

New Zealand tax treatment of crypto-assets for Business

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In our main [article](#) we discuss tax issues facing crypto investors who buy and sell crypto and provide some practical guidance for them. In this article we look specifically at crypto for business.

Trading in crypto

Individuals and entities that are in the business of dealing (or trading) in crypto must account for income tax on their trading profits. This is because under section CB 1 of the ITA an amount that a person derives from a business is income of the person, unless the amount is of a capital nature. If you are a trader, the good news is that you will be able to deduct the cost of acquiring those cryptoassets from your income.

The [IRD guidance for crypto trading](#) says that the main way to tell if you're in the business of trading is by looking at:

- the frequency of your transactions;
- how much time and effort you put into buying, selling or exchanging crypto;
- the reasons for your transactions;
- whether your activity is organised and systematic;
- how long you hold your crypto; and
- the amount you invest.

If you have a high number of transactions, spend a lot of time and effort managing your crypto portfolio and work on it on a fairly continuous basis, it's likely that the IRD will classify you as a trader. However, if you have a full-time job and just spend some of your spare time buying and selling, it's unlikely you would be classified as a trader.


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The trading stock rules will generally apply. These require that the property that a taxpayer has for the purpose of selling or exchanging in the ordinary course of their business be valued at the end of each income year. While it is possible to hold some crypto other than as trading stock, if you claim that crypto you sold were not part of your trading business, you will need clear and compelling evidence to show this when you both bought and sold them.

Profit-making schemes and undertakings

Another possibility is that the acquisition of crypto may be part of a profit-making scheme or undertaking. If such a scheme is involved, an income tax liability may arise. Section CB 3 of the ITA is the relevant section and, like CB 4, also applies a dominant purpose test. CB 3 provides: "An amount that a person derives from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit is income of the person."

The [IRD's guidance](#) says the activity may be a profit-making scheme if:

- there is a coherent plan of action (a scheme)
- you enter into the plan for the purpose of making a profit.

You do not need to write the plan down and it does not need to be exact. A general plan is all that is needed. However, while a one-off transaction is unlikely to be caught under this section, a gain might be caught under section CB 4 if the purpose was to sell for profit.

Mining

As the price of crypto appreciates, so does the incentive to [mine](#) it. Some bitcoin mining businesses, like this one in [Iceland](#), are now mind-bogglingly large.

IRD [considers](#) that in most scenarios mining, whether alone or as part of a [mining pool](#), is directed towards making a profit and will be a business activity or profit-making scheme rather than a hobby. Therefore, any mining receipts (i.e. mining related fees or block rewards) will likely be taxable. Profit (or loss) from selling the mining rewards is likely to be treated as assessable (or deductible) income.

On the other hand, expenses related to the mining, such as the power, repairs and maintenance of hardware, will generally be deductible revenue expenses. Hardware expenses (e.g. that new Antminer S19 Pro ASIC mining rig) can be depreciated over time with the depreciation claimed as a taxable expense.



Staking

As noted already, if you earn staking rewards through a staking as a service provider (i.e. a third party that undertakes the staking for you) then this could be classified as a profit-making scheme and the rewards taxable income. Similarly, the rewards could also be taxable income if your main purpose of staking was to sell or dispose of the rewards once they were received.

Remuneration

IRD has released several public binding rulings that consider the implications when crypto is provided to employees. [IRD's view](#) is that where an employee is paid part of their regular remuneration in certain types of crypto, this is subject to PAYE. In addition, the payment of an amount of crypto to an employee as an incentive or bonus is also subject to PAYE.

However, not all crypto will be subject to PAYE. To be considered 'salary or wages', the crypto needs to be sufficiently similar to existing notions of salary and wages. In the Commissioner's view, this will be the case where the crypto have the following features:

- they are not subject to a 'lock-up' period;
- they can be converted directly into a fiat currency (on an exchange), and either:
 - a significant purpose of the crypto-asset is to function like a currency, or
 - the value of the crypto-asset is pegged to one or more fiat currencies.


Crypto payments that are not subject to PAYE will be fringe benefits and the fringe benefit tax rules will apply.

The IRD has also given specific guidance for those businesses issuing crypto to employees in connection with their employment, for example as part of an [initial coin offering](#), [initial exchange offering](#), or some other conditional arrangement (e.g. the employee only receives the crypto if they are still employed at a future date or cannot sell until a future date). In these cases, the FBT rules apply.

GST and financial arrangements

If you receive crypto as payment for goods and services you have provided, whether as a company or an individual, you will be required to pay income tax on the New Zealand dollar value equivalent of the crypto received. What the value of the crypto should be is determined on the day of receipt of payment.

With the tax rules around crypto still in their infancy, it's no surprise that GST and financial arrangement rules have been left wholly untouched and undeveloped. However, IRD has proposed very specific changes that would apply to supplies of crypto.



Other services related to crypto, that are not in themselves supplies of crypto, such as mining, providing crypto exchange services or providing advice, general business services or computer services will continue to be subject to the existing GST rules. Specifically, the IRD proposes reforms under which crypto would be:

- Excluded from the scope of GST, essentially by treating crypto in the same way as money is treated for GST purposes; and
- Excluded from the financial arrangements rules by making crypto a new type of excepted financial arrangement.

The proposed law changes to exclude crypto from the GST (and financial arrangement) rules should apply retrospectively from 1 January 2009, which (for all of you crypto enthusiasts) is the date the first crypto, bitcoin, was launched. The proposed change is aimed to ensure that all New Zealand traders of crypto are not subject to GST or financial arrangement rules, regardless of when their purchases or disposals took place.

IRD indicated it was accepting submissions on the proposals' issues paper until 9 April 2020. It does not appear that this has progressed much since that date but watch this space.

Airdrops and forks

Airdrops are distributions of crypto for no payment. A fork, or 'chain split' is where the protocol changes to create a new version of the blockchain alongside the old version; the most notable being the forking of [bitcoin cash](#) (BCH) from bitcoin (BTC). Like an airdrop, where a hard fork occurs, the holder receives an equivalent value of new crypto for no payment.

The IRD has undertaken a [detailed analysis](#) of both. Like most situations, whether amounts received from disposing of these crypto are taxable depends on your circumstances. As far as section CB 4 is concerned, the IRD favours the view that the newly forked crypto takes on the same purpose as the original crypto (similar to the tax treatment of e.g. a share subdivision), rather than a passive receipt (akin to gifts, inheritances, and share rights issues). Similarly, for airdrops, the IRD takes the view that the receipt is unlikely to be passive. Often the person receiving the airdrop has turned their mind to and done something to acquire them.

If their dominant purpose was to sell, then the airdropped crypto is likely to be taxable income. Deductions for the cost of the assets won't generally be available, since the person did not incur any expenditure acquiring them.



What if I think I have a tax liability?

Seek professional advice and assistance as soon as possible to limit the risk of penalties. Our [cryptocurrency / crypto assets](#), [dispute resolution](#) and [tax](#) teams understand crypto and have particular expertise dealing with the IRD (e.g. negotiating payment arrangements and reductions in penalties).

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