

**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 21/02. 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
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PUBLIC RULING | WHAKATAUNGA TŪMATANUI

Income tax – bonuses paid in cryptoassets

Issued | Tukuna: XX

BR Pub XX

This ruling considers when a bonus or an incentive paid in cryptoassets will be a “PAYE income payment” under s RD 3 for which the payer 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 21/02. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.



Public Ruling BR Pub XX/XX: Income tax – bonuses 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 an amount of cryptoassets 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 cryptoassets being paid are an agreed deduction from a monetary amount.

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

The taxation law applies to the Arrangement as follows:

- The cryptoasset payment is a “PAYE income payment” under s RD 3 and is 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].

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 21/02, 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.¹

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

2. Under employment law, cryptoassets may be paid to an employee as a bonus where the bonus is a monetary amount and the employee agrees to a deduction from that amount to be paid as cryptoassets. PAYE is payable on the full amount of the bonus (whether received by the employee as money or agreed to be paid as an equivalent amount of cryptoassets).

Background | Horopaki

3. The Ruling sets out the Commissioner's view on the situation where an employee receives a bonus and agrees for an amount of that bonus to be paid in cryptoassets.

Application of the legislation | Whakapānga o te whakature

Whether cryptoassets received under a valid salary sacrifice 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 cryptoassets 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). In any event, an amount specifically includes a bonus.

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. Under employment law, a bonus is part of a person's salary or wages and must be paid in money. However, employees can agree to a deduction being made from the monetary amount, and opt to receive the bonus in cryptoassets (provided that requirements in the Wages Protection Act 1983 and Minimum Wage Act 1983 are satisfied).
12. PAYE will apply regardless of whether the bonus is paid in cash, an equivalent amount of cryptoassets as an agreed deduction, or a combination of both.
13. It is useful, at this point, to consider whether there is anything in the scheme of the Act that suggests that non-monetary payments in cryptoassets (paid as an agreed deduction) should not be treated as employment income.

Scheme of the Act

14. 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).
15. 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.
16. Similarly, "extra pay" is defined in s RD 7 relation to payments that would generally be made in money. However, it also includes a benefit under certain share purchase agreements.
17. 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 cryptoassets money or its equivalent?

18. In the Commissioner's view, cryptoassets are property.² Cryptoassets are not "money" as commonly understood (at least not at the present time). In particular, because cryptoassets are not currently issued by any government, it is 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.
19. Under New Zealand employment law, any payment of cryptoassets as a bonus must be made by way of an agreed deduction from a monetary amount. PAYE is applicable on the monetary amount of the bonus, whether it is paid in money or as an equivalent amount of cryptoassets.

² This view is consistent with the decision in *Ruscoe v Cryptopia Ltd* (in liquidation) [2020] NZHC 728.

Conclusion

20. An amount of cryptoassets paid to an employee, in connection with their employment, as an agreed deduction from an incentive or bonus payment will be a "bonus" under s CE 1.
21. 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.

Implications of conclusion

PAYE is calculated on the full amount of the bonus

22. Where payment is provided in cryptoassets (as an agreed deduction from a monetary amount), the employer must account for the gross amount of the bonus being provided to the employee when calculating PAYE.
23. 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 \$10,000 (gross) and the employee agrees to a deduction of the full amount for a payment in cryptoassets. Assume also that the bonus is an "extra pay" under s RD 7 which is subject to PAYE at a flat rate of 33%. In such a case, \$6,700 worth of cryptoassets would be payable to the employee and \$3,300 (NZD) must be paid to Inland Revenue as PAYE.
24. If a cryptoasset payment is not denominated in NZD (for example, if an employee is paid a bonus of 0.001 of a cryptoasset), this may be contrary to employment legislation and you may need to seek advice.
25. 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

26. The following example is included to help explain the application of the law. For simplicity the example does 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: Calculating PAYE on a bonus

Anaru is employed by Cryptowonderland Ltd. In addition to his \$150,000 salary, Anaru's contract provides for a NZ\$10,000 (gross) bonus if Cryptowonderland's profit exceeds the previous year's. Under New Zealand employment law bonuses must be payable in money, but an employee may agree that a deduction will be made from a bonus payable in money and an equivalent amount paid out in cryptoassets. Anaru requests that his bonus be paid out in cryptoassets.

Cryptowonderland has an exceptional year and Anaru receives his bonus in cryptoassets as requested. The bonus is subject to PAYE at a flat rate of 33%. NZ\$3,330 ($\$10,000 \times 0.33$) must be paid to the Commissioner (in New Zealand dollars). As a result of Anaru's request, the net amount of \$6,670 worth of the cryptoasset will be transferred to Anaru's cryptoasset wallet as a deduction from his cash bonus.

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 21/02: Income tax – bonuses paid in crypto-assets

Legislative references | Tohutoro whakatureture

Income Tax Act 2007 – ss CE 1, CE 7, CX 2, CX 4, RD 3, RD 5, RD 7 and the s YA 1 definition of "amount"

Case references | Tohutoro kēhi

CIR v Smythe [1981] 1 NZLR 673

Other references | Tohutoro anō

Subject references

Bonus, cryptoasset, cryptocurrency, FBT, PAYE, salary, wages

Related rulings

BR PUB XX/XX: Income tax – salary and wages 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”

Legislation

27. 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:

...

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.