

## **BINDING RULINGS**

### **PUBLIC RULING BR PUB 21/02: INCOME TAX – BONUSES PAID IN CRYPTO-ASSETS**

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

#### **Taxation law**

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

This Ruling applies in respect of s RD 3.

#### **The Arrangement to which this Ruling applies**

The Arrangement is the payment of 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 are an agreed deduction from a monetary amount.

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 from 1 March 2021 until 1 December 2022.

This Ruling is signed by me on 11<sup>th</sup> January 2021.

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## COMMENTARY ON PUBLIC RULING BR PUB 21/02

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 21/02 (“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 amends and replaces a previous Ruling (BR Pub 19/02) which considered the income tax treatment of crypto-assets received by employees as a bonus. The income tax treatment in that Ruling is still correct. However, the Commissioner is aware that some aspects of the arrangement ruled on and its commentary may be inconsistent with employment law (including, relevantly, the Wages Protection Act 1983 and the Minimum Wage Act 1983).
2. Under employment law, crypto-assets 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 crypto-assets. 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 crypto-assets).

### Background

3. The crypto-asset industry is still evolving and there is currently no standard terminology used. The Ruling uses the term “crypto-asset” to cover digital assets that use cryptography and blockchain technology to regulate their generation and verify transfers.<sup>1</sup>

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

4. It is becoming more common for employees (particularly those working in crypto-asset-related industries) to receive remuneration in crypto-assets. The Commissioner has been asked to provide guidance on how remuneration paid in crypto-assets is taxed. This Ruling sets out the Commissioner's view on the situation where an employee receives a bonus and agrees for an amount of that bonus to be paid in crypto-assets.

## Application of the legislation

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

5. 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.
6. 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]

7. "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"*

8. "Bonus" is not defined in the Act. Therefore, it is necessary to consider its ordinary meaning.
9. 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.

10. 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.

11. 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.
12. 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 crypto-assets (provided that requirements in the Wages Protection Act 1983 and Minimum Wage Act 1983 are satisfied).
13. PAYE will apply regardless of whether the bonus is paid in cash, an equivalent amount of crypto-assets as an agreed deduction, or a combination of both.
14. 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 crypto-assets (paid as an agreed deduction) should not be treated as employment income.

*Scheme of the Act*

15. 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).
16. 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.
17. 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.
18. 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?*

19. 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 currently 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.
20. Under New Zealand employment law, any payment of crypto-assets 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 crypto-assets.

### **Conclusion**

21. An amount of crypto-assets 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.
22. 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*

23. Where payment is provided in crypto-assets (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.
24. 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) and the employee agrees to a deduction of the full amount for a payment 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.
25. If a crypto-asset payment is not denominated in NZD (for example, if an employee is paid a bonus of 0.001 bitcoin), this may be contrary to employment legislation and you may need to seek advice.
26. There are various circumstances where obligations, eligibility, or entitlements may be calculated based on an employee's salary or wages (for example Kiwisaver, Working for Families Tax Credits, and student loan repayments). The crypto-asset payments must be taken into account when calculating these.

## Example

27. 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](http://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. Anaru requests that this cash bonus be paid out in bitcoin.

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). As a result of Anaru's request, the net amount of \$6,670 worth of bitcoin will be transferred to Anaru's bitcoin wallet as a deduction from his cash bonus.

## References

### **Related rulings**

BR PUB 21/01: 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***

28. 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.

29. 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.

30. 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).

31. 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.

32. 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.

33. 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.

34. Section YA 1 defines "amount" as follows:

**amount—**

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

...