdictions can be impractical for large DAOs, which may have active contributors in *every jurisdiction in the world*.

In this report, we make two core recommendations to jurisdictions considering how to address the policy issues and opportunities of DAOs.

First, we set out a preferred legislative framework for jurisdictions to consider as they draft sensible legislation to tackle the DAO Policy Trilemma. DAO* members and DAOs may also use the framework to evaluate the merits of entry to or greater presence in a jurisdiction, or whether to prohibit participation from, or activities with, a particular jurisdiction.

Second, we encourage jurisdictions to set suitable passive criteria for DAO legal recognition rather than requiring a DAO to actively register in their jurisdiction. DAOs often already publish verifiable, registration-like data. They should be able to use this data to prove their default legal status.

About the authors

Joni Pirovich is the Regulatory Interoperability Lead at DAOstar; founder of Blockchain & Digital Assets - Services + Law (BADAS*L), a web3 specialist law firm; founder of Crypto Co Counsel, a software company building crypto compliance tools; and is on the Law Commission of England and Wales DAO Advisory Panel.

This report is a publication of [DAOstar](#) (or DAO*), the standards body of the DAO ecosystem.

Version

Version 0.1 of this report was published on 2 April 2024 for review and comment by DAO* members and the wider public. This version of the report does not reflect the formed or final views of DAO* or its members and has been prepared for the purpose of seeking feedback on the hypothesis proposed that the DAO Policy Trilemma must be solved by a jurisdiction before that jurisdiction is attractive to persons supporting large DAOs, or can meaningfully grant legal recognition in respect of a large DAO.

When this report is updated, the date of update and a version number will be displayed here.

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Introduction

“DAO” stands for decentralised autonomous organisation, but in practice, many DAOs are closer to an open means of organising than a traditional organisation. In particular, this is the case for global DAOs and blockchain networks that are sufficiently open and decentralized.

To understand why, one needs to understand the fundamental difference between an *organisation* and *organising*. In short: organisations are static entities, while organising is the process by which organisations (and other institutions) are continuously formed and deformed. The shift from organisation to organizing can be difficult to grasp. But we need to understand this shift in order to unlock the productivity gains possible from greater support of global DAOs.

Organising is a continuous process of determining the activities and resources required to fulfil an evolving purpose - as an ecosystem evolves or changes, so too can the purpose or nature of sentiment and involvement by each participant or contributor. An organisation is a thing that houses people and resources, where organising can occur within an organisation but is centrally controlled and purposely contained to that organisation.

Organising is an idiosyncrasy of DAOs that does not map well to existing regulatory and tax frameworks for traditional forms of organisation. Traditional forms of organisation prefer to operate as silos in the way that employees are engaged, incentivised and disincentivised, in how responsibility and liability for important functions of an organisation is centred in its directors, and in the way that one organisation competes with others (rather than cooperates) for market share and dominance in the best interests of its shareholders. In contrast, DAOs were born and live in open-source, standards-based ecosystems, so that one standard is composable with another, and have global reach and a variety of contributors and participants with different motives.

This paradigm shift to *organising* in the open and as part of a standards-based ecosystem is in part borne out of frustration with the lack of transparency, accountability, and affordability of centralised organisations and interactions with them. These generational shifts and expectations are demanding of something more and different than we have seen of organisations, which we have attempted to describe in the proposed legislative framework contained in this report.

The DAO Policy Trilemma

The DAO Trilemma comprises three core policy problems:

1. DAO legal personality
2. Regulation of DAOs and DAO Activities
3. Taxation of DAOs and DAO Activities

What is missing or confused in DAO policy setting is recognition that there are different ways in which persons can participate in a DAO, or the Product Protocols it governs, or the Tokens referable to a DAO. Policies centred around a DAO's legal personality can govern some of these means of participation, whereas other means of participation are better suited to the Regulation of a DAO or DAO Activities, and clarification of associated tax implications. What results is the conflation of different parts of the ecosystem as one organisation or one DAO when legislating for DAO legal personality alone, which has in large part proved to be a flawed approach to date. Even when legal wrappers are used, there is often confusion about what parts of a DAO are included in the wrapper or left unwrapped.

The natively global (or stateless) nature of DAOs struggles when forced into the paradigm that DAOs grew out of, and as a new form of online human coordination are worth nurturing and protecting. They give us a new means to digitally connect and participate in global issues, and to enjoy and contribute to standardised and transparent digital products alongside global communities. They deserve DAO-specific legislative frameworks that are future fit for the new paradigm.

Current policy efforts

At the date of this report, there have been several attempts around the world to legislate specific regimes to give legal personality and limited liability to a DAO. These include Vermont (USA), Malta, Wyoming (USA), Utah (USA), Tennessee (USA), Texas (USA), the Republic of Marshall Islands, the Abu Dhabi Global Market (UAE), and the Catawba Digital Economic Zone.

Some jurisdictions continue to consider the need for amended or new laws based on the idiosyncrasies of decentralised technology infrastructure and governance. These include England and Wales, several states within the United States and at the federal level, Australia, and Japan.

Other crypto-specific regulatory regimes, such as Dubai (UAE) have skipped the issue of DAO legal personality and moved immediately to the regulation of crypto-token activities. Where such crypto-token activities require a licence, the presence of a DAO or decentralised governance must be disclosed and is treated as a complicating factor to a licence application.

Most DAO-specific legislative efforts have failed to recognise that DAOs are a new form of *organising* and instead try to treat DAOs as a type of limited liability company (**LLC**) or unincorporated nonprofit association (**UNA**). Whilst the 'living organism' that is a global DAO

community is closer to an UNA than an LLC, most UNA based regimes still suffer from requiring registration without having solved regulation and taxation.

Wyoming's "DUNA" is a recent worthy DAO-specific legislative attempt but the unfortunate overlay of US federal securities law issues will continue to stifle adoption of DAO-specific structures in the US in the short to medium term. Unfortunately, the same US federal securities law issues overshadow the proposed DAO-specific regime in New Hampshire, which comes closest to passive criteria for DAO legal recognition and makes a comment on taxation. In New Hampshire it is proposed that a 'New Hampshire DAO' – not an LLC, or UNA, or LLD, but a DAO in its own right – need only submit a notice of intent to register to the New Hampshire Secretary of State and once this is filed and accepted, the DAO is registered and remains on the New Hampshire registry unless the Registry Administrator determines that the DAO does not satisfy the listing requirements. Insofar as taxation goes, the notes to the proposed law state, "If the activities of the DAOs, without the official recognition of the DAO status under this bill, are already taxable in the State because of implications of current tax laws, the Department does not expect the proposed legislation would result in any revenue change."

Future attempts may be more successful in obtaining global DAO support if they are undertaken at a federal level and grounded in the need to solve the DAO Policy Trilemma. At the very least, legislative action to address each policy issue in the proposed legislative framework would serve as a positive and informative signal to global DAOs and their participants and contributors.

There is some recognition of the organisation-organising distinction in existing financial services and financial markets regulations. These regulations acknowledge the different roles and responsibilities of different actors in the global financial ecosystem – e.g. financial market operators versus financial services providers – but they are still grounded in the regulation of a centralised organisation that is held accountable for meeting those obligations.

Separate to financial services and financial market regulations, many jurisdictions will typically also have consumer protections law and corporate law. The practical effect of having consumer protection law and corporate law in place produces clear separation between what constitutes consuming a good or service as a customer versus the role, rights and obligations of a shareholder or member of an organisation. Such a clear distinction is not yet possible with crypto-tokens that can function as an entitlement to a good or service as well as a membership interest that is the same or similar to that of a shareholder.

Most if not all legislative frameworks do not judge the nature of a token by the intention and substance of its use at the time of use and continue to rely on a characterisation from the perspective of the issuer at the time of issue unless there is a material change to the terms of issue. For as long as this persists, we will continue to have regulatory and tax uncertainty surrounding crypto-token activities regardless of whether determining the treatment from the

perspective of the DAO as a legally recognised entity or those interacting with a DAO or DAO-governed Autonomous Protocols.

Proposed legislative framework

The purpose of the proposal is to provide a high-level framework for evaluating DAO policy. It is intended for use by DAO*, its members (80+ major DAOs and DAO tooling providers), and the larger DAO ecosystem to ascertain the effectiveness of legislative efforts that seek to address the DAO Policy Trilemma.

In summary, the proposed framework requires a jurisdiction to:

1. Protect and incentivise participation in DAOs
2. Clarify DAO legal recognition criteria
3. Clarify DAO limited liability
4. Clarify the regulation of DAOs and DAO activities
5. Clarify the taxation of DAOs and DAO activities
6. Clarify the taxation of Autonomously Derived Protocol Receipts
7. Clarify that AutoDPR Tax and other DAO taxes can be paid in certain fiat-currency pegged stablecoins
8. Establish Progressive Decentralisation Tax Restructure Relief
9. Establish specific classes of visa for the Regulated Functions, Governing Class and Operational Organ



1. Protect and incentivise participation in DAOs

Important forms of DAO participation, which support accountability and transparency of DAO members, include:

- engaging in governance and voting,
- engaging in DAO community sentiment expression and administration, and
- being able to allocate or receive tokens as rewards for healthy kinds of participation.

Persons typically refrain from important forms of DAO participation because of:

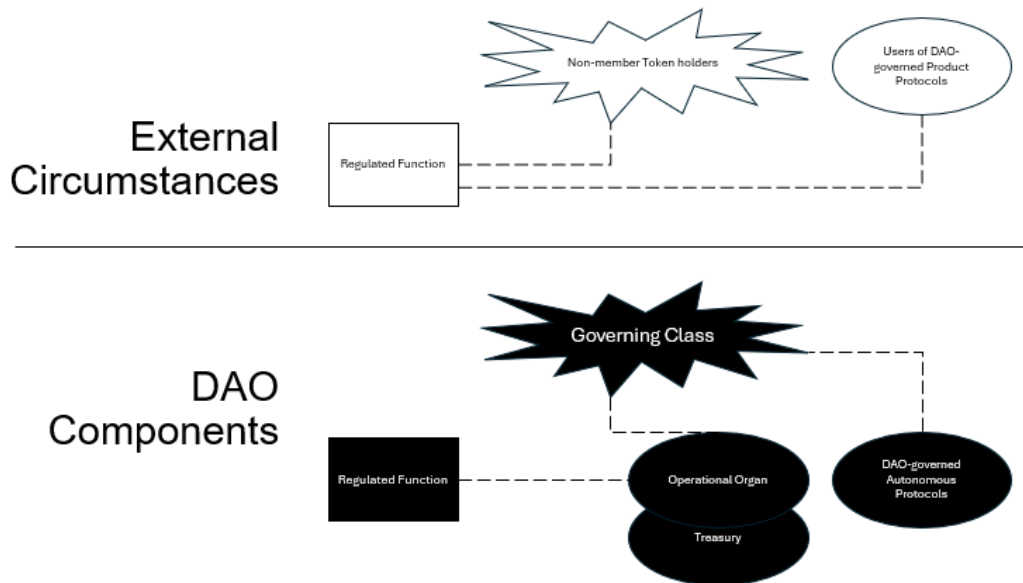
- fear of:
 - unlimited liability or partial liability for the improper actions of others, and
 - unintended taxation consequences,
- insufficient skill or ability, or access to training, to engage with the technology,
- insufficient or no access to reliable internet to engage via the technology, or
- lack of awareness of DAOs or DAOs specific to their areas of professional or personal interest.

Enhancing community participation in DAOs is achieved in part by:

- A. Acknowledging that a DAO is a living organism made up of DAO Components (defined below), some of which are relatively stable and others that are in a constant state of evolving and devolving.

The evolution and devolution of a DAO's state is more commonly referred to as its progressive decentralisation or regressive recentralisation – terms described from the perspective that decentralisation is the policy goal important for building the trust that derives from immutability, censorship resistance, operational resilience and fault tolerance.

- B. Separating the DAO Components from External Circumstances.



DAO Components should be protected and quarantined from the legal and tax implications and obligations that largely (if not solely) arise from the External Circumstances.

DAO Components (defined below) include those things that make up the DAO at a particular time, such as its Autonomous Protocols, Governing Class and Operational Organ.

External Circumstances are the things that arise, and that may have a regulatory or tax consequence for the DAO or its participants (members and non-members), because the DAO exists in a Permissionless Blockchain Ecosystem. This report acknowledges that there are regulatory and tax ripples that flow from unrestricted crypto-token activities but those activities should be defined to fall clearly outside the ambit of DAO participation or DAO Components as defined in this report.

External Circumstances include Non-member Activities and Regulated Functions. Non-member Activities are things such as speculation and trading of the DAO's token or tokens, and mere interaction with the DAO-governed Product protocol/s as a consumer of the digital good or service (e.g. receiving a loan in DAI from Maker Protocol should not trigger membership into the Governing Class or Operational Organ of Maker DAO).

Regulated Functions in respect of Non-member Activities, performed by third parties but subject to oversight by the Governing Class, could include things such as the regulatory requirements and obligations associated with the intended operation of any Product Protocol/s; supervision of the circulation and trading of transferable tokens referable to the DAO for interventions necessary and as a result of potential or actual money

laundering or terrorism financing, breach of sanctions, market manipulation or other prohibited conduct; and crypto-token market events that could impact the integrity of one or more of the DAO Components.

C. Defining DAO Components, such as:

- C.1. Existence within a Permissionless Blockchain Ecosystem which is a blockchain ecosystem that is not controlled by any one or group of persons, such as the Ethereum network (i.e. the fact that it is not controlled by any one or group of persons means it is decentralised).
- C.2. Autonomous Protocols, including:
 - C.2.1. Governance Protocol/s, that can comprise several sub-governance protocols and explanations in plain language (e.g. the decentralised model of governance explained in a white paper).
 - C.2.2. Product Protocol/s, that can comprise of several protocols that make up the overall protocol (e.g. Maker Protocol).
 - C.2.3. Operational Protocol/s, that can comprise of several sub-operational protocols (e.g. the process by which members can contribute sentiment, spend from the DAO Treasury, moderate a discord server or online venue).
- C.3. A DAO Treasury, whereby the total assets and liabilities, and transfers in and transfers out, may be represented at one or more public addresses and subject to governance by the Governing Class.
- C.4. A DAO Community, which is a community of twenty or more persons with defined means of organising to:
 - C.4.1. Govern community conduct in all official online and physical venues; one or more protocols the DAO is responsible for governing; the receipts and expenses of the DAO Treasury; interactions between one or more of the above, whereby a DAO's members that are involved in the above are referred to as the Governing Class, and
 - C.4.2. contribute according to a Code of Conduct to administering and moderating community conduct and governance processes; sentiment about the governance, DAO Treasury spending, operation of the DAO-governed Autonomous Protocols; and to procure and

engage third parties paid from the DAO Treasury to perform any Regulated Functions in respect of Non-member Activities, whereby a DAO's members that are involved in the above are referred to as part of the Operational Organ.

- C.5. Regulated Functions in respect of Member Activities, performed by third parties but subject to oversight by the Governing Class, such as compliance with applicable laws such as privacy, labour, whistleblowing, and governance proposals to change tokenomics around incentivisation or disincentivisation of behaviour by the Governing Class and Operational Organ, should be supported by legal and tax advice such as impact on low balance token holders and impact on financial market and non-members, before the proposal can be submitted for final vote.
- C.6. A DAO Code of Conduct to define:
 - C.6.1. a mandatory process for submitting complaints online and a publicly displayed complaint resolution procedure which is operated by the Operational Organ and reviewed by the Governing Class from time to time, with certain matters escalated to the Governing Class or other escalation mechanism determined or approved by the Governing Class,
 - C.6.2. the types of healthy member behaviour that can be rewarded with tokens (where such behaviour would not amount to the person working in employee like conditions and not subject to securities/markets laws), and
 - C.6.3. the types of unhealthy member behaviour that amounts to a token holder address being suspended or disqualified from participating in the Governing Class or the Operational Organ, or interacting with the Product Protocol/s, or engaging with Token activities outside of the DAO that are within the oversight of the DAO as External Circumstances.
- D. Enabling as an option alongside existing customer due diligence procedures under AML/CTF laws, to support such processes with verifiable credentials (**VCs**) , zero-knowledge proofs (**ZKPs**) and / or social graphing / vouching to validate and approve the participation of a member (in the Governing Class or Operational Organ), or user of a Product Protocol, including appropriate standards and auditing to ensure the VCs and ZKPs and vouches are not subject to abuse or manipulation.

2. Clarify DAO legal recognition criteria

Instead of extending existing laws created for traditional forms of organisation, clarify the minimal and essential data a DAO should publish to be granted legal recognition in respect of its dealings in a jurisdiction.

DAO*'s EIP-4824 standard is an industry-led start which sets a minimum data standard for the consistent display of essential "registration-like" data for DAOs. DAOs that have adopted the standard can be viewed at <https://daostar.org/explore>.

3. Clarify DAO limited liability

Clarify the conditions for, and reach of, full or partial limited liability if granted to a DAO's Governing Class and persons involved in the Operational Organ. This is one of the most difficult aspects to address because without defining the DAO Components and External Circumstances, the Governing Class and Operational Organ would likely be set up to fail.

Except for Utah's Limited Liability DAO and New Hampshire's proposed DAO Law that adopt a new form of *partial limited liability* based on the COALA DAO Model Law, jurisdictions that have legislated to solve DAO legal personality have done so on the assumption that a DAO as an *organisation* must have legal standing to enter into contracts, own property, and to be sued albeit with limited liability. This is a flawed assumption and a flawed retrofitting of DAOs into existing legal and tax frameworks.

We are yet to see how Utah, and if passed also New Hampshire, deal with the new concept of partial limited liability, and the evidence that would be brought to bear by the DAO's Administrator or Legal Representative.

Recent works that critique the ineffectiveness of the roles and liability attribution to directors in the context of blockchain ecosystems, include Devlin Murphy's piece titled "Building the Blocks: Developing an Effective Regulatory Framework for the Attribution of Liability in Distributed Ledger Technology".

An effective system for liability attribution would also go some ways towards improving the insurability of DAOs or the Governing Class or the Operational Organ or third parties otherwise involved in servicing the DAO Components.

4. Clarify the regulation of DAOs and DAO activities

Clarify the Regulated Functions in respect of Member Activities and in respect of Non-member Activities. Such clarification must be cognisant of the differences between DAOs that will start

following the clarification versus DAOs and regulators that need time to transition to meet the clarifications.

To encourage fundraising by only sustainable DAO communities, any jurisdiction should consider the appropriate balance to be struck with the vesting or unlocking of team token allocations.

The articulation of DAO Components above goes towards the foundational clarity required to then regulate DAOs and DAO Activities more appropriately from the lens of modular DAO Components.

Except for discussions concerning developer liability, no jurisdiction has sought to clarify whether a DAO-governed Product Protocol is the property (and legal responsibility) of the DAO, or property (and responsibility) of the authors of the Product Protocol, or the property (and responsibility) of no person in particular.

Notably, the European Union's Markets in Crypto Assets Regulation captures, and requires a licenced entity to conduct, any crypto-asset activities that are not "fully decentralised". So, to the extent a DAO-governed Product Protocol is not "fully decentralised" it is for the DAO's participants – whether clearly defined as members or not – to determine how to obtain the appropriate entity form to obtain a licence.

Despite who the rightful owner (and person/s responsible) may be, IOSCO has made recommendations in December 2023 about the regulation of DeFi.

In a submission to IOSCO in October 2023, this author proposed a more fit for purpose "semi-optional leapfrog approach" that imposes:

- a nuanced regulatory obligation upon each person involved in the DeFi stack to disclose the extent to which they have considered and introduced measures to protect investors and market integrity,
- a nuanced regulatory obligation upon each person involved in the DeFi stack to understand the extent to which regulatory protections have been provided by earlier stages and other levels in the stack to identify what is appropriate for each participant to contribute in the way of investor protections and market integrity,
- a central source of truth that discloses (without revealing identity) what has been undertaken in the way of protections and measures at each stage and level (which could be an effort coordinated through industry and / or regulators and / or IOSCO),
- a prohibition or requirement to transition into regulatory boundaries on use or continued use of DeFi protocols where metrics exceed certain thresholds such as for total value locked, average daily value exchanged, value of Tokens referable to the DAO involved.

The “semi-optional leapfrog approach” was borne out of the need for DeFi to have better cognisance of existing financial market and financial services standards and laws. However, the approach is not isolated to DeFi and has broader application across most verticals that DAOs operate in.

5. Clarify the taxation of DAOs and DAO activities

At least as a transitional measure with an expiry date of three (3) years from announcement, noting further transitional measure may be required to the international nature of many contentious tax issues below, clarify a basis of taxation of DAO, DAO Treasury activities, and DAO Activities by members and non-members, including allocation of taxing rights between jurisdictions.

Key tax issues under domestic tax law regimes, and international tax law principles (and double tax agreements) include:

- A. Tax entity characterisation
 - Corporate
 - Non-corporate (pass-through)
 - Taxable permanent establishment
 - Controlled foreign entity
- B. Tax residency analysis
 - Voting control
 - Central management and control
 - Double tax agreements
 - International conflict of laws
- C. Source analysis, for receipts received and outgoings spent via:
 - Product Protocol/s
 - Governance Protocol/s
 - Operational Protocol/s
- D. Transfer pricing analysis
 - Material related party transactions
 - Comparable or reasonable arms’ length pricing methods
 - Determination of income and expense allocations based on functions, assets and risks performed/assumed in each jurisdiction
- E. Charitable purpose or not-for-profit (mutual) status, and consequential concessions and exemptions

- F. Timing of income derivation or incurrence of expenses for each item below.
- G. Liquidity Mining: for DAO, for participants (members and non-members)
- Single sided staking
 - LP and stake LP token
 - Incentivised Liquidity Pools (by other ecosystem actors)
- H. Token distribution and retraction event/s: for DAO, for participants (members and non-members)
- Airdrop to launch DAO governance
 - Airdrop to reward behaviours
 - Slashing to disincentivise behaviours
 - Sale to raise funds
 - i. Sale by SAFT
 - ii. Sale by SAFE with token warrant
 - iii. Liquidity pool seeded by a DAO member
 - iv. Liquidity pool seeded by an unknown person
- I. Team token incentives: for DAO, for members
- Liquid
 - Illiquid (subject to unlock/vesting)
- J. Product Protocol users: for DAO, for participants (members and non-members), noting users that hold and engage with governance could be characterised as a mutual entity
- K. Information collection obligations to support compliance with tax obligations

6. Clarify the taxation of Autonomously Derived Protocol Receipts

Clarify or implement a basis of taxation of autonomously derived DAO-governed protocol receipts, including allocation of taxing rights to those receipts as between jurisdictions to ensure no double tax.

No rational or obvious outcome results from applying existing domestic tax laws or international tax law principles (enshrined in double tax treaties) to autonomously derived protocol receipts (**AutoDPR**) to determine the proper allocation of taxing rights between jurisdictions. Further to this, to date there has been no coordinated effort amongst tax authorities to gather consensus or dissenting views as to the appropriate basis of allocating taxing rights to ADPR between jurisdictions.

All Autonomous Protocols deployed on a permissionless blockchain rely on the underlying network continuing to support the verification of blockchain transactions and production of blocks. Due to this criticality, DAO* holds preliminary support subject to further investigation that the allocation of taxing rights to AutoDPR should be based on a jurisdiction's percentage of block producers. For example, if 20% of Ethereum validators are based in Japan for a particular period, then 20% of the AutoDPR Tax collected by a DAO-governed Autonomous Protocol that has adopted the AutoDPR Tax (perhaps as a requirement of DAO legal personality) is allocated to the Japanese tax authority.

Now that the DAO Components have been laid out, it should be apparent that the only persons engaged by a (genuine) DAO are third party suppliers and those in the Operational Organ (possibly in the nature of an employee) that are involved in the day-to-day management and administration but are not in control or responsible for setting the high level strategy of the DAO or any DAO Component. The Governing Class is responsible for setting the high level strategy of the DAO or any DAO Component.

The two-pillar approach under BEPS 2.0 which is focussed on addressing the tax challenges of the digital economy currently falls short in being able to address the tax challenges of a decentralised digital economy and AutoDPR – the provisions regarding stateless entities do not map well enough to the nature of DAO-governed Autonomous Protocols and AutoDPR.

More simply, AutoDPR means receipts that are received from the autonomous operation of a protocol deployed on a permissionless blockchain. Autonomous operation of a protocol means software code (i.e. a protocol) that operates as it is intended, and coded, to operate. So if x happens then y occurs. If a vulnerability in the code is exploited then the code is not operating as it was intended to operate and should not give rise to adverse tax consequences to genuine participants. Deployed on a permissionless blockchain means a protocol that is submitted to, and stored as a program at a unique public address on a permissionless blockchain ledger. Permissionless blockchain means a public distributed ledger that allows any person to transact and produce blocks in accordance with the blockchain protocol where the validity of a block is not affected by the identity of the producer.

Autonomous operation is not to be confused with artificial (intelligence) operation. However, the principles set out in this paper could be equally applicable to artificially derived protocol income (**ArtiDPI**).

7. Clarify that AutoDPR Tax and other DAO taxes can be paid in fiat-currency pegged stablecoins

If a DAO cannot obtain a bank account, it is unable to hold 'money' to pay tax-related liabilities. Since it will take time for the commercial banking industry to support banking for the DAO

sector, an interim and immediate solution is required to allow DAOs to pay tax-related liabilities without the requirement of a bank account.

For further analysis, see a more fulsome analysis with reference to Australian law prepared by the author on key legal barriers inhibiting the payment of tax-related liabilities in fiat-currency pegged stablecoins, as well as innovation in payments and the administration of the tax system, from page 61 of the Australian National Blockchain Pilot Report (link in bibliography). An extract of some recommendations is provided below:

2. Summary of Recommendations

- a) APRA and the RBA should consider providing guidance to clarify whether a 'tokenised Australian dollar deposit' issued by an ADI can be interpreted as 'currency' or 'Australian currency' under the Currency Act and Reserve Bank Act, which may include specifying at least equal fiat currency must be held in reserve by the ADI to support this characterisation.
- b) The Treasurer should consider signing an instrument under the Currency Act to specify a variation from the standard weight applicable to coins, that 'coins' issued as fiat currency pegged crypto-assets on a blockchain are a type of composition of coins, or stablecoins, accepted for circulation and that have the status of 'currency', which may include specifying at least equal fiat currency must be held in reserve by the ADI to support this characterisation.
- c) The ATO should consider providing guidance regarding whether a tokenised Australian dollar deposit can be treated as 'currency' for income tax purposes when it represents the unit of account of each Australian dollar, which may include guidance regarding when a fiat currency pegged stablecoin should be treated as a CGT asset, trading stock or a Taxation of Financial Arrangement (TOFA) for income tax purposes.
- d) The ATO should consider providing guidance to clarify whether payment of a tax-related liability with a tokenised Australian dollar deposit may be acceptable as 'currency' if the private-permission blockchain or control rights specified for the token contract deployed on a public blockchain is considered an 'electronic funds transfer system' under subparagraph 3(a) of Regulation 21(a) of the Taxation Administration Regulations 2017.
- e) The Governor-General should consider amending Regulation 21(a) of the Taxation Administration Regulations 2017 to allow for tax-related liabilities to be paid in stablecoins that are designated as 'currency' or 'currency equivalent' would enable innovation in digital government to keep pace with innovation in the payments system.
- f) The Government should consider amending the GST definition of 'digital currency' to permit characterisation as a 'digital currency' if a fiat currency pegged stablecoin is restricted but still intended to operate as digital currency by a platform or application.

8. Establish progressive decentralisation tax restructure relief

Establish a process with associated tax restructuring relief for progressive decentralisation of traditional organisations by recognition of DAO Components.

Without such relief, existing and traditional organisation forms will become defensive and lobby against the adoption and support of new and emerging structures for organising such as DAOs.

The associated tax relief could be similar to demerger tax relief, with recognition of DAO status once all DAO Components are in place.

9. Establish specific visa classes for the Regulated Functions, Governing Class and Operational Organ

With the foundations for DAO Components and External Circumstances set out above, there is a clear need for establishing visa classes for the skills required to perform the Regulated Functions in respect of members and non-members.

Conclusion

The key to addressing the DAO Policy Trilemma lies in fostering a deeper understanding and engagement with the global DAO ecosystem by key political, business, and industry stakeholders of any jurisdiction seeking to attract DAO communities to their jurisdiction. A similar finding is made in the pending State of DAOs in Japan report to be released in 2024.

Absent a clear plan to solve the DAO Policy Trilemma, by any one or several jurisdictions, the trajectory of large DAOs will likely continue to be stateless.

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Disclaimers

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