TD 2026/D2 - Income tax: capital gains tax consequences of using a smart contract to wrap and unwrap crypto assets

For information about the status of this draft Determination, see item [4178] on our Advice under development program.

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Draft Taxation Determination

Income tax: capital gains tax consequences of using a smart contract to wrap and unwrap crypto assets

Relying on this draft Determination

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Determination is about

1. This draft Determination[1] addresses the capital gains tax (CGT) consequences that arise when you interact with a wrapping contract. Wrapping contracts are a type of smart contract that exchange a crypto asset for its wrapped equivalent, often to enable compatibility with particular protocols or platforms. The Determination also applies if you subsequently unwrap your crypto asset by swapping the wrapped version for the same type of crypto asset that was originally wrapped.

2. There are various ways of wrapping and unwrapping crypto assets. This Determination only applies to wrapping, as described in Steps 1 to 3, and unwrapping, as described in Steps 5 to 7 (set out below):

Step 1: transferring crypto asset A to a wrapping contract

You initiate a dealing under which an amount of crypto asset A is sent from your wallet to the wrapping smart contract.

Step 2: wrapping contract locks crypto asset A

The number of units of crypto asset A recorded to your balance decreases, and the wrapping contract's balance increases by the same number.[2] The contract locks those units at its address.

Step 3: minting crypto asset B

The wrapping contract mints an equivalent amount of crypto asset B (for example, an ERC-20 token) on a 1:1 basis with the locked units of crypto asset A and sends it to your wallet address.

Step 4: using crypto asset B

The newly minted crypto asset B can now be used in decentralised finance (DeFi) protocols or traded.

Step 5: unwrapping crypto asset B

If you want to exchange your crypto asset B for crypto asset A, you must call the withdraw function on the wrapping contract and specify the amount you want to exchange.

Step 6: burning crypto asset B

When the withdraw call executes, the wrapping contract burns crypto asset B.

Step 7: releasing crypto asset A

The contract sends the corresponding amount of crypto asset A back to your wallet address.

3. This Determination does not apply to all arrangements that may be described as 'wrapping'. There are many types of dealings in crypto assets that are given that label and not all involve the same tax analysis. This Determination only applies to wrapping arrangements facilitated by smart contracts that are programmed as set out in paragraph 2 of this Ruling. It does not apply to any transactions where crypto assets are sent to custodian counterparties.

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[1] For readability, all further references to 'this Determination' refer to the Determination as it will be read when finalised. Note that this Determination will not take effect until finalised.

[2] This step concerns a change to recorded balances only. No private key or 'holding rights' are transferred to the wrapping contract. These terms are used consistently with Taxation Determination 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?*

4. This Determination uses ETH (Ether) and WETH (wrapped Ether) as examples of crypto asset A and crypto asset B respectively. Using well-known crypto assets provides recognisable context alongside the more abstract terms 'crypto asset A' and 'crypto asset B'. ETH is the native coin of the Ethereum network, managed directly by the Ethereum protocol. WETH, by contrast, is a token created by depositing ETH into a smart contract, which then issues an equivalent amount of WETH. WETH complies with the ERC-20 token standard, enabling interaction with decentralised applications on the Ethereum network. This Determination is not limited to wrapping ETH and unwrapping WETH.

5. This Determination does not consider the income tax consequences for anyone carrying on a business where the wrapping and unwrapping transactions form part of the ordinary course of that business. It also does not consider the income tax consequences where the transactions are undertaken with a profit-making purpose as part of an isolated business operation or commercial transaction.

Terms used in this Determination

6. For the purposes of this Determination:

- ***Burning*** refers to the process where a smart contract permanently removes crypto asset B from circulation when a user exchanges it back for crypto asset A. This ensures that the total amount of crypto asset B minted by a contract always equals the amount of crypto asset A locked in it.
- ***DeFi*** refers to a system of financial services built on blockchain technology that operates without traditional intermediaries like banks. It enables users to trade, lend, borrow, and earn returns on crypto assets through smart contracts.
- ***ETH*** means an Ether coin. ETH is used as an example of 'crypto asset A'.[3] Where 'an ETH' is referred to in this Determination, it should be read as 'a quantity of ETH'.
- ***Minting*** refers to the process where a smart contract creates and issues a token when a different crypto asset is deposited into it.
- ***Smart contract*** refers to an autonomous, self-executing program on a blockchain. It operates as a computerised transaction protocol that enforces predefined rules based on its programming without the need for intermediary entities.
- ***Token*** refers to any crypto asset built on an existing blockchain that represents other assets, which can be used for specific applications on the blockchain. WETH is an example of a token.
- ***Unwrapping*** refers to the process set out in Steps 5 to 7 in paragraph 2 of this Determination.
- ***WETH*** means a wrapped Ether token, being an ERC-20 token that represents the value of ETH on a 1:1 basis. WETH is used as an example of 'crypto asset B'.[4] WETH can be used in certain DeFi applications that ETH is incompatible with. Where 'a WETH' is referred to in this Determination, it should be read as 'a quantity of WETH'.

[3] As that term is used in paragraph 2 of this Determination.
[4] As that term is used in paragraph 2 of this Determination.

- ***Wrapping*** refers to the process set out in Steps 1 to 4 in paragraph 2 of this Determination.
- ***Wrapping contract*** refers to a smart contract that facilitates the exchange of crypto asset A for crypto asset B and vice versa.

7. All legislative references in this Determination are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

Ruling

Ownership of crypto assets

8. You own a CGT asset if you hold a crypto asset such as ETH or WETH, at an address that you control through a private key. The nature of the property in that crypto asset is equivalent to that described in Taxation Determination 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?*[5]

Wrapping crypto assets (such as ETH)

9. CGT event C2 happens when crypto asset A, such as ETH, is wrapped. When crypto asset A is sent to a wrapping contract address, your ownership of that CGT asset ends by abandonment because you cease to have the proprietary relationship that made the asset yours.[6] In particular, once crypto asset A is transferred to the wrapping contract address, the connection between that crypto asset and the address associated with your private key is severed. Your private key no longer gives you the ability to transfer, use or otherwise deal with that particular asset. The fact that the wrapping contract may later release an equivalent quantity of crypto asset A if you burn crypto asset B does not mean you retain a continuing proprietary interest in the original crypto asset A. It means only that crypto asset B gives you the practical ability, under the contract's programming, to obtain a new holding of crypto asset A by giving up crypto asset B. CGT event C2 occurs at the time crypto asset A is sent to the wrapping contract address.

10. Any amount of crypto asset A (for example, ETH) you later receive on unwrapping will represent a new property interest and, therefore, a new CGT asset, distinct from the original asset that was abandoned.

11. The capital proceeds from this event are the market value of crypto asset B (for example, WETH) received from wrapping crypto asset A.[7] This will correspond to the market value of crypto asset A at the time it is sent to the wrapping contract.[8]

12. The first element of the cost base of your crypto asset B holding is the market value of crypto asset A at the time it was sent to the wrapping contract.[9]

[5] The position taken in this Determination regarding the nature of a property interest in a crypto asset is consistent with that expressed in paragraph 8 of TD 2014/26.
[6] Paragraph 104-25(1)(d).
[7] Subparagraph 116-30(2)(b)(ii).
[8] Subject to any part of crypto asset A being consumed in paying network transaction fees (for example, gas fees). Any such fees are treated separately for CGT purposes. This Determination does not deal with the CGT implications related to any platform or network fees incurred.
[9] Paragraph 110-25(2)(b).

13. A holding of crypto asset B is not the same CGT asset as the crypto asset A sent to the wrapping contract. Although the 2 have equivalent value, they represent separate CGT assets.

Example 1 – wrapping ETH

14. *Finella purchases 5 ETH on 5 March 2021 for $10,000. Four years later, she decides to use a DeFi protocol to earn rewards. The DeFi application she wishes to use requires a deposit of ERC-20 tokens. Her ETH are incompatible with the DeFi application.*

15. *She decides to swap her ETH for WETH to use the DeFi application. Finella wraps her 5 ETH by sending them to a wrapping contract address. At that time, the 5 ETH have a total market value of $30,000.*[10] *The wrapping contract mints 5 WETH and sends them to her wallet address.*[11]

16. *CGT event C2 happens when Finella sends her ETH to the wrapping contract. The capital proceeds of the event are $30,000, being the market value of the WETH received. As the cost base of her 5 ETH is $10,000, Finella makes a capital gain of $20,000.*

Unwrapping crypto assets (such as WETH)

17. CGT event C2 happens when crypto asset B, such as WETH, is unwrapped. In the unwrapping process:

- you call the withdraw function on the wrapping contract
- crypto asset B is burnt, and
- an equivalent quantity of crypto asset A is released from the contract's balance and sent to you.

When the WETH is burnt, your ownership of that CGT asset ends by abandonment, surrender or release.

18. The time of the CGT event is when crypto asset B ends, which occurs when it is burnt under the wrapping contract. Where the burning of crypto asset B and the release of crypto asset A occur as part of the same smart contract execution, the market value of crypto asset A received should be determined at that time.

19. The capital proceeds are the market value of crypto asset A that you receive from the wrapping contract.[12] The first element of the cost base of your new holding of crypto asset A is the market value of crypto asset B at the time it is burnt.

Example 2 – unwrapping WETH

20. *Using the same facts as Example 1 of this Determination, after a few months, Finella stops using the WETH in the DeFi protocol and unwraps it to reacquire ETH. She*

[10] This is an estimate of the value for illustrative purposes. It is not the actual price of ETH on that date.
[11] For clarity, these examples proceed on the basis that no platform or network fees (such as gas) are incurred. This Determination does not address the CGT consequences of paying those fees, which involve a separate CGT event.
[12] Paragraph 116-20(1)(b).

does this by calling the wrapping contract to redeem her 5 WETH. The 5 WETH are burnt, and 5 ETH, valued at $28,000, are sent to her wallet address.

21. *CGT event C2 happens when Finella's 5 WETH are burnt by the wrapping contract in exchange for an equivalent amount of ETH. The capital proceeds from the event are $28,000, being the market value of the ETH received at that time. The reduced cost base of Finella's 5 WETH is $30,000. As a result, she makes a capital loss of $2,000. The cost base of the 5 ETH she receives is $28,000.*

Date of effect

22. When the final Determination is issued, it is proposed to apply both before and after its date of issue.

Commissioner of Taxation
19 August 2026

Appendix 1 – Explanation

This Explanation 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.

Separate CGT asset arises from wrapping

23. Your holding of a crypto asset is property and therefore a CGT asset.[13] That holding reflects the proprietary relationship arising from your ability to access, control and transfer the crypto asset. However, that proprietary relationship you have with that asset ends when it is sent to a wrapping contract address.

24. Crypto asset A (for example, ETH) and any subsequent holding of the corresponding crypto asset B (for example, WETH), which is minted upon wrapping crypto asset A, are each separate CGT assets despite being tied in value. Each CGT asset reflects a distinct legal relationship with a different digital object, as each asset corresponds to a separate balance recorded on the blockchain.

25. When crypto asset A (for example, ETH) is locked in a wrapping contract and crypto asset B (for example, WETH) is minted, crypto asset A does not change into crypto asset B. Nor does crypto asset A split to form a new CGT asset.[14] At the protocol level, wrapping ETH uses a standard 'lock-and-mint' mechanism. The ETH balance is sent to a smart contract and held without alteration, save that it is no longer controlled by your private key. Separately, the contract mints a new WETH token appearing in your wallet. A wrapping arrangement does not rewrite or reformat crypto asset A into crypto asset B.

No property in crypto locked in a wrapping contract

26. A crypto balance held at a wrapping contract address is not property because no person or entity exercises sufficient control over it. The locked crypto asset cannot be traded, or otherwise used for value, unless another valuable asset is first relinquished. A token recorded against a wrapping contract address does not confer 'holding rights' as that term is used in TD 2014/26.[15]

27. For example, when ETH is locked in a wrapping contract, it ceases to function as a transferable asset under the user's control. It instead forms part of the balance recorded at the wrapping contract address. That balance may have commercial significance because it supports the operation of the wrapping contract and the 1:1 relationship between ETH and WETH. However, the commercial significance of the contract balance does not mean that any particular user has a continuing proprietary interest in a separately identifiable part of that balance. The relevant point is that the user's former holding no longer exists as a distinct item of property capable of being controlled, transferred or excluded by that user.

[13] On the same basis that bitcoin is a CGT asset as provided in TD 2014/26.

[14] As the holding of an ETH does not split or change into a new asset upon being wrapped, section 112-25 does not apply.

[15] At paragraphs 8 and 9. 'Holding rights' are also noted in *Poulton v Conrad* [2025] TASFC 7 at [28] and [63], where the Full Court records the Magistrate's findings and upholds the result on that basis. Nor does the locked ETH have 'transactional functionalities' as that expression is used in *D'Aloia v Persons Unknown* [2024] EWHC 2342 (Ch) at [156].

The value previously reflected in the user's ETH holding is instead reflected in the newly minted WETH, apart from any amount expended in network transaction fees.[16]

28. The degree of control necessary for ownership of crypto assets is achieved by the computer software allocating to each public key a second set of data made available only to the holder of the account (the private key).[17] It is the private key which enables a crypto asset to have an identifiable owner, capable of being recognised as such by third parties. This feature is essential to its status as property.[18] The private key is a fundamental component of the CGT asset itself.[19]

29. A crypto asset's ability to be exclusively controlled through its public–private key pair distinguishes it from mere information.[20] Mere information is not recognised as property. When crypto asset A is sent to a wrapping contract, the blockchain records a single aggregated balance for that contract. That balance is expressed as a single amount and does not comprise separately identifiable portions referable to individual depositors. No part of the balance is set aside or identifiable as belonging to a particular depositor, and no depositor can exercise exclusive control over any part of it. Accordingly, the balance lacks the feature of excludability that is characteristic of property in crypto assets.

No property in a crypto asset that is burnt

30. Your holding of crypto asset B (for example, WETH) is a CGT asset while it is recorded against your wallet address. When the asset is unwrapped, it is burnt and ceases to exist, both legally and algorithmically. All functionality of that asset is lost, and it cannot be used again. After unwrapping, no property exists in crypto asset B.

CGT event C2

31. CGT event C2 happens if your ownership of an intangible CGT asset ends by any of the means set out in subsection 104-25(1), including by being abandoned, surrendered or released.

32. When crypto asset A is sent to a wrapping contract, your ownership of that asset ends by abandonment. 'Abandoned' is not defined by the ITAA 1997. The Macquarie Dictionary states that 'abandon' includes the meaning 'to give up the control of'.[21] The concept of abandonment has also acquired a general legal meaning referring to situations where an owner discards property with the intention of forgoing any future claim to it.[22]

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[16] Commercial value is an indicator that property may exist in crypto assets generally: *Poulton v Conrad* [2025] TASFC 7 at [51]; TD 2014/26 at paragraph 7, citing *Halwood Corporation Ltd v Chief Commissioner of Stamp Duties* 33 NSWLR 395 at [403]. However, commercial value is not determinative of whether a particular taxpayer retains a proprietary interest in a separately identifiable part of a crypto balance recorded to a wrapping contract address.

[17] *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728; [2020] 2 NZLR 809 at [112] and *Poulton v Conrad* [2025] TASFC 7 at [51] and [77].

[18] *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728 at [109]; *MB Technology Ltd v Orbis Blockchain Technologies Ltd & Ors* [2025] NZHC 1012 at [10].

[19] *Ruscoe v Cryptopia Ltd (in liquidation)* [2020] NZHC 728 at [121], cited in *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [375]; *Poulton v Conrad* at [51] and [77]; paragraph 8 of TD 2014/26.

[20] *Yeates (A Pseudonym) v The King* [2025] VSCA 288 at [99]; *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [388].

[21] Pan Macmillan Australia (2026) *Macquarie Dictionary online*, www.macquariedictionary.com.au, accessed 6 July 2026.

[22] See *Re Jigrose Pty Ltd* [1994] 1 Qd R 382. The asset is still considered to be abandoned even if the user expects to later receive an equivalent quantity of tokens from the smart contract.

33. Sending crypto asset A (for example, ETH) to a wrapping contract amounts to giving up control over that asset. Once that occurs, you no longer have property in crypto asset A. Although crypto asset A remains recorded on the blockchain, it no longer represents a CGT asset as it has been abandoned.

34. If you later unwrap crypto asset B (for example, WETH) and receive a corresponding amount of crypto asset A (for example, ETH), the crypto asset A received constitutes a new CGT asset. The property in the original balance of crypto asset A, having come to an end upon wrapping, cannot be revived by the later unwrapping.[23] Although it may have the same denomination and value as the crypto asset A originally sent to the wrapping contract, it represents new 'holding rights'.

35. The original CGT asset was abandoned, and what is returned is a new holding. An equivalent quantity of crypto asset A may be reacquired upon unwrapping crypto asset B, but not without sacrificing valuable property.

36. Similarly, sending crypto asset B to a wrapping contract amounts to you abandoning your holding of crypto asset B.

37. For these reasons, CGT event C2 happens when crypto asset A is wrapped by sending it to a wrapping contract and crypto asset B is received. CGT event C2 also happens when crypto asset B is sent to a wrapping contract to reacquire an amount of crypto asset A.

38. Alternatively, if the crypto asset is not considered to have been abandoned, we consider CGT event C2 will still apply as the crypto asset can be considered to have been surrendered or released. These terms are not defined in section 104-25 and take their ordinary meaning.

39. 'Surrender' is relevantly defined in the *Macquarie Dictionary* as[24]:

> 1. to yield (something) to the possession or power of another; deliver up possession of (something) upon demand or compulsion: *to surrender a fort*.
>
> …
>
> 3. to give up, abandon, or relinquish (comfort, hope, etc).[25]

40. 'Release' is defined in the *Macquarie Dictionary*[26] as 'to give up, relinquish or surrender (a right, claim etc)'.

41. Those terms are apt to describe what occurs when a crypto asset is sent to a wrapping contract. The holder gives up the asset and relinquishes control over it. In the case of unwrapping, the asset is also burnt and can no longer be used. On that basis, if the asset is not abandoned, ownership of it ends by being surrendered or released for the purposes of CGT event C2.

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[23] In the case of the new CGT asset, the relevant relationship in the nature of property is essentially as outlined at paragraph 8 of TD 2014/26.

[24] Pan Macmillan Australia (2026) *Macquarie Dictionary online*, www.macquariedictionary.com.au, accessed 6 July 2026.

[25] It is acknowledged that some may consider that the term surrender may imply that the asset needs to be surrendered to another legal entity which does not occur when an asset is sent to a wrapping contract. However, we consider that the better view is that the meaning is broad enough to encompass both scenarios.

[26] Pan Macmillan Australia (2026) *Macquarie Dictionary online*, www.macquariedictionary.com.au, accessed 6 July 2026.

Identifying the capital proceeds

42. Ignoring platform fees, the capital proceeds of CGT event C2 happening to crypto asset A will generally be the market value of crypto asset B received from the wrapping contract.[27] However, if the market value of crypto asset B received is less than the market value of crypto asset A sent to the wrapping contract, for example, because a platform fee is deducted, the market value substitution rule applies and the capital proceeds are the market value of crypto asset A at the time it is sent to the wrapping contract.[28]

43. The capital proceeds of unwrapping crypto asset B are the market value of crypto asset A at the time it is received from the wrapping contract, being the property received in respect of the CGT event happening.[29]

44. Returning crypto asset B to a wrapping contract does not reduce the capital proceeds produced by originally wrapping crypto asset A under section 116-50. Unwrapping does not constitute a repayment or compensation, but rather a subsequent reciprocal dealing involving the mutual exchange of property with a wrapping contract.

Ordinary income and the anti-overlap rules

45. The wrapping or unwrapping of a crypto asset in the circumstances described in this Determination does not, of itself, give rise to an amount included in assessable income as ordinary income under section 6-5. A crypto asset received from the wrapping contract is not derived from any counterparty, nor is it non-cash consideration received upon a transaction with another person. The taxpayer instead interacts with an autonomous smart contract that executes its programmed functions without another entity participating in the exchange.[30] Section 118-20 therefore does not reduce a capital gain made from CGT event C2 happening on wrapping or unwrapping, as no amount is included in assessable income as ordinary income.

46. If a crypto asset received on wrapping or unwrapping is later disposed of in circumstances where an amount is included in assessable income as ordinary income, section 118-20 applies to reduce any capital gain from that later disposal to the extent an amount from that disposal is otherwise included in assessable income.

[27] Paragraph 116-20(1)(b).
[28] Subparagraph 116-30(2)(b)(ii).
[29] Paragraph 116-20(1)(b).
[30] Subsection 21(1) of the *Income Tax Assessment Act 1936* provides that where, 'upon any transaction', consideration is paid or given otherwise than in cash, the money value of that consideration is taken to have been paid or given. In *Grimwade v Federal Commissioner of Taxation* [1949] HCA 9; 78 CLR 199 at [220], Latham CJ and Webb J stated that '[a] transaction by a person must be a transaction with some other person'. See also *Re Taxpayer and Federal Commissioner of Taxation* [2005] AATA 538 at [63].

Status: **draft only – for comment**

Appendix 2 – Alternative views

This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the proposed binding public ruling.

47. This Appendix outlines alternative views and explains why we do not accept them. We recognise that the application of the law in this area raises difficult questions, particularly given the developing state of the general law. However, we consider that the position taken in this Determination is the better view.

Continuing property interest in crypto asset A

48. One alternative view is that a user retains a continuing proprietary interest in crypto asset A while it is locked in the wrapping contract. That view is not accepted. It is difficult to reconcile with the case law and would produce anomalous CGT outcomes, including outcomes adverse to taxpayers. If the user continues to own crypto asset A, no property is given to acquire crypto asset B.[31] Nor would the market value substitution rule operate to set a cost base for crypto asset B, because crypto asset B is not acquired from another entity, an autonomous smart contract not being a legal entity.[32] That produces the problematic result that crypto asset B would have a nil cost base.[33]

Consideration of other CGT events

49. This Determination provides that CGT event C2 is the most appropriate event to apply when using a wrapping contract to wrap or unwrap a crypto asset. However, we acknowledge that there are differing views about which, if any, CGT event should apply in these circumstances.

50. One possible view is that CGT event A1[34] happens when the crypto asset is sent to the wrapping contract. However, CGT event A1 requires a disposal of a CGT asset involving a change of ownership from one entity to another.[35] That requires there to be another entity to whom ownership is transferred. Where a crypto asset such as ETH is sent to a wrapping contract, there is no such counterparty. CGT event A1 therefore cannot apply.

51. Another possible view is that the locked crypto asset is held on trust, such that CGT event E1 or CGT event E2 may apply. CGT event E1 happens if you create a trust over a CGT asset by declaration or settlement.[36] CGT event E2 happens if you transfer a CGT asset to an existing trust.[37]

52. That view is also not accepted. A trust requires, at a minimum, trust property and a trustee capable of holding the legal interest in that property.[38] A wrapping contract is not

[31] Paragraph 110-25(2)(b).
[32] Subsection 112-20(1).
[33] If crypto asset B has a nil cost base and is later burnt, CGT event C2 would necessarily happen to it and, on this alternative analysis, the capital proceeds would be its market value, producing a capital gain equal to the full value of the crypto asset.
[34] Section 104-10.
[35] Subsection 104-10(2).
[36] Section 104-55.
[37] Section 104-60.
[38] Only entities who are capable at law of taking and holding title to property in their own right have the capacity to hold the office of trustee: *Harris and Harris* (1991) 15 Fam LR 26; (1991) FLC 92-254. See also *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [383–386].

capable of legally owning property. It follows that you cannot settle a trust with a wrapping contract acting as trustee.

53. A further possible view is that CGT event C1[39] happens when a crypto asset such as ETH is wrapped, or when WETH is unwrapped because the relevant CGT asset is destroyed. However, subsection 102-25(1) provides that, if more than one CGT event can happen, the most specific event is the one that applies. We consider that CGT event C2 is the more specific event in the context of wrapping a crypto asset using a wrapping contract, because it specifically addresses the ending of an intangible CGT asset by abandonment, surrender or release.

54. If CGT event C2 did not apply, CGT event C1 would happen and would produce substantially the same CGT outcomes.

Wrapping representing a 'change' in a CGT asset

55. Another view is that when you deposit a balance of crypto asset A into a wrapping contract address and receive a balance of crypto asset B, you hold the same asset that has merely 'changed' its form for the purposes of section 112-25. On this view, no CGT event would occur.[40]

56. However, this is inconsistent with the nature of property in a crypto asset set out in TD 2014/26[41] and adopted in *Poulton v Conrad*.[42] The relevant property consists of the relationship between the digital object defined by the balance recorded to a particular address together with its associated public and private keypair, and the holding rights recognised by the protocol and wider user community, including the capacity to control and transfer that balance. On this basis, each separately recorded balance corresponds to a distinct digital object, and therefore to a distinct property interest.

57. Crypto assets A and B may share value, but that does not make them the same asset. The existing crypto asset A balance is not reformatted or modified. Rather, that balance is sent to a wrapping contract address that the taxpayer does not control, and a new and distinct crypto asset B balance is simultaneously created and recorded to the taxpayer's original address. As these balances form different digital objects and involve different holding rights, the original ETH cannot be characterised as having changed into WETH.

58. A crypto asset can be exchanged for another with entirely different characteristics, including one that bears no substantive resemblance to the original, simply by interacting sequentially with multiple lock and mint smart contracts. Treating the final asset as a 'changed' form of the initial asset would undermine the fundamental proposition that crypto assets are sufficiently definable, identifiable, and stable to constitute property.[43]

Availability of Subdivision 124-B rollover

59. We do not consider that the replacement-asset rollover under Subdivision 124-B is available where a crypto asset is sent to a wrapping contract and another crypto asset is received.

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[39] Section 104-20.
[40] Subsection 112-25(2).
[41] At paragraphs 8 to 9.
[42] [2025] TASFC 7 at [79].
[43] These characteristics are set down in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 as applied in *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [383–386].

60. Paragraph 124-70(1)(b) applies if a CGT asset you own is destroyed. Although 'destroyed' is not defined, the other events listed in subsection 124-70(1) concern the involuntary loss of a CGT asset.[44] In that context, the voluntary abandonment of a property interest in a token by sending it to a smart contract is not characterised as the asset being 'destroyed' for the purposes of paragraph 124-70(1)(b).

61. Further, we do not consider rollover is available because paragraph 124-70(2)(a) requires that money or another CGT asset be received as 'compensation' for the event. The language of the provision is directed to money or property provided in response to misfortune. In *Batchelor v Commissioner of Taxation*[45], the Full Federal Court observed that the ordinary meaning of 'compensate' is 'to make amends or to recompense'. There is no apparent reason why relief should extend to the calculated decision to exchange one CGT asset for another.[46]

Application of section 106-60

62. Another alternative view is that section 106-60 applies to disregard any capital gain made when wrapping and unwrapping. We do not accept that view. Section 106-60 applies where a CGT asset is vested in another entity to enforce, give effect to, or maintain a security, charge or encumbrance. That does not occur when a crypto asset such as ETH is sent to a wrapping smart contract. There is no counterparty to whom the asset is vested, and the user does not assume any obligation of a kind that would give rise to a security, charge or encumbrance.

[44] In Taxation Determination TD 1999/79 *Income tax: capital gains: does the expression 'lost or destroyed' for the purposes of CGT event C1 in subsection 104-20(1) of the Income Tax Assessment Act 1997 apply to: (a) a voluntary 'loss' or 'destruction'?, (b) intangible assets?*, we accept that an asset may be voluntarily destroyed in the context of CGT event C1. However, this is not determinative of the proper construction of paragraph 124-70(1)(b). The same word, same meaning presumption is, in this case, displaced by context and purpose.

[45] [2014] FCAFC 41 at [83].

[46] The legislative history of the rollover reinforces this view. Former subsection 160ZZL(1) of the *Income Tax Assessment Act 1936*, headed 'Asset received as a result of an involuntary disposal', confined rollover relief to involuntary disposals where a replacement asset was acquired. That purpose appears to have carried over to paragraph 124-70(2)(a).

Status: **draft only – for comment**

Appendix 3 – Your comments

63. You are invited to provide comments on this draft Determination, including the proposed date of effect. Forward your comments to the contact officer by the due date.

64. A compendium of comments is prepared as part of the finalisation of this Determination. An edited version of the compendium (with names and identifying information removed) is published to the ATO Legal database on ato.gov.au.

65. Advise the contact officer if you do not wish for your comments to be included in the edited compendium.

Due date:	18 September 2026
Contact officer:	Dexter Marcenko
Email address:	CryptoPagComments@ato.gov.au

References

Previous draft:

Not previously issued as a draft

Related rulings and determinations:

TR 2006/10; TD 1999/79; TD 2014/26

Legislative references:

- ITAA 1936 21(1)
- ITAA 1936 160ZZL(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(2)
- ITAA 1997 104-20
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(1)(d)
- ITAA 1997 104-55
- ITAA 1997 104-60
- ITAA 1997 106-60
- ITAA 1997 110-25(2)(b)
- ITAA 1997 112-20(1)
- ITAA 1997 112-25
- ITAA 1997 112-25(2)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 116-30(2)(b)(ii)
- ITAA 1997 116-50
- ITAA 1997 118-20
- ITAA 1997 124-70(1)
- ITAA 1997 124-70(1)(b)
- ITAA 1997 124-70(2)(a)

Cases relied on:

- Batchelor v Commissioner of Taxation [2014] FCAFC 41; 219 FCR 453; 98 ATR 153; 2014 ATC 20-450.
- D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch)
- Grimwade v Federal Commissioner of Taxation [1949] HCA 9; 78 CLR 199; 23 ALJR 184; 8 ATD 441.
- Halwood Corporation Ltd v Chief Commissioner of Stamp Duties 33 NSWLR 395; 23 ATR 158; 92 ATC 4155.
- Harris and Harris (1991) 15 Fam LR 26; (1991) FLC 92-254; (1991) 104 FLR 458
- MB Technology Ltd v Orbis Blockchain Technologies Ltd & Ors [2025] NZHC 1012
- National Provincial Bank Ltd v Ainsworth [1965] AC 1175
- Poulton v Conrad [2025] TASFC 7
- Re Blockchain Tech Pty Ltd [2024] VSC 690; (2024) 76 VR 578
- Re Jigrose Pty Ltd [1994] 1 Qd R 382
- Re Taxpayer and Federal Commissioner of Taxation [2005] AATA 538; 2005 ATC 154; 59 ATR 1118
- Ruscoe v Cryptopia Ltd (in liq) [2020] NZHC 728
- Yeates (A Pseudonym) v The King [2025] VSCA 288; (2025) 79 VR 340

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ATO references

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