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Draft Taxation Determination 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*?

We, Taxpayers Australia Ltd, welcome the opportunity to comment in respect of Draft Taxation Determination TD 2014/D14 and the Commissioner's view on the treatment of Bitcoin for Fringe Benefits Tax (FBT) purposes.

Commissioner's position

TD 2014/D14 outlines the Commissioner's preliminary view on the appropriate taxation treatment of Bitcoin under the Fringe Benefits Tax Assessment Act 1986 (FBTAA).

The Commissioner's view is that where Bitcoin is provided by an employer or an associate of the employer to an employee, it would be treated as a property fringe benefit.

The support for this stance is s136(1) of the FBTAA, which defines a property fringe benefit as consisting of both 'intangible property' and 'tangible property.' With intangible property further defined as:

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

All legislative references are to the FBTAA, unless otherwise stipulated.

Valuation of property fringe benefits

Assuming that an employer is not in the 'business' of trading Bitcoin, the provision of Bitcoin to an employee would be classified as an external property fringe benefit.

Determining the taxable value of external property fringe benefits is stated at section 43 and is summarised below:

- a) Where the employer or associate of the employer acquires the Bitcoin under an arm's length transaction, and the property is then provided to the employee, the taxable value is the cost of the property to the employer (or associate) less any amount contributed by the employee.
- b) Where the benefit is provided by a third party and is paid for by the employer or associate, the taxable value is the amount the employer (or associate) paid to the third party at "arm's length".



- c) In any other situation, the taxable value is the amount the recipient would have been required to pay to the provider for the benefit under an arm's length transaction at the time the benefit was provided as per the guidance in TD 93/231.

Issues to be addressed

There are some practical issues with the proposed classification in TD 2014/D14, which are discussed below:

1. Determining taxable value of the property fringe benefit

As discussed above, the value of the Bitcoin property fringe benefit would generally be the purchase price that the employer or associate has paid for the Bitcoin and is a significant issue.

It would require that the employer has maintained the relevant records to establish the date of purchase of that specific Bitcoin and the price paid. Where an employer has a number of Bitcoin in an 'ewallet' purchased at different times at different prices, records will need to be kept referencing the Bitcoin identifier to enable the employer to use the correct purchase price when calculating the FBT.

Also, by using the historic price, it means that the value used for FBT purposes is likely to be significantly less than the value at the time they are provided to the employee, given the trending of Bitcoin significantly increasing. Therefore, where it may have cost an employer \$200 to buy a Bitcoin, by the time he provides it to his employee it may be valued at \$2,000 and the tax will be levied on the significantly lower valuation of the benefit.

In addition, there would be no recourse under the Act to somehow tax the residual between the two values (namely the purchase price and market value at the time the Bitcoin is received by the employee).

Alternatively, where a valuation is required under scenario c) above, a market value of the Bitcoin has to be established to determine the taxable value of the property fringe benefit provided.

Given that the Commissioner does not view Bitcoin as a form of currency, on what basis would a market value be determined? There are theoretical Bitcoin exchanges with market prices, but these exchanges use comparative analysis with cash and cash equivalents to determine value.

If the theory is that as an asset and effectively an item of 'barter', then logically it means that the market value can only be established once the employee has used the Bitcoin to purchase something of value, thus determining the Bitcoin's "worth."



2. Bitcoin provided as remuneration package

Where an employer allows for the provision of Bitcoin under an employment agreement or contract as part of a total remuneration package, then Bitcoin would be considered salary and wages and PAYG withholding tax would apply.

For example, if a salary was quoted as \$100,000pa gross, plus two Bitcoins plus super, the Bitcoins in this scenario take on the characteristics of salary and wages and not a property fringe benefit.

In addition, where Bitcoin forms part of an employee's remuneration, it can potentially be considered Ordinary Times Earnings for Superannuation Guarantee purposes also.

3. Administrative requirements

Treating Bitcoin as a fringe benefit will be cumbersome on employers to keep the records necessary to determine the purchase price of each Bitcoin and hence the value, of the property fringe benefit.

Or where a market valuation for the Bitcoin is required, the employer would likely require some sort of valuation or calculation to be performed by a third party.

Where the Bitcoin is treated as currency and taxed under the PAYG Withholding regime, employers could levy tax as part of the payroll process and include the amount in existing reporting forms such as PAYG Payment Summaries.

Conclusion and recommendation

How Bitcoin is classified for income tax purposes automatically determines whether it will be captured by the FBT regime. Where Bitcoin is considered to be a form of currency, then PAYG withholding will apply and no FBT will apply.

Our contention is that were Bitcoin classified as and taxed as a form of currency, employers can easily transact with employees using Bitcoin under the withholding tax system and reflect a more accurate value of the total remuneration package to the employee including Bitcoin.

From a tax collection perspective, greater tax revenues will be collected as tax will be levied at the current value of the Bitcoin (as opposed to historic rate) as well as potentially triggering further employment tax obligations such as Superannuation Guarantee.

Logically, treating Bitcoin as currency and taxing it under the PAYG regime instead of the FBT regime when provided to employees simplifies the treatment for all parties involved and is more tax effective.