

## TECHNICAL DECISION SUMMARY > ADJUDICATION

## WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

# Disposal of cryptoassets

Decision date | Rā o te Whakatau: 9 June 2025

Issue date | Rā Tuku: 6 October 2025

TDS 25/23

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## Subjects | Kaupapa

This item summarises an adjudication about the acquisition and disposal of cryptoassets (including staking rewards) and whether the amounts derived are income.

## Taxation laws | Ture tāke

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

## Summary of facts | Whakarāpopoto o Meka

1. The taxpayers held interests in cryptoassets jointly.
2. The taxpayers decided to invest in Crypto Y. At the time they bought Crypto Y it was still in the early stages of development, but the taxpayers were aware Crypto Y planned to offer staking rewards in the future.
3. The taxpayers stated that their dominant purpose in acquiring Crypto Y was as a long-term investment to obtain a regular investment return of about 5–10% in the form of Crypto Y staking rewards.
4. Shortly after the taxpayers bought Crypto Y, the price increased significantly, and the taxpayers sold almost half their holding. They invested about 30% of the sale proceeds into shares and bonds and reinvested the rest back into Crypto Y.
5. About 9 months after the taxpayers' initial purchase of Crypto Y the price dropped below the original purchase price and the taxpayers used some of the cash they got from the sale of Crypto Y to purchase more Crypto Y.
6. Two years after the initial purchase the taxpayers were able to start staking Crypto Y and earn staking rewards, which they did.
7. About 3½ years after the initial acquisition, the taxpayers sold just under 30% of their Crypto Y in multiple transactions over an 8-month period for a significant profit. The taxpayers invested the proceeds in blue-chip dividend-paying shares that provided a regular return similar to the return from staking Crypto Y.
8. In their income tax returns, the taxpayers returned amounts from the disposal of Crypto Y. They also returned amounts related to the acquisition of staking rewards and claimed a deduction for crypto-related expenses.

9. The taxpayers filed a Notice of Proposed Adjustment proposing to reverse those amounts out of their income tax returns.
10. Inland Revenue's Customer and Compliance Services issued a Notice of Response rejecting the adjustments the taxpayers proposed. Customer and Compliance Services considered the income tax returns the taxpayers filed were correct.
11. The dispute continued unresolved. The parties exchanged statements of position, and the dispute was referred to the Tax Counsel Office for adjudication.

## Issues | Take

12. The main issues considered in this dispute were whether:
  - amounts derived from the disposal of Crypto Y (including the disposal of staking rewards) were income under s CB 4 (acquired for purpose of disposal);
  - a profit-making undertaking or scheme existed under s CB 3 (profit-making undertaking or scheme); and
  - the acquisition of Crypto Y staking rewards was income under s CA 1(2) (income under ordinary concepts).

## Decisions | Whakataau

13. The Tax Counsel Office decided the taxpayers had not shown that:
  - in terms of s CB 4, they did not acquire Crypto Y (including the staking rewards) for the purpose of disposing of it;
  - there was not a profit-making undertaking or scheme under s CB 3; and
  - the Crypto Y staking rewards the taxpayers acquired were not income under ordinary concepts under s CA 1(2).

## Reasons for decisions | Pūnga o ngā whakatau

### Preliminary issue | Take tōmua: Onus and standard of proof

14. Except for proceedings relating to evasion or similar act or obstruction, the onus is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.<sup>1</sup> However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.<sup>2</sup>
15. The standard of proof required is the balance of probabilities.<sup>3</sup>

### Issue 1 | Take tuatahi: Acquired for the purpose of disposal

16. Under s CB 4, an amount that a person derives from disposing of personal property is income of the person if they acquired the property for the purpose of disposing of it.
17. The only question under s CB 4 was whether the taxpayers acquired Crypto Y for the purpose of disposal.
18. The courts have developed principles when determining whether property was acquired for the purpose of disposal including the following:<sup>4</sup>
  - The distinction between capital and revenue is not relevant to s CB 4.
  - The test of purpose is subjective and requires consideration of the state of mind of the purchaser at the time the property was acquired.
  - Where there is more than one purpose, it is the dominant purpose that is relevant. The focus is on what was truly important to the person at the time of acquisition.
  - In some factual situations it may be necessary to draw a careful distinction between motives and intentions and purposes.

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<sup>1</sup> Section 149A(2) of the Tax Administration Act 1994. See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC) and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

<sup>2</sup> Section 138P(1B) of the Tax Administration Act 1994.

<sup>3</sup> *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028 and *Case X16* (2005) 22 NZTC 12,216.

<sup>4</sup> *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346; (1989) 3 NZLR 661 (CA).

- Describing a purchase as a hedge against inflation or as providing an accretion in capital value or as a good investment is not a substitute for making the proper enquiry required under the provision.
- The person's subjective purpose must be assessed and tested against the totality of circumstances, which includes the:
  - nature of the asset;
  - vocation of the taxpayer;
  - circumstances of the purchase;
  - number of similar transactions;
  - length of time the property was held; and
  - circumstances of the use and disposal of the asset.
- Actions may speak louder than words, and the totality of circumstances may negate the asserted purpose of the purchase.

## Application

19. The Tax Counsel Office considered the taxpayers' statements and actions and assessed them against the totality of the circumstances. It considered that while earning staking rewards was a purpose, the taxpayers' dominant purpose when they acquired the relevant cryptoassets was to dispose of them eventually.
20. The following factors led to this conclusion:
  - The taxpayers had the onus of proof on the balance of probabilities. It was up to the taxpayers to prove the cryptoassets were not acquired with the dominant purpose of disposing of them. The onus was not on the Commissioner to prove the taxpayers acquired the cryptoassets with the dominant purpose of disposing of them.
  - However, the taxpayers' statements and actions together with their previous research and involvement in the crypto industry for several years suggested they were looking for exponential growth in cryptoassets rather than seeking a regular investment return in the form of staking rewards.
  - The facts and circumstances showed that a regular return from holding Crypto Y (in the form of staking rewards) was unlikely to be the dominant purpose of acquiring Crypto Y. In particular, staking was not available at the time the Crypto Y was acquired, and the projected return from staking could have been achieved

by investing in blue-chip dividend-paying shares without the risk involved with holding Crypto Y.

- The facts and circumstances also showed that the disposal of Crypto Y was likely to be the dominant purpose of acquiring Crypto Y. In particular, purchases of Crypto Y were made when the market was low (or falling) and sales were made at peaks in the market. The gains from the disposal of Crypto Y were substantial both in absolute terms and relative to the returns achieved from staking, and proceeds from the sales were invested in blue-chip dividend-paying shares for a similar return to the return from staking Crypto Y.

## Issue 2 | Take tuarua: Profit-making undertaking or scheme

21. Under s CB 3, an amount derived by a person from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit is income of the person.
22. From case law the following principles can be derived for the application of s CB 3:
  - An undertaking or scheme requires the existence of some plan or purpose that is coherent and has unity of conception, involving a series of steps directed to an end result.
  - The courts have generally adopted the view that the undertaking or scheme must exhibit features of a business deal.
  - The mere realisation of a capital asset in the most advantageous manner is not subject to s CB 3.
  - The taxpayer must have a dominant purpose of making a profit. The assessment of a profit-making purpose is made at the time the relevant undertaking or scheme is entered into or devised.
  - There must be a nexus between the undertaking or scheme and the amount derived so it can be said that the amount was derived from carrying on or carrying out the scheme.

### Application

23. The available evidence demonstrated that the taxpayers were likely carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit. That scheme was to buy Crypto Y, use it in various ways to accumulate more Crypto Y and sell it for a profit over time. The reasons for this conclusion were as follows:

- The taxpayers' statements and the extent of their activities and actions demonstrated they had a coherent plan involving a series of steps that were directed to an end result of making a profit.
  - The purpose of entering into the scheme was to make a profit as demonstrated by statements the taxpayers made.
  - The amounts derived were derived from carrying on or out carrying out the identified scheme.
24. The plan was more than just a single transaction of acquisition and resale. The Tax Counsel Office considered the plan exhibited features that gave it the character of a business deal. The office did not consider the receipt of staking rewards a passive acquisition. Not everyone who holds Crypto Y receives staking rewards. An investor in Crypto Y must actively turn their mind to receiving staking rewards and make the decision to stake all (or a portion) of their holdings. In the taxpayers' situation (because they self-custodied Crypto Y) they also had to choose a validator to delegate their holdings to for each wallet they had.

### Issue 3 | Take tuatoru: Income under ordinary concepts

25. Section CA 1(2) provides that "an amount is also income of a person if it is their income under ordinary concepts". "Income under ordinary concepts" is not defined in the Act. The courts have usually adopted a process of "characterisation" in which they weigh up several factors to decide whether an amount constitutes income. These factors include:
- the principle that income is something that comes in;
  - periodicity, regularity or recurrence of the amount;
  - the quality of the amount in the hands of the recipient;
  - whether or not the amount is a capital receipt; and
  - whether or not the amount derived was a passive acquisition.
26. The Tax Counsel Office concluded that the Crypto Y staking rewards the taxpayers acquired were income under ordinary concepts in terms of s CA 1(2). The reasons for this conclusion were as follows:
- The taxpayers received regular and recurrent staking rewards in the form of Crypto Y and Crypto Y is convertible into money.

- The regular receipt of staking rewards was a flow of money or money's worth arising from the ownership of property, being the Crypto Y staked. Therefore, the staking rewards were a return on the taxpayers' investment and had the character of income.
- It was also arguable that the staking rewards were rewards for a service the taxpayers provided. Holders of Crypto Y are not required to stake their Crypto Y but, if they do so, they are contributing to the operation and security of the