

BINDING RULINGS

PUBLIC RULING BR PUB 19/02: INCOME TAX – BONUSES PAID IN CRYPTO-ASSETS

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 an amount of crypto-assets to an employee in connection with their employment as an incentive or bonus.

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

- can be converted directly into a fiat currency (on an exchange); and either:
 - a significant purpose of the crypto-assets is to function like a currency; or
 - the value of the crypto-assets 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 that 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 payment is a “PAYE income payment” under s RD 3 and is 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 27 June 2019.

Susan Price
Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR PUB 19/02

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 19/02 (“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 a bonus. The commentary discusses when crypto-assets will 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.¹
3. It is becoming more common for employees (particularly those working in crypto-asset-related industries) to receive remuneration in crypto-assets. The

¹ These are sometimes referred to by other terms including “cryptocurrencies” and “tokens”.

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 receives a bonus paid in crypto-assets.

Application of the legislation

Whether crypto-assets received as a bonus are subject to PAYE or FBT

4. 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.
5. Section CE 1 sets out the "amounts" that are treated as employment income. Relevantly, these include bonuses:

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.

[Emphasis added]

6. "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).

Meaning of "bonus"

7. "Bonus" is not defined in the Act. Therefore, it is necessary to consider its ordinary meaning.
8. The Court of Appeal considered the meaning of "bonus" in *CIR v Smythe* [1981] 1 NZLR 673. Richardson J stated at 676:

A bonus may be a gratuity or it may be something which an employee is entitled to on the happening of a condition precedent and which is enforceable when the condition is fulfilled (*Sutton v Attorney-General* (1923) 39 LTR 294, 297; *Great Western Garment Co v Minister of National Revenue* [1974] Ex CR 458, 467; [1948] 1 DLR 225, 233). In either case it is an addition to regular salary or wages. It is a payment above the normal and it is often, but not always, paid for extraordinary work or service. Its special character is that it is an additional amount, not part of the regular permanent remuneration.

9. McMullin J stated at 678:

One of the meanings given in the *Oxford English Dictionary* to the word bonus is: "Money or its equivalent, given as a premium, or as an extra or irregular remuneration, in consideration of offices performed, or to encourage their performance". Often enough a bonus will take the form of something for which no entitlement exists. In that sense it will be a favour, a bounty, largess, something over and above what the donee is entitled to expect. And it may be in some cases quite unexpected and a windfall. But I do not think that the word "bonus" is limited to those payments only for which no entitlement can be established. Indeed, it is not infrequently the case in present conditions of employment that a payment is made to an employee by way of a bonus even though it is directly related to his industry and productivity.

10. It can be seen from this that a bonus is a payment to an employee over and above their regular salary or wages. It is generally paid for good performance. A bonus can be something to which an employee is contractually entitled (if certain conditions are met) or a purely voluntary payment.
11. It also appears that bonuses are not necessarily limited to payments in money. McMullin J in *Smythe* suggested that a bonus could be "money or its equivalent". That suggests that "bonus" may be wide enough to include non-monetary amounts that have the same, or a similar, function or effect as money.
12. It is useful, at this point, to consider whether there is anything in the scheme of the Act that suggests that non-monetary payments should not be treated as employment income.

Scheme of the Act

13. As noted above, the Act first requires determining whether the PAYE rules apply. FBT applies only where a payment is not assessable income (s CX 4).
14. There is no express provision in the PAYE or FBT rules that distinguishes between monetary and non-monetary payments. Nevertheless, payments in money are generally subject to PAYE and non-monetary payments are generally subject to FBT. This is because of the types of payments the PAYE rules apply to. 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.
15. 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.
16. 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. Some non-monetary benefits are expressly included in the PAYE rules. Also, non-monetary payments are not expressly excluded from items that make up "salary or wages" (which includes bonuses).

Are crypto-assets money or its equivalent?

17. 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, it is 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.
18. However, some crypto-assets have many of the characteristics of money; for example, being readily transferable mediums of exchange, divisible, fungible, durable and hard to counterfeit. As such, some types of crypto-assets with these features could have a similar function or effect as money and, therefore, be a "bonus".
19. In the Commissioner's view, this will be the case where the crypto-assets 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.
20. 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.
21. It could be argued that a wider range of crypto-assets are equivalent to money and, therefore, within the meaning of "bonus". However, the Commissioner's view is that the scheme of the Act suggests that a relatively narrow interpretation should be taken when considering whether non-monetary benefits come within s CE 1.

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

22. 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 [56] and [57]) are not sufficiently equivalent to money to be considered a bonus for PAYE purposes.

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

23. 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.
24. Some crypto-assets are designed to function similarly to fiat currency in the sense they provide a broad peer-to-peer payment system. Examples are bitcoin and Litecoin (LTC). Some crypto-assets are designed with other functions in addition to use as a currency, but the currency's 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-asset (where conversion directly into a fiat currency on an exchange is possible) is sufficiently “money-like” to be a bonus.

25. 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”).
26. 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

27. 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 [21]–[24]) the Commissioner’s view is that payment in a stablecoin (where conversion directly into a fiat currency on an exchange is possible) is sufficiently equivalent to money to come within the ordinary meaning of bonus.

Conclusion

28. An amount of crypto-assets paid to an employee in connection with their employment as an incentive or bonus will be a “bonus” under s CE 1 where the crypto-assets being paid:
- can be converted directly into a fiat currency; 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.
29. A “bonus” comes within the meaning of “salary or wages” for the purposes of s RD 5. Therefore, it is a “PAYE income payment” under s RD 3 and the PAYE rules apply to it.
30. Other types of crypto-assets paid to an employee as an incentive or bonus will be fringe benefits and subject to FBT².

² 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.

Implications of conclusion

PAYE is calculated on the gross basis

31. 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.
32. 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 a bonus of \$100 (gross) in crypto-assets. 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.
33. 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

34. 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.
35. However, where a crypto-asset payment is not denominated in NZD (for example, if an employee is paid a bonus of 0.001 bitcoin), it is necessary to calculate the NZD value of the crypto-assets on the date it is paid to the employee.
36. Conversion rates may be obtained from any centralised data repository site that may be listed from time-to-time on the Inland Revenue website.
37. 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.
38. 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.
39. 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

40. 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.

Examples

41. The following examples are included to help explain the application of the law. For simplicity the examples do not consider the potential application of, Kiwisaver, student loan, child support or other deductions. The Employer's Guide (IR 335) (available on the Inland Revenue website www.ird.govt.nz) can be used to assist with calculating these.

Example 1: Calculating PAYE where gross up is not required

42. Anaru is employed by Cryptowonderland Ltd. In addition to his \$150,000 salary, Anaru's contract provides for a NZ\$10,000 (gross) bonus payable in bitcoin if Cryptowonderland's profit exceeds the previous year's.
43. Cryptowonderland has an exceptional year and Anaru receives his bonus. The bonus is subject to PAYE. NZ\$3,330 ($\$10,000 \times 0.33$) must be paid to the Commissioner (in New Zealand dollars). The net amount of \$6,670 worth of bitcoin can be transferred to Anaru's bitcoin wallet.

Example 2: Calculating PAYE where conversion is required

44. Deidre is employed by Cryptowonderland Ltd. In addition to her \$180,000 salary, Deidre's contract provides for a gross payment of 10 Litecoin if Cryptowonderland's profit exceeds the previous year's.
45. Cryptowonderland has an exceptional year and Deidre is entitled to her bonus. Cryptowonderland must calculate the NZ\$ equivalent of the Litecoin on the day that Deidre is paid. In accordance with its standard practice, Cryptowonderland uses conversion rates obtained at approximately 5pm from a New Zealand-based exchange that meets its KYC/AML requirements. At the relevant time, 10 Litecoin is worth NZ\$1,140. The bonus is subject to PAYE. NZ\$376.20 ($\$1,140 \times 0.33$) must be paid to the Commissioner (in New Zealand dollars). The net amount of \$763.80 worth of Litecoin can be transferred to Deidre.

Example 3: Calculating PAYE where gross up is required

46. Sarah is employed by Cryptowonderland Ltd. She receives an annual salary of \$130,000 direct credited to her bank account. In addition, Sarah's contract provides for annual bonus payments if Sarah's performance targets are met.
47. Sarah met all of her performance targets this year and was paid a bonus of NZ\$5,000 (net) worth of ether.
48. The payment is subject to PAYE. When calculating the PAYE payable, the \$5,000 needs to be grossed up ($\$5,000/0.67 = \$7,462.69$). PAYE is then calculated on the gross amount ($\$7,462.69 \times 0.33 = \$2,462.69$) and paid to the Commissioner (in New Zealand dollars).

References

Related rulings

"BR PUB 19/01: Income tax – salary and wages paid in crypto-assets"

Subject references

Bitcoin, bonus, 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, and the YA 1 definition of "amount"

Case references

CIR v Smythe [1981] 1 NZLR 673

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 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 YA 1 defines "amount" as follows:

amount—

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

...