

## BINDING RULINGS

### PUBLIC RULING BR PUB 19/01: INCOME TAX – SALARY AND WAGES PAID IN CRYPTO-ASSETS

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This is a public ruling made under s 91D of the Tax Administration Act 1994.

#### Taxation law

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of s RD 3.

#### The Arrangement to which this Ruling applies

The Arrangement is the payment of remuneration to an employee in crypto-assets in circumstances where the crypto-asset payments:

- are for services performed by the employee under an employment agreement;
- are for a fixed amount; and
- form a regular part of the employee's remuneration.

This Ruling applies only to salary and wage earners, not self-employed taxpayers; and where the crypto-assets being paid:

- are not subject to a "lock-up" period;
- can be converted directly into a fiat currency (on an exchange); and either:
  - a significant purpose of the crypto-asset is to function like a currency; or
  - the value of the crypto-asset is pegged to one or more fiat currencies.

This Ruling does not apply where the crypto-asset provided is a "share" for income tax purposes and is received under an "employee share scheme" as defined in s CE 7.

#### How the taxation law applies to the Arrangement

The taxation law applies to the Arrangement as follows:

- The crypto-asset payments are "PAYE income payments" under s RD 3 and are subject to the PAYE rules.

## **The period or tax year for which this Ruling applies**

This Ruling will apply for a period of three years beginning on 1 September 2019.

This Ruling is signed by me on 27 June 2019.

**Susan Price**

Director, Public Rulings

# COMMENTARY ON PUBLIC RULING BR PUB 19/01

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Ruling BR Pub 19/01 (“the Ruling”).

Legislative references are to the Income Tax Act 2007 unless otherwise stated. Relevant legislative provisions are reproduced in the Appendix to this commentary.

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## Summary

1. This Ruling considers the income tax treatment of crypto-assets received by employees as part of their regular remuneration. The commentary discusses when crypto-assets will be treated as part of an employee’s salary or wages and, therefore, be subject to PAYE. It also discusses the implications arising from crypto-asset payments being subject to PAYE (such as potentially affecting an employee’s student loan repayments, Kiwisaver, and Working for Families entitlements). Payments of crypto-assets not subject to PAYE will be fringe benefits and subject to FBT.

## Background

2. The crypto-asset industry is still evolving and there is currently no standard terminology used. The Ruling uses the term “crypto-asset” to cover digital assets

that use cryptography and blockchain technology to regulate their generation and verify transfers.<sup>1</sup>

3. It is becoming more common for employees (particularly those working in crypto-asset-related industries) to receive remuneration in crypto-assets. The Commissioner has been asked to provide guidance on how remuneration paid in crypto-assets is taxed. This Ruling sets out the Commissioner's view on the situation where an employee is regularly paid part of their remuneration in crypto-assets.
4. The Commissioner's initial views on this issue were set out in issues paper IRRUIP 11: "Whether remuneration paid to an employee in cryptocurrency is subject to PAYE or FBT", which was released for consultation in June 2018. The submissions received have been taken into account in drafting this Ruling and also the related Ruling "BR PUB 19/02: Income Tax – Bonuses paid in crypto-assets".

## Application of the legislation

### *Introduction*

5. An agreement to pay an employee in crypto-assets could be structured in two ways. The first way is as an agreed deduction from the employee's gross salary or wages (where the employee's after-tax remuneration is, in effect, being traded for a payment of crypto-assets).<sup>2</sup> It is well-settled law that the employee is subject to PAYE on the full amount in this situation.
6. The second way is as a reduction in calculating the employee's gross salary or wages (also known as a salary sacrifice). The following analysis considers how the provision of crypto-assets will be treated when a salary sacrifice arrangement is valid, in particular, whether PAYE or FBT applies.

### ***Whether crypto-assets received under a valid salary sacrifice are subject to PAYE or FBT***

7. The first step is to consider whether the payment is subject to PAYE. This is because, to the extent that an employment-related benefit is taxable to an employee, it will not be a fringe benefit (s CX 4). Therefore, if the provision of crypto-assets to an employee falls within the PAYE rules, PAYE will apply even if the FBT rules would also otherwise apply.
8. Section CE 1 sets out the "amounts" that are treated as employment income. Relevantly, these include "salary or wages":

#### **CE 1 Amounts derived in connection with employment**

##### *Income*

- (1) The following amounts derived by a person in connection with their employment or service are income of the person:
  - (a) **salary or wages** or an allowance, bonus, extra pay, or gratuity:

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<sup>1</sup> These are sometimes referred to by other terms including "cryptocurrencies" and "tokens".

<sup>2</sup> The leading case on when a salary sacrifice will be valid is *Heaton v Bell* [1970] AC 728. See also *Watts v MNR* 61 DTC 592, *Co-operative Insurance Society Ltd v Commissioners of Customs and Excise* (1992) VATTR 44, and *Goodfellow v The Commissioners* (1986) VATTR 119.

- (b) expenditure on account of an employee that is expenditure on account of the person:
- (bb) the value of accommodation referred to in sections CE 1B to CE 1E:
- (c) *[Repealed]*
- (d) a benefit received under a share purchase agreement:
- (e) directors' fees:
- (f) compensation for loss of employment or service:
- (g) any other benefit in money.

[Emphasis added]

9. The situation being considered is an employee receiving part of their regular remuneration in crypto-assets. Therefore, the potentially relevant part of s CE 1 is "salary or wages".<sup>3</sup>
10. It could be argued that the reference in paragraph (g) of s CE 1 to "any other benefit in money" supports the view that the paragraphs that come before it were intended to be limited to benefits in money. However, the fact s CE 1(1) includes benefits that are not in money (for example, the value of employer-provided accommodation) could suggest that this is not the case.
11. Also, "amount" "includes an amount in money's worth" (s YA 1). Therefore, s CE 1 is drafted widely enough to include amounts derived that are "money's worth" (but not money). However, for crypto-assets (which are money's worth) to be included, they must also be "salary or wages".

*Meaning of "salary" and "wages"*

12. "Salary or wages" is defined in s RD 5 for the purposes of the PAYE rules:

**RD 5 Salary or wages**

*Meaning*

- (1) Salary or wages—
  - (a) means a payment of salary, wages, or allowances made to a person in connection with their employment; and
  - (b) includes—
    - (i) a bonus, commission, gratuity, overtime pay, or other pay of any kind; and
    - ....

13. Neither "salary" nor "wages" is further defined in the Act, so it is necessary to consider their ordinary meanings.

14. "Salary" is relevantly defined in the *Concise Oxford English Dictionary* (Oxford University Press, 12th ed, 2011) as:

a fixed regular payment made usually on a monthly basis by an employer to an employee, especially a professional or white-collar worker.

15. "Wage" is similarly defined as:

a fixed regular payment for work, typically paid on a daily or weekly basis.

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<sup>3</sup> Inland Revenue's view is that crypto-assets are not "money" (see [19] for further discussion of this). Therefore, s CE 1(1)(g) is not relevant in this case.

16. *Deputy Commissioner of Taxation v Applied Design Development Pty Ltd (in liq)* 2002 ATC 4,193 considered the ordinary meaning of "salary" and "wage". Mansfield J defined the terms in the following way (at 4,195):

Of particular importance in the present application is the absence of statutory definitions of the words "salary" or "wage". In the absence of statutory definitions, meaning should be given to those words according to the ordinary meaning conveyed by the text of the provision, and taking into account their context in the legislative scheme and the objects of the Act. The words "salary" and "wage" denote an amount of money payable, the consideration for which is the performance of work or services. That meaning is reflected in the definitions provided for the terms in the Oxford English Dictionary, 2nd ed:

Salary: fixed payment made periodically to a person as compensation for regular work.

Wage: a payment to a person for services rendered.

I adopt those definitions in the determination of these proceedings.

17. The hallmarks of salary and wages were also discussed in a case on the meaning of "allowance". In *Stagg v IRC* [1959] NZLR 1252 the Supreme Court referred to the ordinary meaning of an allowance as "sums of money". The provision in question read:

All salaries, wages or allowances (whether in cash or otherwise) including all sums received or receivable by way of bonus, gratuity, extra salary, or emolument of any kind, in respect of or in relation to the employment of the taxpayer.

18. Hutchison ACJ held that the normal meaning of "allowances" was coloured by the words "salary" and "wages" and was to be read consistently with, or in light of, those words. His Honour considered that the characteristics of salaries that have bearing on the meaning of "allowances" were that they are:
- for an employment or service;
  - payable under the contract of service and not as a gratuity (although this factor was affected by the later part of the paragraph that included some gratuities within "salaries, wages, or allowances");
  - paid in money (although this factor was affected by the words "whether in cash or otherwise", which meant non-cash allowances could be paid if they were convertible); and
  - paid periodically.
19. In summary, this suggests salary and wages are generally considered to be payments that are:
- in return for work undertaken;
  - fixed, ie of a predetermined amount or rate (not, for example, a share of profits);
  - regular, ie recurring on a regular basis (usually weekly, fortnightly or monthly); and
  - in money.
20. Where an employee has agreed to receive part of their regular remuneration in the form of crypto-assets, most of these requirements would be met. The payments would be fixed, regular amounts received in return for work undertaken. Crypto-assets can also have many of the characteristics of money; for example, the types

of crypto-assets covered by this Ruling are readily transferable mediums of exchange, divisible, fungible, durable and hard to counterfeit.

21. In the Commissioner's view, crypto-assets are property. Crypto-assets are not "money" as commonly understood (at least not at the present time). In particular, because crypto-assets are not issued by any government, they are not legal tender anywhere. Further, although acceptance of certain crypto-assets as payment for goods and services is increasing, they are not "generally accepted" as payment. Given the extreme volatility experienced to date, there are also issues around some crypto-assets' ability to be a store of value.

#### *Interpretation Act 1999*

22. Notwithstanding that crypto-assets are not "money" in the technical sense, it remains to be considered whether the terms "salary" and "wages" in s CE 1 are wide enough to include payments in crypto-assets. Clearly, at the time "salary" and "wages" were first referred to in the Income Tax Act, Parliament would not have contemplated payments of crypto-assets being within the scope of salary and wages as crypto-assets did not exist.

23. However, s 6 of the Interpretation Act 1999<sup>4</sup> provides for an ambulatory approach to statutory interpretation:

an enactment applies to circumstances as they arise.

24. This requires old legislation to be interpreted as applying to modern circumstances, that is, the:<sup>5</sup>

- new developments to which the Act is to be applied are within the mischief that the Act was meant to cure; and
- words of the Act, albeit by liberal interpretation, are capable of covering these new developments.

25. Or, put another way:<sup>6</sup>

The Court's task in deciding such cases is to remain faithful to the original Parliamentary intent, yet to produce a result that is workable in the different world of today.

26. This interpretive approach has been used where technological developments or changes in the way society views something have made old legislation outdated. For example, in *R v Walsh* [2007] 1 NZLR 738, the Court of Appeal applied s 6 of the Interpretation Act 1999 to interpret the meaning of "false document" taking into account the digital age.<sup>7</sup> In *R v Misic* [2001] 3 NZLR 1 the Court of Appeal held that a computer program and disk were documents for the purposes of s 229A of the Crimes Act 1961.

27. Originally, the concept of salary and wages would have been limited to payments in physical notes and coins. Later, payment may have been made by cheque. Now payment is likely to be made by direct credit to an employee's bank account. As such, the concept of salary and wages has shifted over time with different payment

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<sup>4</sup> Section 6 replaced s 5(d) of the Acts Interpretation Act 1924.

<sup>5</sup> J Burrows and J Fogerty (presenters) "Statutory Interpretation" (New Zealand Law Society seminar, 2011).

<sup>6</sup> Bigwood, R (ed) *The Statute Making and Meaning* (LexisNexis, 2004).

<sup>7</sup> The Supreme Court (*R v Walsh* [2007] 2 NZLR 109) later held that such an interpretation was not necessary.

methods. Crypto-assets and the blockchain on which they are based have been around since 2009. Crypto-assets have become more widely used in recent times.

28. The question is whether the ordinary meanings of “salary” and “wages” are now wide enough to encompass payments in crypto-assets. Unlike the moves from physical notes and coins to cheques to direct credit (which are all payments of money), the shift to paying in crypto-assets is a more significant one. However, this does not prevent s 6 of the Interpretation Act applying. There is nothing in the Income Tax Act that limits the interpretation of salary and wages to monetary payments. Rather the ordinary meanings apply, and these can change over time. The Commissioner’s view is that the meanings of “salary” and “wages” are capable of including payments in crypto-assets.

*PAYE generally applies only to monetary benefits*

29. The alternative view is “salary” and “wages” should be interpreted narrowly and, consequently, PAYE will not apply. If a payment of crypto-assets was not subject to PAYE, it would be a fringe benefit and subject to FBT<sup>8</sup>.
30. The primary argument for FBT applying is that the scheme of the Income Tax Act suggests that payments in money are subject to PAYE and non-monetary payments are subject to FBT (except where specifically provided for). The PAYE rules apply to “PAYE income payments”, which for employees is defined as a payment of “salary or wages” or an “extra pay”. “Salary or wages” is defined in s RD 5. Most of the items listed are payments that would generally be expected to be made in money. These include salary, wages, allowances, bonuses, commissions, gratuities, and various benefit, grant and compensation payments. However, employer-provided accommodation under s CE 1(1)(bb) is also expressly included.
31. Similarly, “extra pay” is defined in relation to payments that would generally be made in money. However, it also includes a benefit under certain share purchase agreements.
32. It can be seen from this that the Act broadly distinguishes between monetary and non-monetary payments to employees with the former being subject to PAYE and the latter to FBT. The reference in s CE 1(1)(g) to “any other benefit in money” is also consistent with this. However, this distinction is not absolute, with some non-monetary benefits being included in the PAYE rules. It is less clear whether non-monetary benefits that are not expressly included could also be subject to PAYE.

*Section RD 6*

33. Section RD 6 seems to contemplate other non-monetary benefits being subject to the PAYE rules. It provides timing and valuation rules for non-monetary benefits. Relevantly, it applies to:

**RD 6 Certain benefits and payments**

*When this section applies*

- (1) This section applies when an employee receives—
- (a) a benefit treated as income under section CE 1(1)(bb) (Amounts derived in connection with employment); or
  - (b) another benefit in kind that is included in their salary or wages; or**

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<sup>8</sup> A crypto-asset payment would satisfy the definition of “fringe benefit” in s CX 2 and not fall within any of the exemptions in subpart CX.



- (c) 1 or more of the following payments:
  - (i) a superannuation payment:
  - (ii) a pension:
  - (iii) a retiring or other allowance:
  - (iv) an annuity; or
- (d) a benefit under section CE 2(2) and (4) (Value and timing of benefits under share purchase agreements) in relation to which the employer has made an election under section RD 7B.

[Emphasis added]

34. As well as including the specific non-monetary benefits (employer-provided accommodation and benefits under share purchase schemes) s RD 6 also provides for other benefits in kind that are included in an employee's salary or wages. This suggests there may be other situations where non-monetary benefits are included in an employee's salary and wages for PAYE purposes. However, it is not clear when this will be the case.
35. The original predecessor to s RD 6 (s 9 of the Income Tax Assessment Act 1957) was introduced at the same time as the PAYE rules. The wording of the original subsection was:

**9 Benefits and superannuation and other payments deemed to be salary and wages—**

- (1) Where in respect of his employment an employee receives a benefit referred to in section eighty-nine of the principal Act<sup>9</sup>, **or any other benefit in kind which is included in his salary or wages**, or receives a payment by way of superannuation, pension, retiring allowance, or other allowance, or annuity which is included in salary or wages as defined in section two of this Act, the value of the benefit (whether in money or otherwise) or, as the case may be, the amount of the payment shall be deemed to accrue from day to day, and accordingly in each case the amount so accrued for any days in a pay period of the employee shall be deemed to be his salary or wages for the pay period, or, as the case may be, part of his salary or wages for the pay period.

[Footnote and emphasis added]

"Salary or wages" was relevantly defined as meaning "salary, wages, or allowances (whether in cash or otherwise)". Consistent with the current legislation, the value of accommodation was also included in the definition. The wording has remained broadly similar through to the Income Tax Act 2007.

36. There is limited contemporaneous material discussing what "other benefits in kind" s 9 of the Income Tax Assessment Act 1957 was intended to cover. During the second reading of the Income Tax Assessment Bill 1957, Hon. Mr Watts explained clause 9 of the Bill as follows (8 October 1958, 314 NZPD 2,894):

Under clause 9 any benefits in kind, for example, the value of a free house, or free meat, or other benefits of that type, are to be taxed at the end of each pay period. If the employee is paid weekly he will also pay on the value of his benefits for the week. Where superannuation is paid and is treated as salary and wages it will be deemed to have accrued from day to day over the period for which it is paid.

37. Many of the taxable benefits that would have been subject to PAYE when s 9 of the Income Tax Assessment Act 1957 was enacted will now be subject to FBT. However, the fact s RD 6(1)(b) is included in the current legislation suggests some

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<sup>9</sup> Section 89 of the Land and Income Tax Act 1954 included in "assessable income" the value of any employer-provided board, lodging and house allowances.

non-monetary benefits (other than those specifically mentioned in other paragraphs of s RD 6(1)) may come within the definition of “salary or wages”.

### **Conclusion**

38. It is unclear on the face of the legislation whether an employee who regularly receives a part of their normal remuneration in crypto-assets is subject to PAYE or whether FBT applies. Both views are arguable.
39. Broadly, the scheme of the Act is that consideration in money is subject to PAYE, whereas non-monetary benefits are subject to FBT. Crypto-assets are not money in the technical sense (although they share some of the characteristics of money). This might suggest that payments in crypto-assets should be subject to FBT. However, the distinction between monetary and non-monetary payments is not hard and fast. Statutory exceptions make some non-monetary benefits (such as employer-provided accommodation) subject to PAYE. Further, the PAYE rules are drafted widely enough to potentially include some other non-monetary payments.
40. Ultimately, the issue turns on whether regular payments in crypto-assets come within the ordinary meaning of “salary or wages”. The answer to this is not certain. While a regular payment received in crypto-assets has many of the hallmarks of salary and wages, historically salary and wages have been payments in money. However, s 6 of the Interpretation Act 1999 requires legislation to be interpreted as applying to modern circumstances. While not free from doubt, on balance, the Commissioner’s view is that the concepts of “salary” and “wages” are wide enough to encompass some regular payments in crypto-assets. Consequently, these payments are “salary or wages” under s RD 5. Therefore, they are “PAYE income payments” under s RD 3 and the PAYE rules apply to them.
41. Because the payments are subject to PAYE, the FBT rules will not apply.

### *Which crypto-assets are subject to PAYE?*

42. In the Commissioner’s view, not all types of crypto-assets will be subject to PAYE. To be considered “salary or wages” the crypto-assets need to be sufficiently similar to existing notions of salary and wages. In the Commissioner’s view, this will be the case where the crypto-assets have the following features:
  - They are not subject to a “lock-up” period;
  - They can be converted directly into a fiat currency (on an exchange); and either:
    - a significant purpose of the crypto-asset is to function like a currency; or
    - the value of the crypto-asset is pegged to one or more fiat currencies.
43. Each of these is discussed in more detail below. Taxpayers can contact Inland Revenue if they are having difficulty determining whether a particular crypto-asset satisfies these criteria.
44. For crypto-asset payments that are not subject to PAYE, the FBT rules will apply.

### Not subject to a “lock-up” period

45. In the Commissioner’s view, crypto-assets that cannot be converted or sold by the employee for a material period of time after payment does not sufficiently resemble a payment of salary or wages.

### The crypto-assets can be converted directly into a fiat currency

46. Most mainstream crypto-assets can generally be traded on an exchange directly for fiat currency (for example, New Zealand dollars (NZD) or United States dollars). For other crypto-assets, this may not be available. Instead, the crypto-assets must first be converted into a more mainstream crypto-asset (such as bitcoin (BTC) or ether (ETH)) and then converted into fiat currency. In the current environment where crypto-assets are not readily accepted as payment for goods and services, the Commissioner's view is that crypto-assets that cannot be converted directly into fiat currency on an exchange (that meets the requirements set out in [57] and [59]) are not sufficiently "money-like" to be considered salary or wages.

### A significant purpose of the crypto-assets is to function like a currency

47. The range and functions of crypto-assets have evolved in recent times. It is now possible to get crypto-assets that function in a similar way, for example, to vouchers, shares, or debt securities.
48. Some crypto-assets are designed to function as an alternative to fiat currency in the sense they provide a general-purpose peer-to-peer payment system. Examples are bitcoin, bitcoin Cash (BCH), bitcoin Gold (BTG), and Litecoin (LTC). Some crypto-assets are designed with other functions in addition to use as a currency, but the currency purpose is still a significant one. Ether is a common example of this. The Commissioner's view is that payment in these types of crypto-assets (where conversion directly into a fiat currency on an exchange is possible) is sufficiently "money-like" to come within the ordinary meaning of salary or wages.
49. These can be contrasted with crypto-assets that are designed primarily for other purposes (for example, filecoin (FIL), Dentacoin (DCN), and CRYPTO20 (C20)). Common examples are:
- rights to access, operate, use or control a platform or other property/services (often referred to as "utility tokens");
  - providing rights to underlying tradable assets such as precious metals or real estate (often referred to "asset tokens"); and
  - providing ownership or control of a financial asset (often referred to as "securities tokens").
50. These crypto-assets can also usually be traded peer-to-peer or on an exchange. Therefore, in a sense, they can function in a similar way to currency. However, this can be seen as the equivalent of trading in gold, shares, or gift cards for example. That is, although they share some of the features of currency, they are not intended to operate as such.

### The value of the crypto-assets is pegged to one or more fiat currencies

51. This refers to so-called "stablecoins" that have their value pegged to one or more fiat currencies. Common examples are USD Tether (USDT) and Paxos Standard (PAX). Regardless of whether these crypto-assets are designed to function like currencies (in the sense discussed above at [47]–[50]) the Commissioner's view is that payment in a stablecoin (where conversion directly into a fiat currency on an exchange is possible) is sufficiently "money-like" to come within the ordinary meaning of salary or wages.

## ***Implications of conclusion***

### *PAYE is calculated on the gross basis*

52. Where payment is provided in crypto-assets, the employer must gross up the net amount of the crypto-assets provided to the employee when calculating PAYE.
53. Where the employee's employment contract sets out the gross amount (ie amount before tax is deducted) payable in NZD, this will not be an issue. Assume, for example, an employment contract provides for an employee to be paid \$100 (gross) of crypto-assets per week. If the employee is on a 33% tax rate, \$67 worth of crypto-assets would be payable to the employee and \$33 (NZD) must be paid to Inland Revenue as PAYE.
54. However, where an employment agreement provides for an employee to receive either a net amount of crypto-assets calculated in NZD, or an amount denominated in crypto-assets, then the amount provided to the employee will need to be grossed up when calculating the PAYE payable. This works in the same way as the provision of employer-provided accommodation, where the value of the accommodation is grossed up before PAYE is calculated and paid.

### *Converting crypto-asset payments to NZD*

55. Generally, arrangements of this type will provide for an employee to be paid an amount of crypto-assets denominated in NZD. In this case, there will be no need to convert the crypto-assets into NZD to calculate the PAYE payable.
56. However, where a crypto-asset payment is not denominated in NZD (for example, if an employee is paid 0.001 bitcoin per fortnight), it is necessary to calculate the NZD value of the crypto-assets on the date it is paid to the employee.
57. Conversion rates may be obtained from any centralised data repository site that may be listed from time-to-time on the Inland Revenue website.
58. Alternatively, conversion rates may be obtained from a public exchange that has comprehensive know-your-customer/anti-money-laundering procedures in place. Which exchange (or exchanges) is appropriate will depend on the circumstances. Using a New Zealand-based exchange listed on the Financial Service Providers Register will be appropriate.
59. If the appropriate valuation cannot be obtained from a New Zealand-based exchange, an overseas-based exchange can be used. For some "alt coins" (crypto-assets other than bitcoin) it may be necessary to convert into US dollars, or another fiat currency, and then convert into NZD.
60. Rates can vary significantly between different exchanges and currencies. Therefore, taxpayers should use a consistent exchange and conversion approach (for example, using a consistent time of day to determine the conversion rates).

### *Other implications*

61. There are various circumstances where obligations, eligibility, or entitlements may be calculated based on an employee's salary or wages (for example Kiwisaver, Working for Families Tax Credits, and student loan repayments). The crypto-asset payments must be taken into account when calculating these.

## Example

62. The following example is included to help explain the application of the law.

### Example: Employee paid part of salary in bitcoin

63. Ken is employed by Cryptowonderland Ltd. His salary is NZ\$10,000 per month before tax. Half Ken's salary is payable in NZD direct credited to his bank account. The other half is payable in bitcoin transferred to Ken's bitcoin wallet.
64. PAYE should be calculated on the \$10,000 gross payment and withheld and paid to the Commissioner (in New Zealand dollars). The net amount is payable to Ken.
65. If Ken is a Kiwisaver member or is subject to, for example, child support or student loan deductions, the Employer's Guide (IR 335) and the PAYE calculator (both available on the Inland Revenue website [www.ird.govt.nz](http://www.ird.govt.nz)) can be used to assist with calculating these.

## References

### Related rulings

"BR PUB 19/02 Income tax – bonuses paid in crypto-assets"

### Subject references

Bitcoin, crypto-asset, cryptocurrency, FBT, PAYE, salary, wages

### Legislative references

Income Tax Act 2007 – ss CE 1, CE 7, CX 2, CX 4, RD 3, RD 5, RD 6, YA 1 definitions of "amount" and "salary or wages"

Interpretation Act 1999 – s 6

### Case references

*Co-operative Insurance Society Ltd v Commissioners of Customs and Excise* (1992) VATTR 44

*Deputy Commissioner of Taxation v Applied Design Development Pty Ltd (in liq)* 2002 ATC 4,193

*Goodfellow v The Commissioners* (1986) VATTR 119

*Heaton v Bell* [1970] AC 728

*R v Walsh* [2007] 1 NZLR 738

*R v Walsh* [2007] 2 NZLR 109

*Stagg v IRC* [1959] NZLR 1252

*Watts v MNR* 61 DTC 592

### Other references

J Burrows and J Fogerty (presenters) "Statutory Interpretation" (New Zealand Law Society seminar, 2011).

Bigwood, R (ed) *The Statute Making and Meaning* (LexisNexis, 2004).

*Concise Oxford English Dictionary* (Oxford University Press, 12<sup>th</sup> ed, 2011)

## Appendix – Legislation

### *Income Tax Act 2007*

1. Section CE 1(1) provides:

#### **CE 1 Amounts derived in connection with employment**

##### *Income*

- (1) The following amounts derived by a person in connection with their employment or service are income of the person:
- (a) salary or wages or an allowance, bonus, extra pay, or gratuity:
  - (b) expenditure on account of an employee that is expenditure on account of the person:
  - (bb) the value of accommodation referred to in sections CE 1B to CE 1E:
  - (c) *[Repealed]*
  - (d) a benefit received under a share purchase agreement:
  - (e) directors' fees:
  - (f) compensation for loss of employment or service:
  - (g) any other benefit in money.

2. Section CE 7 provides:

#### **CE 7 Meaning of employee share scheme**

##### *Employee share scheme means—*

- (a) an arrangement with a purpose or effect of issuing or transferring shares in a company (company A) to a person—
  - (i) who will be, is, or has been an employee of company A or of another company that is a member of the same group of companies as company A, if the arrangement is connected to the person's employment or service:
  - (ii) who will be, is, or has been a shareholder-employee in relation to company A or in relation to another company that is a member of the same group of companies as company A, if the arrangement is connected to the person's employment or service:
  - (iii) who is an associate of a person described in subparagraph (i) or (ii) (person A), if the arrangement is connected to person A's employment or service; but
- (b) does not include an arrangement that—
  - (i) is an exempt ESS:
  - (ii) requires market value consideration to be paid by a person described in paragraph (a) for the transfer of shares in the company on the share scheme taxing date:
  - (iii) requires a person described in paragraph (a) to put shares, acquired by them for market value consideration, at risk, if the arrangement provides no protection against a fall in the value of the shares and none of the consideration for acquiring the shares is provided to the person under an agreement that it is used for acquiring the shares.

3. Section CX 2 provides:

#### **CX 2 Meaning of fringe benefit**

##### *Meaning*

- (1) A fringe benefit is a benefit that—

- (a) is provided by an employer to an employee in connection with their employment; and
- (b) either—
  - (i) arises in a way described in any of sections CX 6, CX 9, CX 10, or CX 12 to CX 16; or
  - (ii) is an unclassified benefit; and
- (c) is not a benefit excluded from being a fringe benefit by any provision of this subpart.

*Arrangement to provide benefit*

- (2) A benefit that is provided to an employee through an arrangement made between their employer and another person for the benefit to be provided is treated as having been provided by the employer.

*Past, present, or future employment*

- (3) It is not necessary to the existence of a fringe benefit that an employment relationship exists when the employee receives the benefit.

*Relationship with subpart RD*

- (4) Sections RD 25 to RD 63 (which relate to fringe benefit tax) deal with the calculation of the taxable value of fringe benefits.

*Arrangements*

- (5) A benefit may be treated for the purposes of the FBT rules as being provided by an employer to an employee under—
  - (a) section GB 31 (FBT arrangements: general):
  - (b) section GB 32 (Benefits provided to employee's associates).

4. Section CX 4 provides:

**CX 4 Relationship with assessable income**

To the extent to which a benefit that an employer provides to an employee in connection with their employment is assessable income, the benefit is not a fringe benefit.

5. Section RD 3(1) provides:

**RD 3 PAYE income payments**

*Meaning generally*

- (1) The PAYE rules apply to a PAYE income payment which—
  - (a) means—
    - (i) a payment of salary or wages, see section RD 5; or
    - (ii) extra pay, see section RD 7; or
    - (iii) a schedular payment, see section RD 8:
  - (b) does not include—
    - (i) an amount attributed under section GB 29 (Attribution rule: calculation):
    - (ii) an amount paid to a shareholder-employee in the circumstances set out in section RD 3B or RD 3C:
    - (iii) an amount paid or benefit provided, by a person (the claimant), who receives a personal service rehabilitation payment from which an amount of tax has been withheld at a rate specified in section RD 10B.

6. Section RD 5(1), (2), (8) and (9) provide:

**RD 5 Salary or wages**

*Meaning*

- (1) Salary or wages—
- (a) means a payment of salary, wages, or allowances made to a person in connection with their employment; and
  - (b) includes—
    - (i) a bonus, commission, gratuity, overtime pay, or other pay of any kind; and
    - (ii) a payment described in subsections (2) to (8); and
    - (iii) an accident compensation earnings-related payment; and
    - (iiib) a payment of earnings compensation under the Compensation for Live Organ Donors Act 2016; and
    - (iv) Repealed.
  - (c) does not include—
    - (i) an amount of exempt income:
    - (ii) an extra pay:
    - (iii) a schedular payment:
    - (iv) an amount of income described in section RD 3(3) and (4):
    - (v) an employer's superannuation contribution other than a contribution referred to in subsection (9):
    - (vi) a payment excluded by regulations made under this Act.
  - (d) Repealed.

*Employees' expenditure on account*

- (2) A payment of expenditure on account of an employee is included in their salary or wages.

...

*Accommodation benefits*

- (8) A benefit treated as income under section CE 1(1)(bb) (Amounts derived in connection with employment) is included in salary or wages.

*Cash contributions*

- (9) An amount of an employer's superannuation cash contribution that an employee chooses to have treated as salary or wages under section RD 68 is included in salary or wages.

7. Section RD 6(1) provides:

**RD 6 Certain benefits and payments**

*When this section applies*

- (1) This section applies when an employee receives—
- (a) a benefit treated as income under section CE 1(1)(bb) (Amounts derived in connection with employment); or
  - (b) another benefit in kind that is included in their salary or wages; or
  - (c) 1 or more of the following payments:
    - (i) a superannuation payment:
    - (ii) a pension:



- (iii) a retiring or other allowance;
- (iv) an annuity; or
- (d) a benefit under section CE 2(2) and (4) (Value and timing of benefits under share purchase agreements) in relation to which the employer has made an election under section RD 7B.

8. Section YA 1 defines "amount" and "salary or wages" as follows:

**amount—**

- (a) includes an amount in money's worth:

...

**salary or wages—**

- (a) means salary, wages, or allowances relating to the employment of a person, including all sums received or receivable by way of bonus, commission, extra salary, gratuity, overtime pay, or other remuneration of any kind; and
- (b) includes—
  - (i) the market value of the benefits that a person receives in a tax year, because of their office or position, by way of the provision of board or lodging or the use of a house or quarters, or the payment of an allowance instead of being provided with board or lodgings or the use of a house or quarters, with the market value determined by the Commissioner if there is a dispute; and
  - (ii) payments that are expenditure on account of an employee; and
  - (iii) payments under section DC 4 (Payments to working partners); and
  - (iv) specified superannuation contributions for which an employee makes an election under section NE 2A (Employee election that specified superannuation contributions be treated as salary or wages); and
  - (v) periodic payments by way of pension, retiring allowance, superannuation, or other allowance or annuity relating to the past employment of a person or of another person of whom the person is or has been the wife, husband, civil union partner, de facto partner or child or dependant; and
  - (vi) payments of salary or allowances made to a member of Parliament under a determination of the Remuneration Authority; and
  - (vii) payments of salary and principal allowances made to a judicial officer under a determination of the Remuneration Authority; and
  - (viii) payments that are income under section CF 1 (Benefits, pensions, compensation, and government grants); and
  - (ix) payments of income-tested benefits, veterans' pensions, New Zealand superannuation, and living alone payments; and
  - (x) parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987; and
  - (xi) basic grants and independent circumstances grants, made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections; and
  - (xii) under the Accident Compensation Act 1982, payments of earnings related compensation, as defined in section 2, and of compensation under section 80(4), that are not payments on account made under section 88 in circumstances in which, at the time the payments on account are made, the nature of the compensation on account of which they are made has not been determined; and
  - (xiii) under the Accident Rehabilitation and Compensation Insurance Act 1992, a vocational rehabilitation allowance payable under section 25, payments of compensation for loss of earnings payable under any of sections 38, 39, and 43, compensation for loss of potential earning capacity payable under section 45 or 46, weekly compensation payable

- under any of sections 58, 59, and 60, and continued compensation payable under section 138; and
- (xiv) under the Accident Insurance Act 1998, payments made under it by an insurer, as defined in the Act, of weekly compensation, as defined in the Act; and
  - (xv) under the Accident Insurance Act 1998, any other payments of compensation for loss of earnings or loss of potential earning capacity in so far as they relate to a work-related personal injury, as defined in the Act, made by an insurer under a policy of personal accident or sickness insurance to which section 188(1)(a) (as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000) applies; and
  - (xvi) under the Injury Prevention, Rehabilitation, and Compensation Act 2001, payments made under it by the Corporation, as defined in the Act, of weekly compensation, as defined in the Act; and
- (c) does not include—
- (i) payments of exempt income, or extra pays, or withholding payments; or
  - (ii) salary, wages, or other income to which section OB 2(2) (Meaning of source deduction payment: shareholder-employees of close companies) applies; or
  - (iii) employer's superannuation contributions; or
  - (iv) payments that are declared by regulations under this Act not to be salary or wages
- (d) for the purposes of sections NE 3 and NE 3B (which relate to SSCWT) means salary or wages, as defined in section 4 of the KiwiSaver Act 2006.

### ***Interpretation Act 1999***

9. Section 6 provides:

an enactment applies to circumstances as they arise.