

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA  
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

This draft ruling is a re-issue of BR Pub 21/01. It contains minor clarifications only. The substantive conclusions in the original ruling have not changed.

Deadline for comment | Aukatinga mō te tākupu: **20 April 2023**

Please quote reference | Whakahuatia te tohutoro: **PUB00447**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki  
[Public.Consultation@ird.govt.nz](mailto:Public.Consultation@ird.govt.nz)

**PUBLIC RULING | WHAKATAUNGA TŪMATANUI**

# **Income tax – salary and wages paid in cryptoassets**

Issued | Tukuna: XX

**BR Pub XX**

This ruling considers when employee remuneration paid in cryptoassets will be a “PAYE income payment” under s RD 3 for which the payer of the cryptoassets will have PAYE obligations.

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

**START DATE | RĀ TĪMATA**

{DD/MM/YYYY}

**REPLACES | WHAKAKAPIA**

This is a reissue of BR Pub 21/01. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

# Public Ruling BR Pub XX/XX: Income tax – salary and wages paid in cryptoassets

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

## Taxation laws | Ture tāke

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 | Te whakaritenga i pāngia e tēnei Whakataunga

The arrangement is the payment of remuneration to an employee in cryptoassets in circumstances where the cryptoasset payments (whether denominated in NZD or in cryptoassets):

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

This Ruling applies only to salary and wage earners, not self-employed taxpayers; and where the cryptoassets 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 cryptoasset is to function like a currency; or
  - the value of the cryptoasset is pegged to one or more fiat currencies.

This Ruling does not apply where the cryptoasset 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 | Ko te pānga o te ture tāke ki te Whakaritenga

The taxation law applies to the Arrangement as follows:

- The cryptoasset payments are “PAYE income payments” under s RD 3 and are subject to the PAYE rules.

## **The period for which this Ruling applies | Ko te wā i pāngia e tēnei Whakataunga**

This Ruling will apply for an indefinite period beginning on[XX [Month] 20XX].

This Ruling is signed by me on[XX [Month] 20XX].

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### **Susan Price**

Group Leader, Tax Counsel Office | | Roia Kaihautū ā-ropu  
Taake, Te Tari Tohutohu Tāke

## Commentary on Public Ruling | Takinga kōrero o ngā Whakatau Tūmatanui BR Pub XX/XX

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 XX/XX (“the Ruling”).

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## Summary | Whakarāpopoto

1. This Ruling is a reissue of BR Pub 21/01, which expired on 1 December 2022. There have been no changes to the original ruling. The Ruling uses the term “cryptoasset” to cover digital assets that use cryptography and blockchain technology to regulate their generation and verify transfers.<sup>1</sup>
2. The commentary discusses when cryptoassets will be treated as part of an employee’s salary or wages (for tax purposes) and, therefore, be subject to PAYE. It also discusses the implications arising from cryptoasset payments being subject to PAYE (such as potentially affecting an employee’s student loan repayments, Kiwisaver, and Working for Families entitlements). Payments of cryptoassets not subject to PAYE will be fringe benefits and subject to FBT.

## Background | Horopaki

3. The Ruling sets out the Commissioner’s view on the situation where an employee is regularly paid part of their remuneration in cryptoassets. 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 were taken into account in drafting BR Pub 21/01 and the following related Rulings:
  - BR PUB 19/03: Income Tax – employer issued crypto-assets provided to an employee;
  - BR PUB 19/04: Income Tax – application of the employee share scheme rules to employer issued crypto-assets provided to an employee; and
  - BR PUB 21/02: Income Tax – bonuses paid in crypto-assets.
4. The related Rulings set out above have also expired and been reissued as follows:
  - BR PUB XX/XX: Income Tax – employer issued cryptoassets provided to an employee;
  - BR PUB XX/XX: Income Tax – application of the employee share scheme rules to employer issued cryptoassets provided to an employee; and
  - BR PUB XX/XX: Income Tax – bonuses paid in cryptoassets.

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

# Application of the legislation | Whakapānga o te whakature

## Introduction

5. An agreement to pay an employee in cryptoassets 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 cryptoassets). 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), where the cryptoassets are paid as part of an overall remuneration package. The following analysis considers how the provision of cryptoassets will be treated when a salary sacrifice arrangement is valid, in particular, whether PAYE or FBT applies.<sup>2</sup>

## Whether cryptoassets 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 cryptoassets 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:
  - (b) expenditure on account of an employee that is expenditure on account of the person:

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<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.

- (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 cryptoassets. 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 cryptoassets (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
    - ....

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<sup>3</sup> Inland Revenue's view is that cryptoassets are not "money" (see [20] for further discussion of this). Therefore, s CE 1(1)(g) is not relevant in this case.

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

14. "Wage" is similarly defined as:

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

15. *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.

16. 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.

17. 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.
18. 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.
19. Where an employee has agreed to receive cryptoassets as part of a remuneration package, most of these requirements would be met (for tax purposes). The payments would be fixed, regular amounts received in return for work undertaken. Cryptoassets can also have many of the characteristics of money; for example, the types of cryptoassets covered by this Ruling are readily transferable mediums of exchange, divisible, fungible, durable and hard to counterfeit.
20. In the Commissioner's view, cryptoassets are property.<sup>4</sup> Cryptoassets are not "money" as commonly understood (at least not at the present time). In particular, because cryptoassets are not issued by any government, they are not legal tender anywhere. Further, although acceptance of certain cryptoassets 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 cryptoassets' ability to be a store of value.

## Legislation Act 2019

21. Notwithstanding that cryptoassets 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 cryptoassets. Clearly, at the time "salary" and "wages" were first referred to in the Income Tax Act, Parliament would not have contemplated payments

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<sup>4</sup> This view is consistent with the decision in *Ruscoe v Cryptopia Ltd* (in liquidation) [2020] NZHC 728.

of cryptoassets being within the scope of salary and wages as cryptoassets did not exist.

22. However, s 11 of the Legislation Act 2019 (formerly s 6 of the Interpretation Act 1999)<sup>5</sup> provides for an ambulatory approach to statutory interpretation:

legislation applies to circumstances as they arise.

23. This requires old legislation to be interpreted as applying to modern circumstances, that is, the:<sup>6</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.

24. Or, put another way:<sup>7</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.

25. 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 the previous version of s 11 (s 6 of the Interpretation Act 1999) to interpret the meaning of "false document" taking into account the digital age.<sup>8</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.

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

27. The question is whether the ordinary meanings of "salary" and "wages" for tax purposes are now wide enough to encompass payments in cryptoassets. Unlike the moves from physical notes and coins to cheques to direct credit (which are all

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<sup>5</sup> Section 6 provided that "[a]n enactment applies to circumstances as they arise".

<sup>6</sup> J Burrows and J Fogerty (presenters) "Statutory Interpretation" (New Zealand Law Society seminar, 2011).

<sup>7</sup> Bigwood, R (ed) *The Statute Making and Meaning* (LexisNexis, 2004).

<sup>8</sup> The Supreme Court (*R v Walsh* [2007] 2 NZLR 109) later held that such an interpretation was not necessary.

payments of money), the shift to paying in cryptoassets is a more significant one. However, this does not prevent s 11 of the Legislation Act 2019 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" for tax purposes are capable of including payments in cryptoassets. However, employers should be aware of employment legislation, and in particular the Minimum Wage Act 1983 and the Wages Protection Act 1983.

## **PAYE generally applies only to monetary benefits**

28. The alternative view is "salary" and "wages" should be interpreted narrowly and, consequently, PAYE will not apply. If a payment of cryptoassets was not subject to PAYE, it would be a fringe benefit and subject to FBT<sup>9</sup>.
29. 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.
30. Similarly, "extra pay" is defined in s RD 7 in relation to payments that would generally be made in money. However, it also includes a benefit under certain share purchase agreements.
31. 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.

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<sup>9</sup> A cryptoasset payment would satisfy the definition of "fringe benefit" in s CX 2 and not fall within any of the exemptions in subpart CX.

## Section RD 6

32. 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**
  - (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]

33. 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.

34. 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>10</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

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<sup>10</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.

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.

35. There is limited contemporaneous material discussing what "other benefits in kind" in 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.

36. 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 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

37. It is unclear on the face of the legislation whether an employee who regularly receives cryptoassets as a part of their normal remuneration package is subject to PAYE or whether FBT applies. Both views are arguable.
38. Broadly, the scheme of the Act is that consideration in money is subject to PAYE, whereas non-monetary benefits are subject to FBT. Cryptoassets are not money in the technical sense (although they share some of the characteristics of money). This might suggest that payments in cryptoassets 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.
39. Ultimately, the issue turns on whether regular payments in cryptoassets come within the ordinary meaning of "salary or wages" for tax purposes. The answer to this is not

certain. While a regular payment received in cryptoassets has many of the hallmarks of salary and wages, historically salary and wages have been payments in money. However, s 11 of the Legislation Act 2019 requires legislation to be interpreted as applying to modern circumstances. While not free from doubt, on balance, the Commissioner's view is that for tax purposes, the concepts of "salary" and "wages" are wide enough to encompass some regular payments in cryptoassets (although employers will need to be aware of employment legislation). Consequently, these payments are "salary or wages" under s RD 5 for tax purposes. Therefore, they are "PAYE income payments" under s RD 3 and the PAYE rules apply to them.

40. Because the payments are subject to PAYE, the FBT rules will not apply.

### **Which cryptoassets are subject to PAYE?**

41. In the Commissioner's view, not all types of cryptoassets will be subject to PAYE. To be considered "salary or wages" for tax purposes, the cryptoassets need to be sufficiently similar to existing notions of salary and wages. In the Commissioner's view, this will be the case where the cryptoassets 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 cryptoasset is to function like a currency; or
    - the value of the cryptoasset is pegged to one or more fiat currencies.
42. Each of these is discussed in more detail below. Taxpayers can contact Inland Revenue if they are having difficulty determining whether a particular cryptoasset satisfies these criteria.
43. For cryptoasset payments that are not subject to PAYE, the FBT rules will apply.

### **Not subject to a "lock-up" period**

44. In the Commissioner's view, cryptoassets 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 cryptoassets can be converted directly into a fiat currency**

45. Most mainstream cryptoassets can generally be traded on an exchange directly for fiat currency (for example, New Zealand dollars (NZD) or United States dollars). For other cryptoassets, this may not be available. Instead, the cryptoassets must first be converted into a more mainstream cryptoasset and then converted into fiat currency.

In the current environment where cryptoassets are not readily accepted as payment for goods and services, the Commissioner's view is that cryptoassets that cannot be converted directly into fiat currency on an exchange (that meets the requirements set out in [57] - [59]) are not sufficiently "money-like" to be considered salary or wages for tax purposes.

### **A significant purpose of the cryptoassets is to function like a currency**

46. The range and functions of cryptoassets have evolved in recent times. It is now possible to get cryptoassets that function in a similar way, for example, to vouchers, shares, or debt securities.
47. Some cryptoassets are designed to function as an alternative to fiat currency in the sense they provide a general-purpose peer-to-peer payment system. Some cryptoassets are designed with other functions in addition to use as a currency, but the currency purpose is still a significant one. The Commissioner's view is that payment in these types of cryptoassets (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.
48. These can be contrasted with cryptoassets that are designed primarily for other purposes. 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").
49. These cryptoassets 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 cryptoassets is pegged to one or more fiat currencies**

50. This refers to so-called "stablecoins" that have their value pegged to one or more fiat currencies. Regardless of whether these cryptoassets are designed to function like currencies (in the sense discussed above at [46]-[49] 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 for tax purposes.

## Implications of conclusion

### PAYE calculations

51. Where an employee's remuneration package includes cryptoassets and salary or wages paid in money, PAYE is calculated on the aggregate of the value of the cryptoassets and the money (the valuation of cryptoassets is discussed at [55] to [60] below). For instance, if in each pay period an employee receives \$2,000 and cryptoassets with a value of \$1,000, the amount on which PAYE is calculated is \$3,000.
52. Similarly, if the employee receives \$2,000 and a fixed number of cryptoassets (rather than an amount of cryptoassets denominated in NZD), PAYE is calculated in the same way, however the amount will vary to the extent that the value of the cryptoasset changes from pay period to pay period. If the employee is entitled to 100 cryptoassets and the value of one cryptoasset is \$12.50, the amount on which PAYE is calculated is \$3,250. This amount is calculated by adding the \$2,000 monetary payment to the \$1,250 cryptoasset payment. The value of the latter is calculated by multiplying the value of the cryptoasset by the number of cryptoassets received (ie,  $100 \times \$12.50 = \$1,250$ ). If in the following pay period the value of one cryptoasset has increased to \$16.50, the amount on which PAYE is calculated is \$3,650 (ie,  $\$2,000 + (100 \times \$16.50) = \$3,650$ ).
53. An employer may agree to meet the cost of a tax liability that arises in relation to cryptoassets paid to an employee. In such a case, the value of the tax paid by the employer is assessable income of the employee and must be included in the amount on which PAYE is calculated. For example, assume the employer in the example at [51] above agrees that it will pay the tax relating to the \$1,000 cryptoasset payment the employee receives. The total of the employee's cryptoasset income and tax paid by the employer will be calculated under the following "gross-up" formula where the employee's tax rate is their marginal rate of 33%:

$$\$1,000 \times 1 / (1 - \text{tax rate}) = \$1,492.54$$

54. Adding the result of this calculation to the \$2,000 payment in money will give the amount on which PAYE is calculated ie,  $\$1,492.54 + \$2,000 = \$3,492.54$ . The components of income that are included in this amount are set out in the table below.

Income	Value
Payment in money	\$2,000.00
Cryptoassets	\$1,000.00



Tax paid by employer	\$492.54
Total	\$3,492.54

## Converting cryptoasset payments to NZD

55. Generally, arrangements of this type will provide for an employee to be paid an amount of cryptoassets denominated in NZD. In this case, there will be no need to convert the cryptoassets into NZD to calculate the PAYE payable.
56. However, where a cryptoasset payment is not denominated in NZD (for example, if an employee is paid 0.001 of a cryptoasset per fortnight as part of a remuneration package), it is necessary to calculate the NZD value of the cryptoassets 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 cryptoassets 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 cryptoasset 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 in cryptoassets as part of salary package**

Ken is employed by Cryptowonderland Ltd. His gross salary is NZD\$5,000 per month, which is payable in NZD direct credited to his bank account. Ken's remuneration package also includes gross payments of NZD\$5,000 in cryptoassets per month. The payments are not subject to a lock up period, the cryptoasset can be converted into fiat currency on an exchange, and a principal purpose of the cryptoasset is to function like a currency. The cryptoassets are paid into Ken's cryptoasset wallet.

Ken's employer has not agreed to fund the tax liability that arises in relation to the cryptoasset payments.

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.

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.

*Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.*

*In draft form these items may not be relied on by taxation officers, taxpayers, and practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*

## **References | Tohutoro**

### **Expired rulings | Whakatau mōnehu**

BR Pub 21/01: Income tax – salary and wages paid in cryptoassets

## Legislative references | Tohutoro whakatureture

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

Legislation Act 2019 – s 11

## Case references | Tohutoro kēhi

*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 Mistic* [2001] 3 NZLR 1

*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 | Tohutoro anō

### Related rulings

BR PUB XX/XX: Income tax – bonuses paid in cryptoassets

BR PUB XX/XX: Income tax – employer-issued cryptoassets provided to an employee

BR Pub XX/XX: Income tax - application of the employee share scheme rules to employer issued cryptoassets provided to an employee

### Publications

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)

## Legislation

63. The relevant provisions in the Income Tax Act 2007 are as follows:

**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.

**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.

## **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).

**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.

**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.

**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.

**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.

...

**RD 7 Extra pay**

*Meaning*

- (1) An extra pay—
  - (a) means a payment that—
    - (i) is made to a person in connection with their employment; and
    - (ii) is not a payment regularly included in salary or wages payable to the person for a pay period; and
    - (iii) is not overtime pay; and
    - (iv) is made in 1 lump sum or in 2 or more instalments; and
  - (b) includes a payment of the kind described in paragraph (a) made—
    - (i) as a bonus, gratuity, or share of profits; or
    - (ii) as a redundancy payment; or
    - (iii) when the person retires from employment; or
    - (iv) as a result of a retrospective increase in salary or wages, but only to the extent to which it accrues from the start of the increase until the start of the first pay period in which the increase is included in salary or wages; and
  - (bb) includes a benefit under section CE 1(1)(d) (Amounts derived in connection with employment) in relation to which the employer has made an election under section RD 7B to withhold an amount of tax; and
  - (c) includes an amount of income that a person derives under section CE 9 (Restrictive covenants) or CE 10 (Exit inducements) if the income is derived in connection with an employment relationship between the person and the person who paid the amount; and
  - (cb) includes an unrepaid PAYE income overpayment that is treated as all or part of an amount of extra pay under section RD 8B(2)(b); and
  - (d) does not include a payment of exempt income.

**YA 1 Definitions**

In this Act, unless the context requires otherwise,—

**amount—**

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

...

64. Section 11 of the Legislation Act 2019 provides as follows:

**11 Legislation applies to circumstances as they arise**

Legislation applies to circumstances as they arise.

## About this document | Mō tēnei tuhinga

Public Rulings are issued by the Tax Counsel Office. Public Rulings set out the Commissioner's view on how tax laws apply to a specific set of facts – called an arrangement. Taxpayers whose circumstances match the arrangement described in a Public Ruling may apply the ruling but are not obliged to do so. Public Rulings are binding on the Commissioner. This means that if you are entitled to apply a Public Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Public Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity between a taxpayer's circumstances and the arrangement covered by a Public Ruling will not necessarily lead to the same tax result.