

Legal regulation of cryptocurrency and NFTs

New Zealand





PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law’s full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

Introduction

There is an increasing number of charities across the world that have started accepting cryptocurrency as donations, including **UNICEF** and the **Salvation Army**. New platforms like **The Giving Block** and **DoinGud** are helping nonprofits to raise funds with cryptocurrency and non-fungible tokens (“NFTs”).

To help charities better understand the opportunities and risks involved in working in this new context, PILnet with its partners launched a project about legal regulation of cryptocurrency and NFTs in different jurisdictions around the world.

The report below aims to consider:

- (a) The legality of cryptocurrency
- (b) Accepting cryptocurrency
- (c) Accepting NFTs and its proceeds
- (d) Issuing NFTs to raise funds

Disclaimer

PILnet, and partners participating in this research, are not liable toward third parties for the accuracy of the information contained in the research about Cryptocurrency and NFTs. The information contained herein is intended as a general overview and discussion of the subjects dealt with and only responds to the regulatory framework in effect during a specific research period in 2022-23. It is not intended to be, and should not be used as, legal advice or a substitute for taking legal advice in any specific situation.

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1. Is engaging in blockchain technology legal in this jurisdiction?

Yes, engaging in blockchain technology (including the receipt of donations in cryptocurrency and the receipt and issuance of NFTs) is legal in New Zealand.



There is no regulatory regime specific to the use of blockchain technology, including cryptocurrencies and NFTs. However, there are a number of general regulatory regimes that may apply depending on the use case, for example:

- General fair trading and consumer protections (e.g., under the *Fair Trading Act 1986* (“**FTA**”) or the *Consumer Guarantees Act 1993* (“**CGA**”).
- Financial services and financial markets regulations (e.g., under the *Financial Service Providers (Registration and Dispute Resolution) Act 2008* (“**FSPA**”) and *Financial Markets Conduct Act 2013* (“**FMCA**”).
- Anti-money laundering, countering the financing of terrorism (“**AML/CFT**”) and sanctions regulations (e.g., under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*, *Russia Sanction Act 2022*, and *United Nations Act 1946*).
- Privacy and data protection regulations under the *Privacy Act 2020* (“**PA**”).

The New Zealand Courts have determined that cryptocurrency is personal property under New Zealand Law.¹ There have been no cases specifically considering the position of NFTs.

Both cryptocurrencies and NFTs are treated as forms of property for tax purposes and so may be subject to income tax (New Zealand does have a capital gains tax). It also means there may be GST implications for dealing in cryptocurrencies and NFTs.

2. Is accepting cryptocurrency permitted for charities? If so, what legislation/regulation governs it?



Yes, New Zealand charities are permitted to accept donations of cryptocurrencies and NFTs. The acceptance of cryptocurrencies is not specifically regulated and therefore there is no particular legislation that governs that activity.

For the same reasons, there are no legal limits or restrictions on the types of cryptocurrencies or NFTs that a charity can accept, or prescribed processes or legal restrictions in realising the value of cryptocurrencies. Charities and NGOs are permitted to open and manage their own wallets and, subject to the rules of the relevant exchange, open exchange accounts for receipt of donations of cryptocurrencies. No exchanges are explicitly prohibited.

¹ *Ruscoe v Cryptopia Ltd (In Liq)* [2020] 2 NZLR 809.

Charities and NGOs can use cryptocurrencies directly for transactions, and accept them as payment for goods and services provided by the charity or NGO. However, given the limited take-up of cryptocurrencies in the real economy in New Zealand, the opportunities for charities and NGOs to use cryptocurrencies directly for transactions are currently limited.

Although charities and NGOs can receive, hold, and use cryptocurrencies directly, a charity may face technical limitations if it does not have the required infrastructure to accept all or any of the different types of cryptocurrencies and/or NFTs as donations. As accepting donations of cryptocurrencies and NFTs is a relatively new practice in New Zealand, and there is not widespread take-up of cryptocurrency for real economy transactions, charities will find cryptocurrency donations more useful if have the ability to turn the cryptoassets into cash. Charities such as UNICEF New Zealand, Plunket, and HeartKids are currently using third-party providers (e.g., The Giving Block) to do so.

2.1. Reporting requirements for charities

There are no specific legal rules for how a charity or NGO is required to record, account for, and report digital assets held. However, the charity or NGO will be subject to the general record keeping, accounting and financial statement preparation, audit, and registration requirements applying to the structure under which the charity or NGO has been formed. The two common legal structures in New Zealand for charities are charitable trusts and incorporated societies. The board of trustees of a charitable trust may incorporate to become a body corporate separate from its trustees (an incorporated charitable trust). Both charitable trusts (incorporated or otherwise) and incorporated societies may register with Charities Services to obtain tax exempt status and the ability for donors to claim tax credits on donations over \$5. However, registration is voluntary and there is no restriction in New Zealand on individuals donating to unregistered charities (although such donations may not be eligible for tax credits – see the tax section below).

Charitable trusts

The *Charitable Trusts Act 1957* (“CTA”) and *Trusts Act 2019* (“TA”) govern charitable trusts. The CTA requires charitable trust boards to provide certain information (often in the form of a trust deed or a set of rules), including relating to the management of trust property² and financial affairs. The CTA is not explicit as to what must be contained in a trust deed or set of rules, but the trust must exist exclusively or principally for charitable purposes. Assets must be clearly defined. Further information regarding charitable trusts is available online.³

Incorporated societies

The *Incorporated Societies Act 1908* (“ISA”) governs incorporated societies. An incorporated society is required to carry out various reporting obligations, including filing annual financial statements with either the Companies Office or the Charities Service (if the incorporated society is also a registered charity). Preparing such financial statements will involve providing financial records such as invoice and payment

² Noting *Ruscoe v Cryptopia Ltd (in liquidation)* established at paragraph 133 that cryptocurrencies are property and capable of forming the subject matter of a trust.

³ See <https://ct-register.companiesoffice.govt.nz/help-centre/getting-started/about-charitable-trusts/>.

authorizations. Incorporated societies must use their funds to fulfill their objectives or purpose, which cannot be the financial gain of its members. Further information regarding incorporated societies is available online.⁴

Registered charities

The *Charities Act 2005* (“CA”) provides for all kinds of charitable entities (including charitable trusts and incorporated societies) to register with Charities Services. Registered charities are required to file an annual return along with a performance report or financial statements with Charities Services. These must provide information about activities, transactions, and balances, as well as include a statement of financial performance (profit or loss) which shows revenue and expenses, and a statement of financial position (balance sheet), which lists all the assets and liabilities. Therefore, if a registered charitable entity is receiving cryptoassets as donations, the entity must ensure use of such assets is consistent with its charitable purpose and that they are disclosed in the financial statements submitted to the Charities Services. Further information regarding registered charities is available online.⁵

Charitable purpose

Dealing with cryptocurrencies and NFTs is not necessarily inconsistent with the “charitable purpose” and “not for financial gain” requirements. However, whether such dealings are inconsistent with those requirements would need to be determined on a case-by-case basis, in the same way as dealings in fiat currency or any other asset.

Whether an officer of a charity or NGO needs to seek any approval or obtain any authority to open and manage the charity or NGO's wallet(s) and exchange account(s) will depend on the governing rules/bylaws of the particular organization (e.g., trust deed and rules in relation to a charitable trust).

Whether the governance documents would provide sufficient oversight would have to be decided on a case-by-case basis. However, again, the treatment of cryptoassets would be no different from any other asset in this regard.

Whether the charity or NGO needs to report digital assets in audits and financial reports will depend on the accounting standards applicable to its legal structure.

2.2. Anti-money laundering (“AML”) and Counter Financing of Terrorism

Charities and NGOs are not required to comply with New Zealand's AML/CTF regime. Therefore, the receipt of cryptocurrencies by a charity or NGO does not need to be reported to any regulatory body. Donations can be made anonymously and there are no rules requiring donor identity verification, regardless of monetary threshold.

However, there are obvious legal and reputational risks involving the receipt of anonymous donations and the remittance of currency offshore. These risks are particularly acute with the handling of cryptocurrencies.

⁴ See <https://is-register.companiesoffice.govt.nz/help-centre/getting-started/about-incorporated-societies/>.

⁵ See <https://ct-register.companiesoffice.govt.nz/help-centre/getting-started/the-role-of-charities-services/> and <https://charities.govt.nz/>.

Therefore, charities and NGOs are generally advised to adopt prudent risk management policies, procedures, and controls, including through guidance from Charities Services. More information is available online.⁶

2.3. Sanctions

Charities and NGOs should also be aware of any sanctions which would restrict entities and individuals from which charities may accept cryptoassets (as well as on-selling any NFTs received, which is discussed further in the following section).

New Zealand implements United Nation sanctions by ratifying them into domestic law under the *United Nations Act 1946* (“UNA”). For example, the *United Nations Sanctions (Democratic People’s Republic of Korea) Regulations 2017* places a prohibition on a person transferring, selling, assigning, paying for, or otherwise dealing with any property located in New Zealand knowing that it is from an individual or the government of North Korea. This would prevent the receipt of donations from that country. New Zealand also has standalone legislation to impose sanctions in response to Russia’s military action. More information regarding New Zealand sanctions is available online.⁷

2.4. Realising the benefit of cryptoassets

There are no specific rules that apply to the realisation of NFTs in conversion to fiat; however, the process of selling an asset is subject to general rules in New Zealand. We outline some of the rules which we think are relevant below.

There are no specific restrictions on how NFTs can be held, whether in relation to duration or otherwise. There are no specific sites/mediums prohibited, but we note that the FMA has cautioned against the use of some sites.⁸

The use of cryptocurrencies and NFTs is also largely unregulated in New Zealand (both generally and in relation to charities). However, there are several regulatory regimes which may restrict a charity’s use of cryptoasset donations, particularly NFTs.

Copyright

Under the *Copyright Act 1994* (“CA”), copyright will automatically exist in any original work (e.g., a piece of art) and vest in the creator by default. The copyright protection period in any work extends to 50 years after the death of the creator. Copyright can be assigned and is sometimes included when a piece of art is sold.

An NFT can be likened to a piece of art. The copyright to the underlying artwork or intellectual property in an NFT will automatically exist upon creation and will be owned by the creator. If a charity receives an NFT as a donation, it would be prudent to consider whether any copyright in the NFT is transferred with the token (e.g., it is included in the NFT token’s smart contract) from the creator to the charity. This will provide clarity

⁶ See <https://www.charities.govt.nz/im-a-registered-charity/running-your-charity/charities-operating-overseas-protect-your-charity-against-terrorist-financing-and-other-risks/> and <https://www.dia.govt.nz/AML-CFT-Homepage>.

⁷ See <https://www.mfat.govt.nz/en/peace-rights-and-security/un-sanctions/> and <https://www.mfat.govt.nz/en/countries-and-regions/europe/ukraine/russian-invasion-of-ukraine/sanctions/>.

⁸ See <https://www.fma.govt.nz/library/warnings-and-alerts/>.

as to whether the charity has the appropriate rights to either sell or licence the NFT further. Charities must also be attuned to any royalty terms in the smart contract, which entitles the creator to receive a commission from further sales. If there is such a term and the charity sells the NFT, the creator will likely be entitled to receive a percentage of the resale value (depending on the terms of the smart contract).

More information regarding copyright in New Zealand generally is available online.⁹

Privacy law

The Privacy Act 2020 (“PA”) regulates how personal information is handled or processed and describes the standards that must be followed relating to rights and obligations for the collection, use, disclosure, security, access to, and correction of personal information. Personal information is broadly defined as any information about an identifiable individual. The PA applies to individuals and businesses (collectively referred to as agencies) carrying on business in New Zealand.

Therefore, any personal information accompanying donations, including cryptoassets, accepted by charities carrying on business in New Zealand will be subject the PA and such charities should be mindful of obligations under the PA, particularly in relation to informing donors that their personal information is being collected and appropriate notification in the instance of a privacy breach. Such personal information may include the donor's name and contact details, financial information, or purchase records.

More information regarding privacy in New Zealand for charities and generally is available online.¹⁰

Consumer law

If a charity receives an NFT as a donation, the charity may only use the NFT in accordance with any legal restrictions such as reporting requirements and use obligations. Additionally, any further sale of NFTs may need to comply with New Zealand's consumer laws, primarily found in the FTA and CGA, if this is done in trade.

Under the FTA (which regulates sales conduct) a person who is in trade must not make an unsubstantiated representation in trade. This covers both express and implied representations. The FTA also prohibits false or misleading representations about goods and services including:

- false or misleading representations that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model;
- false or misleading representations that services are of a particular kind, standard, quality, or quantity; and

⁹ See <https://copyright.co.nz/understanding-copyright/what-is-copyright>, <https://www.iponz.govt.nz/about-ip/copyright/> and <https://www.mbie.govt.nz/business-and-employment/business/intellectual-property/copyright/copyright-protection-in-new-zealand/>.

¹⁰ See <https://www.privacy.org.nz/blog/privacy-101-for-charities-a-recap/> and <https://www.charities.govt.nz/privacy-statement/>.

- false or misleading representations that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits.

The CGA regulates the quality of goods and services after they have been purchased by providing a series of minimum guarantees that a seller of goods automatically makes to consumers purchasing for personal use. All goods must:

- be of acceptable quality (durable, safe, fit for purpose, free from defects, acceptable in look or finish);
- be fit for any particular purpose explained to the supplier;
- match a description, sample, or model shown;
- have good legal title, e.g., be able to be sold and not have any security interests registered against them;
- be a reasonable price if no price is set;
- arrive on time (within a reasonable time if not agreed) and in good condition; and
- have spare parts and repair facilities available (this is a manufacturer responsibility).

More information regarding consumer law in New Zealand generally is available online.¹¹

3. Is issuing NFTs to raise funds permitted for charities? If so, what legislation/regulation (if any) governs it?



Yes, New Zealand charities are permitted to issue NFTs to raise funds, and there are no legal restrictions specific to the creation and/or sale of NFTs individually or as collections. However, charities will need to consider how general legal duties and obligations may apply to the issuance of NFTs.

3.1. Reporting requirements and officer duties for charities

As set out in Section 2, governing charities are derived from a number of statutes and will depend on the legal structure of the charity. When issuing NFTs, charities will need to comply with the applicable general legal duties depending on the legal structure of the charity.

¹¹ See <https://www.consumerprotection.govt.nz/general-help/consumer-laws/fair-trading-act/> and <https://www.consumerprotection.govt.nz/general-help/consumer-laws/consumer-guarantees-act/>.

Charitable trusts

If a charitable trust accepts cryptoassets as payment for the issuance of the NFT, the trust deed or set of rules will need to permit this activity and the charity must demonstrate that holding the asset (including any cryptocurrency converted to cash) is necessary for the good of the community.

Additionally, charities should be conscious of general duties when accepting unusual forms of payment such as cryptocurrencies. For example, charitable trustees have a fiduciary duty to act in the best interests of the trust, and general duties to advance the trust's charitable purposes and exercise diligence in making investments. Where trustees hold property (including cryptoassets) to generate income, the purposes of the trust will generally best be served by the trustees seeking to obtain the maximum return for that property on the basis that the more money the charity obtains, the more it can accomplish. Charitable trusts must be mindful of this when deciding whether to accept certain proceeds, such as cryptocurrencies. In making such a decision, trustees should have regard to well-established investment principles, including the need to diversify and the need to balance risk against return.

Incorporated societies

An incorporated society must be established and maintained exclusively for its purpose, which cannot include the financial gain of its members. The issuance of NFTs, and the acceptance of cryptocurrencies or other cryptoassets, must be consistent with its charitable purpose/objectives, as set out in its rules. If NFTs are being issued to raise funds to further the charity's objectives, this will be acceptable.

Registered charities

Under the CA, registered charities are required to file annual returns along with performance reports or financial statements. Charities may also be required to report on trading operations including detailing goods sold to generate income. Therefore, if a registered charity is issuing NFTs and/or receiving cryptoassets as payment, the entity must ensure these activities align with the charitable purpose and are disclosed in the financial statements submitted to Charities Services (or in the case of Incorporated Societies, Charities Services or the Companies Office).

3.2. Consumer protection laws

As noted above in Section 2, the supply of NFTs to generate funds for the charity will need to comply with New Zealand's general consumer protection laws, primarily found in the FTA (which regulates sales conduct) and the CGA.

“Trade” is broadly defined under both the FTA and GCA, and includes any undertaking relating to the supply or acquisition of goods or services and therefore, covers charities that regularly or habitually sell goods or services (regardless of the fact the trading is not carried out for profit).

Under both the FTA and GCA, NFTs are goods, being personal property of any kind, whether tangible or intangible (but, for the purposes of the CGA, excluding money or choses in action).

Because the CGA, and parts of the FTA, apply only in relation to goods and services supplied to consumers, the restrictions on the sales will depend on the nature of the NFTs and the context in which they are sold. A “consumer” is defined as a person acquiring from a supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption and does not acquire the goods or services, or hold themselves out as acquiring the goods or services, for the purpose of:

- resupplying them in trade;
- consuming them in a process of production or manufacture; or
- repairing or treating in trade other goods or fixtures on land.

Therefore, it is likely that in most cases, the NFTs will be supplied to a consumer. The most probable scenario in which the supply of NFT would not be to a consumer is where the purchaser acquires the NFT for the purpose of resupplying it in trade, for example, where a purchaser is in the business of NFT trading.

Consumer Guarantees Act

Under the CGA, goods must comply with a number of implied guarantees when supplied in trade to consumers (as set out in question 2). The supplier (or manufacturer) must also ensure that:

- goods are delivered in accordance with any agreed delivery times/estimates;
- spare parts and repairs are available in relation to the goods (likely inapplicable to cryptoassets).

Where goods do not comply with a guarantee, the consumer has varying rights of redress against the supplier and/or the manufacturer (depending on the guarantee that has not been complied with), for remedies including requiring the goods to be repaired or replaced, the right to reject the goods and receive a refund, the right to receive compensation for a reduction in the value of the goods, and damages for any other loss caused by the failure to comply with the guarantee, requiring the supplier to remedy the failure within a reasonable time (by repairing the goods; curing a defect in title; replacing the goods; or where repair is unreasonable, providing a refund).

Fair Trading Act

The FTA includes a number of prohibitions relating to conduct in trade in respect of the sale of goods, including prohibitions on:

- unconscionable conduct in trade, misleading and deceptive conduct, making unsubstantiated representations, false or misleading representations, forging a trade mark, or misleading or deceptive use or application of a trade mark;
- unfair practices including:
 - offering gifts or prizes in connection with a sale of goods without intent to provide them;

- bait advertising (an offer that there is no reasonable grounds to believe can be complied with);
- promoting or operating pyramid selling schemes; and
- including unfair contract terms (terms that cause a significant imbalance in the parties' rights and obligations, that are not reasonably necessary to protect the legitimate interests of the party it benefits, and would cause detriment to the other party) in standard form consumer contracts or small trade contracts.

3.3. Collaborating with third party partners

New Zealand's law is silent on the collaboration of charities and NGOs with third party partners to create NFTs. However, under the FTA the government can make regulations in relation to required disclosures for third party fund-raisers who make requests for donations for charitable purposes in the course of business. To the extent that a charity/NGO engages a third party partner to carry out the sale of its NFTs to raise funds, it could be subject to such regulations (if enacted). Although there has been consultation on potential regulations in the past, there are no current regulations.

3.4. NFT functions, features, and real-world benefits

There are no specific restrictions on the functions, features, or real-world benefits that a charity can include in its NFTs. However, certain functions or features, or the provision of that function or feature by it, will be regulated. For example, because:

- providing the function/feature constitutes the provision of a financial service, requiring registration under the FSPA.
- the function/feature is a financial product, and the offer of its sale is regulated under the FMA.
- by providing the function/feature, the charity may, depending on the nature of the function/feature, become a VASP and thereby fall within scope of the AML/CFT Act. This would require it to comply with a range of compliance obligations, including conducting customer due diligence. For example, VASPs include service providers that issue virtual currency/digital tokens to facilitate virtual asset trading (we note that NFTs that are used as collectibles rather than as payment or investment instruments are generally not considered virtual assets for AML/CFT purposes).

3.5. Royalties from subsequent sales

Charities are permitted to accept proceeds from subsequent sales of their NFTs beyond the initial sale. As always, charities that issue NFTs subject to smart contracts requiring royalties to be paid to the charity for

subsequent sales should be conscious of their general obligations, including the restrictions under the FTA on unfair contract terms.

3.5. Anti-money Laundering (“AML”) / Counter the Financing of Terrorism (“CFT”)

Generally, charities issuing and selling NFTs will not be required to comply with the AML/CFT regime in New Zealand.

While VASPs are considered financial institutions for the purposes of the regime, and therefore required to conduct customer due diligence and determine the source of funds/wealth in relation to captured activities, VASPs are not strictly defined in the Act. Guidance from the supervisor for VASPs (the DIA), defines virtual assets as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. The DIA is guided by the global expectations and definitions of virtual assets established by the FATF, which notes that virtual assets such as NFTs that are collectibles only, such as digital art NFTs, are not generally considered virtual assets for the purposes of AML/CFT regimes.

Accordingly, it is unlikely that a charity selling NFTs will be subject to the AML/CFT regime unless the NFT is being used as an investment instrument or otherwise includes functions or features which are captured activities under the regime.

More information regarding AML/CFT requirements for VASPs is available online.¹²

3.6. Disclosure requirements in relation to purchaser identity

The initial and subsequent purchasers of any NFTs sold by a charity are able to request that their purchase remains anonymous to the public. However, the purchaser may need to provide certain information to the charity for record-keeping purposes (depending on the technology used to mint the NFT).

Under the CA, Charities Services may withhold or restrict public access to any information on the Charities Register if it considers it in the public interest to do so. “Public interest” is not defined and will be dependent on the circumstances; however, protecting the privacy of donors is an example that Charities Services gives of public interests that may justify restrictions on information. If a purchaser requested that their purchase remained anonymous and the charity was disclosing any information identifying the purchaser for display on the Charities Register (e.g., if it identified purchasers in its financial statement), the charity would need to make a written request asking Charities Services to withhold any details relating to the purchaser that were included in the financial statements.

Where Charities Services agrees to withhold the requested information, government agencies including the IR and Statistics New Zealand will still be able to access the restricted information. Additionally, the CA does

¹² See <https://www.dia.govt.nz/Information-for-Virtual-Asset-Service-Providers> and <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html>.

not limit the *Official Information Act 1982* (“OIA”), and Charities Services considers requests under the OIA on a case-by-case basis.

Charities are also likely to be required to collect information relating to the income received for tax and financial record purposes, including the details of purchasers. For example, initial purchases are likely to be subject to the *Goods and Services Act 1975*, for which a charity is required to keep transaction records. Depending on the value of the taxable supply, information required for transaction records may include the purchaser's details including name and address. Subsequent purchases for which the charity receives a royalty are likely to be subject to the *Income Tax Act 2007*, and therefore the charity will be required to keep records sufficient to verify tax-related activities.

More information regarding restricting public access to information on the Charities Register is available online.¹³

4. Are there tax implications for donations of cryptocurrency or NFTs? Are there obligations to pay tax for charities who sell NFTs for fundraising purposes?

Limited guidance has been published by the IR on the taxation of cryptoassets in New Zealand.¹⁴ Cryptoassets are treated as a form of personal property for New Zealand tax purposes. While there are different types of cryptoassets, the tax treatment depends on the characteristics and use of cryptoassets. It does not depend on what they are called.



New Zealand has recently introduced definitions for the terms "cryptoasset," "cryptocurrency," and "non-fungible token":

- **Cryptoasset** means a digital representation of value that exists in—
 - (a) a database that is secured cryptographically and contains ledgers, recording transactions, and contracts involving digital representations of value, that are maintained in decentralized form and shared across different locations and persons; or
 - (b) another application of the same technology performing an equivalent function.
- **Cryptocurrency** means a cryptoasset that is not a non-fungible token.
- **Non-fungible token** means a cryptoasset that contains unique distinguishing identification codes or metadata.

¹³ See <https://www.charities.govt.nz/im-a-registered-charity/restricting-information/>.

¹⁴ See <https://www.ird.govt.nz/cryptoassets>.

The definitions are relevant, because, for example, under New Zealand tax law, cryptocurrencies are not subject to New Zealand GST, whereas non-fungible tokens are.

4.1. Tax implications in relation to donations

There is no New Zealand tax guidance about charitable organizations' use of cryptoassets or relating to the donation of digital assets. However, in New Zealand gifts or donations should not give rise to a taxable event for the donor.

Subject to meeting certain requirements (e.g., like the donee organization having "donee" status, which broadly means it is an organization or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand and/or is a registered charity with New Zealand's Charities Service), donation tax credits are available to persons, or a corporate tax deduction is available for a company, that makes a gift of money of \$5 or more. Cryptoassets are treated as property for New Zealand tax purposes and not money. This means donors of cryptoassets would not be eligible for a donation tax credit or income tax deduction.

Record-keeping

Based on an individual donor's circumstances, they may or may not be required to maintain their own records for tax purposes.

Further, there do not appear to be any specific New Zealand tax rules relating to record-keeping of donated digital assets.

New Zealand has general record keeping requirements that, broadly, require a taxpayer to retain business records for a period of seven years at a place in New Zealand, or outside New Zealand with the IR's approval (more information can be found online¹⁵). In addition, a "gift-exempt body" (e.g., a registered donee organization with the IR) is required to keep in New Zealand sufficient records in the English language to enable the IR to determine both the sources of donations made to them and the application.

Valuing

Cryptoassets need a value to be ascribed to them, like any other business asset. Reasonable care must be taken to determine the appropriate value for cryptoasset transactions, and a consistent method should be adopted, with that method being recorded. Further information on valuing cryptoasset transactions can be found online.¹⁶

¹⁵ See <https://www.legislation.govt.nz/act/public/1994/0166/latest/DLM350462.html>.

¹⁶ See <https://www.ird.govt.nz/cryptoassets/taxing/convert-currency>.

Receipts

To the extent a taxpayer is eligible to claim a donation tax credit or a corporate income tax deduction, the donee organization would need to provide the donor with a donation tax receipt sufficient to support that taxpayers claim. A donation receipt template can be found online.¹⁷

There are no specific requirements for an NGO or charity to issue a donation receipt in relation to digital assets. As noted above, donation tax credits are available to persons, or a corporate tax deduction is available for a company, which makes a gift of money of \$5 or more. Cryptoassets are treated as property for New Zealand tax purposes and not money. This means donors of cryptoassets would not be eligible for a donation tax credit or income tax deduction. As no credit or deduction is available for the donation of cryptoassets, we would not expect a receipt would need to be issued.

4.2. Selling crypto assets (for example, NFTs) for fundraising purposes

As noted above, “cryptoassets” are treated as a form of personal property for New Zealand tax purposes. While there are different types of cryptoassets, the tax treatment depends on the characteristics and use of the cryptoassets. It does not depend on what they are called.

As such, where NFTs are issued, the issuer would need to understand the legal rights attached to that NFT. Consideration would need to be given whether payment for that NFT could be considered a royalty that would result in New Zealand withholding tax implications (subject to any income tax exemptions available to the NGO or charity). There may be other income tax considerations where the charity or NGO acquired the NFT with a dominant purpose of disposal, the NFT is disposed by a NGO or charity that carries on a business that deals in NFTs, or if the NFT is acquired and disposed by the NGO or charity in the course of carrying on or carrying out a profit-making undertaking or scheme. There may be GST consequences if certain requirements are met (including, where the NGO or charity makes taxable supplies of \$60,000 or more in any 12-month period).

Capital Gains Tax (“CGT”)

New Zealand does not have a general CGT. To the extent the charity or NGO later disposes of the cryptoasset, there may be tax consequences if it was acquired with the dominant purpose of disposal, it is disposed by a NGO or charity that carries on a business that deals in cryptoassets, or if the cryptoasset is acquired and disposed by the NGO or charity in the course of carrying on or carrying out a profit-making undertaking or scheme.

Subject to certain requirements, an NGO or charity that disposes of cryptoassets may be subject to New Zealand Goods and Services Tax. For completeness, the supply by any non-profit body of any donated goods and services are generally GST-exempt (i.e., outside the GST “net”).

¹⁷ See <https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir1100---ir1199/ir1130/ir1130-2021.pdf?modified=20210810013238&modified=20210810013238>.

5. What is the best practice or guidance?

Financial Markets Authority

The New Zealand financial markets conduct regulator, the Financial Markets Authority (“FMA”), has issued limited online guidance for both consumers and providers of cryptoassets and related blockchain technologies.¹⁸



The FMA has also released a list of warnings and alerts specifying names of businesses that should not be engaged with, including in relation to cryptocurrency trading platforms and scams, which is also available online.¹⁹

Inland Revenue

The New Zealand tax authority, the Inland Revenue (“IR”), has issued limited online guidance on the tax treatment of cryptoassets.²⁰

Department of Internal Affairs

The Department of Internal Affairs (“DIA”), which regulates virtual asset service providers (“VASP”) (such as cryptocurrency trading platforms) for AML/CFT purposes, has issued guidance on the application of the AML/CFT regime for that sector.²¹

CERT NZ

Cert NZ (a government agency tasked with protecting New Zealand's internet infrastructure) offers guidance on cryptocurrency security (particularly in relation to wallets and NFTs).²²

Ruscoe v Cryptopia Ltd (in liquidation)

The decision in *Ruscoe v Cryptopia*²³ put New Zealand on the map as one of the first common law countries to expressly address the question of whether digital assets, such as cryptocurrencies, constitute property (and therefore can be the subject of a trust). The Court concluded that cryptocurrencies are property at common law.

Importantly, the Court distinguished between pure information and digital assets, holding that cryptocurrencies are not in any event pure information (pure information is not recognized as a form of

¹⁸ See <https://www.fma.govt.nz/consumer/investing/types-of-investments/cryptocurrencies/>, <https://www.fma.govt.nz/library/articles/spotlight-on-cryptocurrency/> and <https://www.fma.govt.nz/news/all-releases/media-releases/fma-commentary-on-icos-and-cryptocurrencies/>.

¹⁹ See <https://www.fma.govt.nz/library/warnings-and-alerts/>.

²⁰ See <https://www.ird.govt.nz/cryptoassets>, <https://www.ird.govt.nz/cryptoassets/individual/buying-selling/trading>, <https://www.ird.govt.nz/cryptoassets/individual/tax-residence/new-returning> and <https://www.ird.govt.nz/cryptoassets/non-fungible-tokens>.

²¹ See <https://www.dia.govt.nz/Information-for-Virtual-Asset-Service-Providers>.

²² See <https://www.cert.govt.nz/individuals/guides/cryptocurrency-security/>.

²³ See <http://www.nzlii.org/nz/cases/NZHC/2020/728.html>.

property). The Court took the view that pure information can be duplicated; however, cryptocurrencies could not be, due to the uniqueness of the public keys that record the data constituting the coin.

The decision has had lasting and significant impacts in New Zealand. For example, had the Court found otherwise, cryptocurrencies would not be able to form the subject matter of a trust or a proprietary right of security. This is of particular importance when charities accepting cryptocurrencies and/or digital assets are considering winding up, because if a charitable trust winds up, it must do so in accordance with the trust deed. However, any money or assets (including cryptoassets) must be left to a charitable purpose.

6. Additional research findings worth noting

There are a number of Government initiatives underway which will impact the use of blockchain technologies in New Zealand:

- In July 2021, New Zealand Parliament commenced an inquiry into the current and future nature, impact, and risks of cryptocurrencies, with public submissions closing in September that year. While the results of the inquiry have yet to be released, we expect the results will affect the New Zealand Government's policy agenda in relation to cryptocurrencies and blockchain technologies going forward.
- In November 2022, the Ministry of Business, Innovation and Employment published a paper about "the Future of Business in Aotearoa." Blockchain was one of the three key trends that were identified, including the "uses of blockchain include growing 'for good' applications that address social and environmental challenges." More information is available online.²⁴

²⁴ See <https://www.mbie.govt.nz/dmsdocument/25454-mbie-ltib-the-future-of-business-for-aotearoa-new-zealand-pdf>.

Legal regulation of cryptocurrency and NFTs in New Zealand

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