

7 May 2019

Public Rulings Unit
Inland Revenue Department
Wellington

By email: public.consultation@ird.govt.nz

PUB00344: Income tax – salary and wages paid in cryptocurrency, and bonuses paid in cryptocurrency

Introduction

1. The New Zealand Law Society's Tax Law Committee welcomes the opportunity to comment on PUB00344 draft rulings relating to *Income Tax – Salary and Wages Paid in Cryptocurrency and Bonuses Paid in Cryptocurrency* (the Exposure Drafts).
2. The Exposure Drafts consider whether regular remuneration and bonuses received by employees in cryptocurrency are subject to PAYE. This follows on from consultation in 2018 on Issues Paper IRRUIP 11, on which the Law Society made a submission.¹

Comments on the exposure drafts

3. The Law Society broadly agrees with the Exposure Drafts' conclusions that:
 - a. cryptocurrency paid as salary and wages or bonuses are subject to the PAYE rules if the cryptocurrency being paid:
 - i. can be converted into a fiat currency; and
 - ii. either a significant purpose of the cryptocurrency is to function like a currency, or the value of the cryptocurrency is pegged to one or more fiat currency; and
 - b. other cryptoassets paid to employees, other than cryptoassets that are "shares" for income tax purposes, are subject to FBT.

The Law Society notes that in practice most cryptoassets are not convertible into fiat currency so therefore it is likely that FBT would apply to most payments of cryptoassets (other than shares) as salary and wages or bonuses.

4. It would be useful if Inland Revenue could confirm that employees who receive cryptoassets as payment do not automatically hold those cryptoassets on revenue account.

¹ NZLS submission 6.8.19 on Public Rulings Unit Issues Paper No 11: Whether remuneration paid to an employee in cryptocurrency is subject to PAYE or FBT. Submission available at http://www.lawsociety.org.nz/_data/assets/pdf_file/0016/125107/I-IRD-Cryptocurrencies-IRRUIP11-6-8-18.pdf

5. While we broadly agree with the conclusions in the Exposure Drafts, we are concerned that the draft commentary on cryptoassets is being released on a piecemeal basis and there is a risk that inconsistent treatment by taxpayers (and Inland Revenue practice) will develop as a result. Before specific issues (such as the treatment of cryptoassets paid as salary or bonuses) are finalised, it would be valuable for Inland Revenue to first release draft commentary on the general nature of cryptoassets for tax purposes for comment. Once a cohesive and coherent general approach has been developed, it could then be applied to specific areas.

Further information

6. We hope these comments are useful to Inland Revenue in finalising the Exposure Drafts. If you would like to discuss the comments further, please contact me through the Law Society's Law Reform Adviser Emily Sutton (emily.sutton@lawsociety.org.nz, (04) 463 2978).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Russ', written in a cursive style.

Neil Russ
Convenor, NZLS Tax Law Committee