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Public Consultation
Inland Revenue
Wellington

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

IRRUIP14: Income tax - tax treatment of cryptoassets received from blockchain forks and airdrops

Introduction

1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on *IRRUIP14: Income tax - tax treatment of cryptoassets received from blockchain forks and airdrops (issues paper)*.
2. The Law Society's Tax Law Committee supports the intent of the issues paper in clarifying aspects of the income tax treatment of cryptoassets received from blockchain forks and airdrops. It would be preferable for these matters to be addressed by a law change to avoid reliance on the application of existing laws which do not specifically address cryptoasset taxation issues. Generally, from a tax policy perspective, the law governing this area needs to be clarified.
3. Specific comments on the tax treatment of cryptoassets received from a hard fork and airdropped cryptoassets are set out below.

Tax treatment of cryptoassets received from a hard fork

4. This section considers whether amounts received from the disposal of cryptoassets that were received from a hard fork could be taxable under sections CB 1, CB 3, CB 4 and CB 5.
5. The issues paper sets out three alternative views on whether a purpose can be attributed to the acquisition of new cryptoassets from a hard fork:
 - (a) continuation of purpose – where the person's purpose for acquiring the new cryptoasset is the same as that for acquiring the original cryptoasset, section CB 4 could apply to a disposal if it would apply to a disposal of the original cryptoasset;
 - (b) active acquisition – where the person has had to take steps to acquire the new cryptoasset and has turned their mind to acquiring the new cryptoasset, purpose on acquisition can be separately established at the time steps are taken, section CB 4 could apply to a disposal.
 - (c) passive acquisition – where the person has done nothing to receive the new cryptoasset, section CB 4 would not apply to a disposal where the purpose on acquisition could not be established.
6. We consider that Inland Revenue's initial interpretation is broadly correct.

Tax treatment of airdropped cryptoassets

7. This section considers whether amounts received from the disposal of cryptoassets that were received from an airdrop could be taxable under sections CB 1, CB 3, CB 4 and CB 5.

8. The tax consequences of disposing of newly acquired cryptoassets received from an airdrop will depend on the recipient's individual circumstances:
 - a) continuation of purpose – where the person's purpose for acquiring the new cryptoasset is the same as that for acquiring the original cryptoasset, section CB 4 could apply to a disposal if it would apply to a disposal of the original cryptoasset;
 - b) active acquisition – where the person has had to take steps to acquire the new cryptoasset and has turned their mind to acquiring the new cryptoasset, purpose on acquisition can be separately established at the time steps are taken, section CB 4 could apply to a disposal;
 - c) passive acquisition – where the person has done nothing to receive the new cryptoasset, section CB 4 would not apply to a disposal where the purpose on acquisition could not be established.
9. We consider that Inland Revenue's initial interpretation is broadly correct.

Comments on the above sections

10. It would be helpful if the following aspects of the issues paper were reviewed and addressed:
 - a) The issues paper includes extensive comparisons between hard forks, share rights issues, share subdivisions and demergers, before stating that such comparisons may not be appropriate and that none of these comparisons will definitively assist in answering which of the above views should be preferred. Inland Revenue is currently constrained by laws which were not created at a time when cryptoassets had been created, and which do not adequately deal with such assets., Inland Revenue's preferred policy position could be addressed if specific tax provisions were developed and enacted in relation to such assets.
 - b) The issues paper includes commentary on the treatment of the disposal of airdropped cryptoassets in other jurisdictions without drawing a direct comparison to the New Zealand treatment. As mentioned above, the development of tax policy and the enactment of specific provisions governing this area would be desirable to ensure that New Zealand has appropriate rules in place.

Further assistance

11. We hope these comments are helpful and if further discussion would assist, please contact the Tax Law Committee convenor Neil Russ, through the Law Society's Law Reform and Advocacy Advisor Emily Sutton (emily.sutton@lawsociety.org.nz).

Yours faithfully,



Arti Chand
Vice President