

TD 2014/D14 - 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?

! This cover sheet is provided for information only. It does not form part of *TD 2014/D14 - 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?*

This document has been finalised by TD 2014/28.

! There is a Compendium for this document: **TD 2014/25EC** .

! You can access a guidance paper that has been issued with this draft Determination. The guidance paper provides an overview of the tax treatment for transactions associated with crypto-currencies, specifically Bitcoin. Where other crypto-currencies have the same characteristics as Bitcoin, the information in the guidance paper applies equally to the taxation treatment for other crypto-currencies.



Draft 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*?

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation 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.

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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. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

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

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Status: **draft only – for comment**

3. While the ATO view will have application for periods prior to its publication, the ATO will not generally apply compliance resources to past year cases in relation to taxpayers who have behaved in a bona fide manner and made a genuine attempt to understand and satisfy their obligations.

Commissioner of Taxation

20 August 2014

Appendix 1 – Explanation

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

Explanation

What is Bitcoin?

4. This Draft Taxation Determination is part of a suite of draft determinations issued by the Commissioner on Bitcoin. A detailed description of Bitcoin is contained in Draft Taxation Determination TD 2014/D11 *Income tax: is Bitcoin a 'foreign currency' for the purposes of Division 775 of the Income Tax Assessment Act 1997 (ITAA 1997)?* (TD 2014/D11).

5. In accordance with Draft Taxation Determinations TD 2014/D11 and TD 2014/D12 *Income tax: is Bitcoin a CGT asset for the purposes of subsection 108-5(1) of the Income Tax Assessment Act 1997 (ITAA 1997)?* Bitcoin is not money² but is considered property for tax purposes. Bitcoin is also not a chose in action (TD 2014/D12).³

Is the provision of Bitcoin a property benefit?

6. 'Property benefit', as defined in subsection 136(1) of the FBTA, '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 of the FBTA.

7. Section 40 of the FBTA provides that where a person (the 'provider') provides⁴ 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) of the FBTA 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.

² See paragraph 24 of TD 2014/D11.

³ Although a dealing in just the private key would constitute an equitable interest: paragraph 14 of TD 2014/D12.

⁴ 'Provide' is defined in subsection 136(1) of the FBTA to mean, as relevant, in relation to property, to dispose of the beneficial or legal ownership of the property.

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9. Bitcoin is not tangible property for the purposes of the FBTAA. 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.

Is Bitcoin a property fringe benefit?

10. ‘Property fringe benefit’ is defined in subsection 136(1) of the FBTAA and means ‘a fringe benefit that is a property benefit’.

11. The term ‘fringe benefit’ is relevantly defined in subsection 136(1) of the FBTAA 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) of the FBTAA 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 *Tax 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 ITAA 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) of the FBTAA 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) of the FBTAA.

Appendix 2 – Your comments

18. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.

19. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	3 October 2014
Contact officer:	Andrea Wood
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References

Previous draft:

Not previously issued as a draft

- FBT intangible property
- FBT tangible property
- FBT property fringe benefit
- fringe benefits tax

Related Rulings/Determinations:

TD 2014/D11; TD 2014/D12; TD 2014/D13;
GSTR 2014/D3; TR 2006/10

Legislative references:

Subject references:

- benefit
- FBT
- FBT salary or wages

- ITAA 1997 995-1
- FBTAA 1986 40
- FBTAA 1986 136(1)
- TAA 1953 Sch 1 12-10
- TAA 1953 Sch 1 12-35

ATO references

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