

TD 2014/28 - Fringe benefits tax: is the provision of bitcoin by an employer to an employee in respect of their employment a property fringe benefit for the purposes of subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986 ?

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! There is a Compendium for this document: **[TD 2014/25EC](#)** .



Taxation Determination

Fringe benefits tax: is the provision of bitcoin by an employer to an employee in respect of their employment a property fringe benefit for the purposes of subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*?

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes. The provision of bitcoin by an employer to an employee in respect of their employment is a property fringe benefit for the purposes of subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).¹

Date of effect

2. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

¹ All legislative references in this Determination are to the FBTAA unless otherwise indicated.

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3. While the ATO view set out in this Determination will have application for periods prior to its publication, the ATO will not generally seek to apply compliance resources to applying this view in income years commencing before 1 July 2014 in relation to taxpayers who can show that they have made a genuine attempt to determine the tax treatment of bitcoin, and have then adopted a consistent position regarding the tax treatment of bitcoin in those years.

Commissioner of Taxation

17 December 2014

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

What is bitcoin?

4. This Determination is part of a suite of Rulings² issued by the Commissioner on Bitcoin. A detailed description of Bitcoin is contained in TD 2014/25.

5. In accordance with TD 2014/25 and TD 2014/26 Bitcoin is not money³ but is considered property for tax purposes. Bitcoin is also not a chose in action.⁴

Is the provision of bitcoin a property benefit?

6. 'Property benefit', as defined in subsection 136(1), 'means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive of Part III)'. Bitcoin is not a benefit described in Divisions 2 to 10.

7. Section 40 provides that where a person (the 'provider') provides⁵ property to another person (the 'recipient'), the provision of the property 'shall be taken to constitute a benefit provided by the provider to the recipient'.

8. Property as defined in subsection 136(1) means 'intangible property' and 'tangible property'. 'Tangible property' is, in turn, defined as 'goods and includes animals, including fish; and gas and electricity'. 'Intangible property' is defined as:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property, but does not include:
 - (d) a right arising under a contract of insurance; or
 - (e) a lease or licence in respect of real property or tangible property.

9. Bitcoin is not tangible property for the purposes of the FBTA. Nor is bitcoin real property and bitcoin holding rights are not a chose in action. However as the definition of intangible property also includes 'any other kind of property other than tangible property', bitcoin will fall within this definition. The provision of bitcoin by an employer to an employee is therefore a property benefit.

² See Taxation Determinations TD 2014/25 *Income tax: is bitcoin a 'foreign currency' for the purposes of Division 775 of the Income Tax Assessment Act 1997?*; TD 2014/26 *Income tax: is bitcoin a 'CGT asset' for the purposes of subsection 108-5(1) of the Income Tax Assessment Act 1997?*; TD 2014/27 *Income tax: is bitcoin trading stock for the purposes of subsection 70-10(1) of the Income Tax Assessment Act 1997?* and Goods and Services Tax Ruling GSTR 2014/3 *Goods and services tax: the GST implications of transactions involving bitcoin.*

³ See paragraph 24 of TD 2014/25.

⁴ Although a dealing in just the private key would constitute an equitable interest: see paragraph 14 of TD 2014/26.

⁵ 'Provide' is defined in subsection 136(1) to mean, as relevant, in relation to property, to dispose of the beneficial or legal ownership of the property.

Is bitcoin a property fringe benefit?

10. 'Property fringe benefit' is defined in subsection 136(1) and means 'a fringe benefit that is a property benefit'.
11. The term 'fringe benefit' is relevantly defined in subsection 136(1) to mean:
...a benefit provided to the employee ... by the employer ... in respect of the employment of the employee, but does not include a payment of salary or wages ...
12. Accordingly, a benefit will not be a fringe benefit if it is 'salary or wages'. 'Salary or wages' is relevantly defined in subsection 136(1) to mean:
 - (a) a payment from which an amount must be withheld (even if the amount is not withheld) under a provision in Schedule 1 to the *Taxation Administration Act 1953* listed in the table, to the extent that the payment is assessable income;...
13. Item 1 of the table to this definition lists section 12-35 of Schedule 1 to the *Tax Administration Act 1953* (TAA) as the relevant provision in relation to a payment to an employee.
14. Section 12-35 of Schedule 1 to the TAA, however, will not apply to require withholding on 'a payment in so far as it consists of providing a non-cash benefit' in accordance with section 12-10 of Schedule 1 to the TAA.
15. Section 995-1 of the *Income Taxation Assessment Act 1997* defines the term 'non-cash benefit' as 'property or services in any form except money'.
16. As bitcoin is not money but is considered to be property for tax purposes, bitcoin satisfies the definition of a 'non-cash benefit' and it is excluded from Pay As You Go (PAYG) withholding. This exclusion from PAYG withholding means that bitcoin is not 'salary or wages' within the definition of that term in subsection 136(1) and accordingly is not 'salary or wages' for the purposes of the exclusion in the definition of 'fringe benefit' in the same subsection.
17. Accordingly, the provision of bitcoin by an employer to an employee in respect of the employee's employment will be a property fringe benefit for the purposes of subsection 136(1).⁶
18. The employer of the employee in these circumstances is liable to pay FBT on the taxable value of the property fringe benefits. Income derived by a taxpayer by way of the provision of a fringe benefit is not assessable and is not exempt income of the taxpayer under subsection 23L(1) of the *Income Tax Assessment Act 1936*.

⁶ The subsection 136(1) definition of 'in-house property fringe benefit' means a property fringe benefit in respect of 'tangible property' only. The 'in-house fringe benefit' provisions do not apply where a bitcoin is provided to an employee in respect of their employment as bitcoin is 'intangible property'.

References

Previous draft:

TD 2014/D14

*Related Rulings/Determinations:*TR 2006/10; TD 2014/25; TD 2014/26;
TD 2014/27; GSTR 2014/3*Subject references:*

- benefit
- FBT
- FBT intangible property
- FBT property fringe benefit
- FBT salary or wages
- FBT tangible property
- fringe benefits tax

Legislative references:

- FBTA 1986
- FBTA 1986 Pt III Div 2
- FBTA 1986 Pt III Div 2 Subdiv A
- FBTA 1986 Pt III Div 3
- FBTA 1986 Pt III Div 3 Subdiv A
- FBTA 1986 Pt III Div 4

- FBTA 1986 Pt III Div 4 Subdiv A
- FBTA 1986 Pt III Div 5
- FBTA 1986 Pt III Div 5 Subdiv A
- FBTA 1986 Pt III Div 6
- FBTA 1986 Pt III Div 6 Subdiv A
- FBTA 1986 Pt III Div 7
- FBTA 1986 Pt III Div 7 Subdiv A
- FBTA 1986 Pt III Div 8
- FBTA 1986 Pt III Div 8 Subdiv A
- FBTA 1986 Pt III Div 9
- FBTA 1986 Pt III Div 9 Subdiv A
- FBTA 1986 Pt III Div 9A
- FBTA 1986 Pt III Div 9A Subdiv A
- FBTA 1986 Pt III Div 10
- FBTA 1986 Pt III Div 10 Subdiv A
- FBTA 1986 40
- FBTA 1986 136(1)
- ITAA 1936 23L(1)
- ITAA 1997 995-1
- TAA 1953
- TAA 1953 Sch 1 12-10
- TAA 1953 Sch 1 12-35

ATO references

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