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# **Cryptocurrency Payroll: A Multinational Tax and Labor Law Comparison**



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## INTRODUCTION

Once understood by few, bitcoin's boom in 2017 brought cryptocurrency into a mainstream spotlight. And with that, ushered in a wave of regulatory action.

For employers paying employees using digital currency, keeping track of a whole new host of compliance issues has become just as daunting as figuring out which newfangled token might turn into the next big thing.

Tax and payroll treatment of digital currency wildly varies among countries as regulatory bodies struggle to keep pace with the rapid spread of new technology.

Digital currency is a convertible type of virtual currency that has an equivalent value in real currency and that can be exchanged for fiat currency. Digital currencies possess some but not all of the features of traditional fiat currency, which is the coin and paper money of a country that is designated as legal tender and is customarily accepted as a medium of exchange in the country of issuance. Digital currency is also distinguished from electronic money or e-money, which is used to electronically represent and transfer value denominated in fiat currency.

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Tax and payroll treatment of digital currency varies among countries.

Cryptocurrency, which is a significant subset of digital currency, involves encryption or cryptography techniques that are used to regulate unit generation and verify each transaction, and also involves operation that is independent of a central bank.

Bitcoin was the first such cryptocurrency and was released in 2009. There are now thousands of different types of digital currency in existence, including approximately 1,600 cryptocurrencies as of March 30, 2018.

Cryptocurrency or digital currency payment options may seem attractive for multinational employers and international payroll professionals, particularly for employment in parts of the world without developed banking systems or stable currencies.

As the hype around cryptocurrency continues to grow, it is incumbent upon international payroll and tax professionals considering cryptocurrency payments to employees to familiarize themselves with relevant tax and labor law compliance issues.

Digital currency payments are significantly restricted or illegal in some countries, whereas many other countries have not yet regulated digital currency. Tax treatment of legal currencies significantly varies among countries, and labor law provisions in many countries contain restrictions relating to the payment of wages in digital currency.

This strategic white paper examines approaches to key payroll compliance issues related to digital currency in more than 20 countries that have begun to explore the treatment of digital currencies for tax and wage payment purposes.



## G20 AND OECD GUIDANCE ON CRYPTO-ASSETS

The predominant emerging international trend regarding regulation of digital currencies like bitcoin is to regulate them as if they were properties or assets, as reflected in the policies of many countries as well as in the official communiqué of the March 2018 Group of 20 (G20) meeting.

### G20 Meeting Conclusions

Digital currencies “lack key traits of sovereign currencies,” according to the official communiqué of the first G20 Meeting of Finance Ministers and Central Bank Governors of 2018, which contains the main conclusions reached from the discussions between finance ministers, central bank governors, and international organization leaders during their March 2018 meeting.

The G20 countries are moving to a consensus that cryptocurrencies are to be treated as an asset, the communiqué said, which could potentially subject digital currencies to capital gains tax. The G20 ministers agreed to implement a Financial Action Task Force (FATF) to develop standards addressing the challenges of “crypto-assets,” calling on the FATF to push forward with global implementation of those standards.

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G20 countries are moving to treatment of digital currencies are assets.

### OECD Recommendations

The OECD Secretary General examined cryptocurrency and its tax consequences in the two-part Report to G20 Finance Ministers and Central Bank Governors in the lead up to the meeting. The OECD’s interim report to financial ministers and central bank regulators of the G20 member countries defines cryptocurrency as a “digital asset used as a medium of exchange and which relies on cryptography to secure its transactions, to control the creation of additional units, and to verify the transfer of assets.” Cryptocurrency is a “digital unit of exchange” that is not backed by government-issued legal tender, according the OECD report’s definition.

The OECD asked the Financial Stability Board in consultation with other standard-setting bodies, including FATF, to report on digital currencies or on “crypto-assets” by July 2018. The OECD plans to develop practical tools and build cooperation in examining tax consequences of new technologies, including digital currencies, as part of a wider Inclusive Framework that the OECD is developing. An update on the framework is to be issued in 2019 and a “consensus-based solution” is to be released by 2020, the OECD said.



## DIGITAL CURRENCY WAGE PAYMENT CONSIDERATIONS

### Australia

In Australia, employer payments to an employee in digital currency are considered a fringe benefit if the employee has a valid salary sacrifice arrangement with their employer to receive digital currency as remuneration instead of Australian dollars. As such, an employer who pays an employee in digital currency under a valid salary sacrifice arrangement would be subject to the provisions of the Fringe Benefits Tax Assessment Act.

In the absence of a valid salary sacrifice agreement, employer remuneration to employees in digital currency is generally treated as normal salary or wages and the employer is required to meet pay as you go (PAYG) obligations in the same manner as other payments.

Because bitcoin and other digital currencies are considered intangible property under rules mandated by the Australian Tax Office, income and profits received from transactions using digital currencies are subject to income tax and other taxes on wages. Income and profits received from transactions using digital currencies are not subject to capital gains taxes if they are used as investments.

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Digital currency payments in may be treated like barter transactions.

Starting July 1, 2018, Australia is to remove the double taxation of transactions involving digital currency payments for services with bitcoin and digital currencies considered as a foreign currency under applicable goods and services (GST) tax treatment.

Since December 2014 and up to July 2018, the exchange of digital currency for fiat currency as well as the purchase or sale of goods and services using digital currency are considered taxable events. This means that digital currency transactions may be taxed twice: once for the goods and services tax on the purchase and a second time for the digital currency used in the transaction. Consistent with the Australian Treasury's pledge to address the double taxation of digital currencies in the department's comprehensive policy of "Australia's FinTech Priorities," the government addressed the issue of digital currency in the 2017 federal budget and changes are to go into effect by July 2018.

### Canada

Digital currencies are not a legal tender in Canada, guidance from the Financial Consumer Agency of Canada said Jan. 1, 2018. Only the Canadian dollar is considered official currency in Canada under the Currency Act, which defines legal tender as bank notes issued by the Bank of Canada under the Bank of Canada Act and coins issued under the Royal Canadian Mint Act. Digital currencies are neither supported nor prohibited by any government or central authority, such as the Bank of Canada.

The Canada Revenue Agency (CRA) is “committed to adapting its administration to keep pace with evolving global services and products,” Etienne Biram, a spokesperson for the Canada Revenue Agency, told Bloomberg Tax in an email March 28, 2018.

“Tax rules apply when digital currency is used,” Biram said. Where an employee receives digital currency, such as bitcoin, as payment for salary or wages, the amount is required to be included in the employee’s income as calculated in Canadian dollars and reported on a T4 slip in Canadian dollars. The employer is required to also make the appropriate deductions, with amounts remitted to the CRA required to be in Canadian dollars.

Digital currency payments for services or to employers are treated in a similar manner to barter transactions, when one commodity is exchanged for another, within the purview of the Income Tax Act for income tax purposes, the CRA said in guidance March 3, 2018.

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Tax rules may apply when digital currency is used.

The value of those services exchanged for digital currencies are required to be calculated in an employee’s income when they are of the kind of services generally provided by the employee in the course of earning income from, or related to, a business or a profession carried on by the employee. Because there is no legal tender changing hands, the employment is neither insurable nor pensionable, so employees would generally not be subject to applicable insurance contributions on the total amount paid in digital currency.

## Europe

Bitcoin is considered a currency rather than a property in the European Union, under a 2015 ruling from the European Court of Justice that digital currency transactions “are exempt from VAT under the provision concerning transactions relating to currency, bank notes and coins used as legal tender.” Digital currency transactions may be subject to other taxes, such as capital gains or income tax and countries in the EU vary regarding treatment of digital currencies for tax purposes on the domestic level.

The European Banking Authority does not consider bitcoin or other digital currency to be legal currency.

**Austria:** The Austrian government considers digital currencies to be an intangible asset subject to income tax.

**Belgium:** Digital currencies are not considered legal tender in Belgium, according to a declaration from the National Bank of Belgium.

**Finland:** Digital currencies are not “currency” or a “payment instrument,” but are “more comparable to a commodity” in Finland. Digital currencies may be subject to a capital gains tax, according to guidance from Finnish tax authorities.

**France:** “Crypto is more an asset than a currency,” French Finance Minister Bruno Le Maire said March 20, 2018, at the G20 meeting in Buenos Aires, Argentina.

Earlier in 2018, Le Maire called for a new legal framework for digital currency regulations to overcome tax evasion, ordering France's central bank chief to develop a new regulatory framework.

The French Ministry of Economy and Finance has said since 2014 that it does not recognize bitcoin or any other digital currency as an official currency, but all revenues generated from digital currency transactions are to be subject to taxation. Net income, including profits and losses, is subject to the progressive income tax schedule as well as to social security contributions.

**Germany:** The use of digital currencies is considered comparable to the use of conventional payment instruments in Germany, as long as they serve no purpose other than that of a “pure payment instrument” rather than a speculative tool with which to trade and profit.

German employers seeking to pay employees in digital currency would need to obtain digital currency, then transfer it to the employee, and then the employee can choose whether or not to exchange that amount into fiat currencies.

Employers paying employees in digital currency are generally required to take into account two reference prices under Germany’s tax laws. If digital currency procured for the purpose of paying employees has a higher valuation at the time of payment than procurement, the employer would need to report any gain and pay income taxes in euros on the value of the amount of digital currency paid or transferred to the employee at the time of the payment. In Germany, the employee would generally have to pay taxes on gains if the digital currency is held longer than one year after the payment.

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Digital currencies are not more comparable to a commodity in Finland.

In Germany, digital currencies may be subject to a capital gains tax and a “wealth” tax.

**Netherlands:** The Netherlands has declined to impose a national ban on digital currency but does not consider bitcoin or other digital currencies to be legal tender, a position paper by the Netherlands Central Bank said in January 2018.

Digital currency does not fall within the scope of the Act on Financial Supervision of the Netherlands because it does not meet the definition of electronic money in the Netherlands, which is defined as “a monetary value stored on an electronic device or stored on-distance in a central accounting record,” and an “electronic money institution” as “a party, not being a bank, whose business it is to obtain the disposal of funds in exchange for which electronic money with which payments can be made is issued, also to parties other than the party issuing the electronic money,” the Dutch Minister of Finance said. Digital currencies are generally considered assets or property under Dutch law. Consequently, digital currency is generally taxed according to the employee’s respective income tax rates.

**Norway:** Digital currencies, including bitcoin, are treated as capital property for tax purposes in Norway. Treatment of digital currencies as capital property al-

lows for deductions for losses and taxes on gains. Digital currencies are not recognized as travel or foreign currencies. Services relating to the exchange of digital currency are excluded from financial services in the VAT Act, the Ministry of Finance's written answer to a question submitted by a parliamentary representative said. Digital currencies are subject to the wealth and sales taxes so gains and losses must be reported to the tax administration.

**Slovenia:** Taxation on digital currency is determined based on the facts and circumstances on each individual case, the Ministry of Finance of the Republic of Slovenia said Dec. 23, 2013, in a formal opinion about the status of the bitcoin and other digital currencies in response to a request from Slovenia's Tax Administration.

Digital currency is not considered a monetary asset or a financial asset under Slovenian law on payment services and systems. Digital currency income made by employees is subject to standard income tax provisions and is to be generally taxed by measuring the digital currency's exchange rate with the euro at the time of the transaction. Personal income tax is not generally required to be paid on capital gains related to digital currency in Slovenia, according to the Financial Administration of the Republic of Slovenia's May 2017 explanation regarding tax treatment of digital currencies.

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Digital currencies are classified as assets or private money in the U.K.

Employer payment to an employee for services in digital currency generally is exempt from VAT, the Slovenian Ministry of Finance said in December 2017 guidance.

**Sweden:** Digital currencies do not meet the Swedish definition of a currency since currencies are, by Sweden's definition, tied to a central bank or a geographic area. Digital currency payments are generally taxed as an asset subject to capital gains tax.

**Switzerland:** Digital currencies are generally treated as movable assessable assets for tax purposes under Swiss law, according to guidance released by Swiss fiscal administrations. Digital currency payments are subject to wealth tax and must be reported by employees to tax authorities in the Schedule of Securities and Assets. Capital gains from digital currencies are generally exempt from tax in Switzerland, though exchange losses are not tax deductible. Digital currencies are not all subject to the same treatment under Swiss tax law and each digital asset may be assessed individually according to its relevant features, according to guidance in leaflets released by Swiss tax authorities.

Employees or employers holding digital currency may be subject to wealth tax at the rate determined by the Switzerland's tax authorities on Dec. 31 of each fiscal year. Digital currencies are required to be reported on annual tax returns along with any other assets. Most tax authorities in Switzerland require reporting and payment in euros. However, the Swiss municipality of Chiasso permits residents to pay their taxes in bitcoin.

**United Kingdom:** Bitcoin and other decentralized digital currencies are classified as assets or private money, under HM Revenue and Customs (HMRC) guidance

issued in 2014. Digital currencies may be used to pay for goods or services at merchants where accepted.

Employer interest in digital currency payments to employees in the U.K. is reflected in a recent study commissioned by the Citrix in partnership with One Poll surveying 750 representatives from different U.K. companies with at least 250 employees, which found that 32 percent of large U.K. employers holding digital currencies intend to pay their employees with digital currencies. The study also found that 50 percent of U.K. employers with at least 250 employees have stocks in digital currencies, holding an average of 24 bitcoins each.

### **Hong Kong**

Bitcoin and other digital currencies are considered a virtual or intangible “commodity” that is not legal tender in Hong Kong, guidance from the Hong Kong Monetary Authority said in 2015.

The president of the Hong Kong Monetary Authority reaffirmed this stance in September 2017.

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Digital currencies are classified as assets or private money in the U.K.

### **Indonesia**

The Indonesian government does not recognize digital currencies, including bitcoin, as legal instruments of payment.

Employers are prohibited from using digital currencies for payment in Indonesia, a press release from the Central Bank of Indonesia said Jan. 13, 2018. Digital currency payments violate Bank Indonesia Regulation No. 18/40/PBI/2016 on Implementation of Payment Transaction Processing and Bank Indonesia Regulation No. 19/12/PBI/2017 on Implementation of Financial Technology, the release said.

### **Israel**

Bitcoin and other digital currencies are considered a taxable asset subject capital gains taxes in Israel and do not fall under the legal definition of currency, a 2017 statement by the Israel Tax Authority said. Consequently, digital currency payment for services in Israel are generally regarded as barter transactions.

An employee’s income from digital currencies can be classified as income for tax purposes and payments in digital currencies may also be subject to VAT and capital gains tax as applicable, the Israel Tax Authority said in a circular released in February 2018. An employee’s income from digital currencies can be classified as income for tax purposes.

### **Japan**

Effective since April 1, 2017, Japan legally recognizes bitcoin as a legal method of payment. Although bitcoin is legally recognized as a method of payment in

Japan, the Japanese Financial Service Agency considers bitcoin to be an asset or commodity rather than a legal currency.

Effective since on July 1, 2017, the 8 percent consumption tax that previously applied to digital currencies is no longer in effect. The Japanese government announced that the conversion of digital currency to Japanese yen would be exempt from the 8 percent Japanese consumption tax previously levied on transactions under the new Fund Settlement Law. Instead, digital currency generally is to be subject to standard taxation models, including income tax and capital gains tax, under the new rules.

The amount of taxable income on digital currency that is sold or converted to Japanese yen is calculated by the difference between the value at the time of payment and the acquisition price of the digital currency.

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Japan legally recognizes  
bitcoin as a legal method of  
payment.

Japan's standard-setting body is in the process of developing further standards for regulation and taxation of digital currencies.

### New Zealand

Digital currencies are not considered legal tender, in that they are not required be accepted as a means of payment, but are not prohibited according to guidance from the New Zealand government.

The Inland Revenue Department in New Zealand treats digital currencies like a foreign currency for tax purposes, but details on the New Zealand tax treatment are limited, according to November 2017 a paper prepared as part of the Reserve Bank of New Zealand Analytical Note Series.

Preparatory work on issuing public guidance is underway in a project to consider the income tax treatment of bitcoin and other digital currencies, a New Zealand Public Rulings Work Programme 2017-18 Monthly update said March 9, 2018.

“It’s inevitable that our tax system will need adjustments to accommodate these new business models, however they evolve. If we don’t evolve at the same rate in real time, the potential cost could be huge,” New Zealand Revenue Minister Stuart Nash said Nov. 16, 2017, regarding bitcoin and other digital currencies in his opening address at the Chartered Accountants Australia and New Zealand Annual Tax Conference.

### Russia

Russian President Vladimir Putin ordered new digital currency legislation to be finalized by July 1, 2018, a report from Russia's Parliament Newspaper, the official publication of the state's legislative body, said March 1, 2018. Draft laws have been prepared by the Central Bank of Russia and the Ministry of Finance but not yet finalized. Digital currencies are restricted under Article 140 of the Russian Civil Code, which generally recognizes the Russian ruble as the exclusive means of payment in the Russian Federation and requires that all prices for financial transactions conducted in Russia be defined in rubles.

## Singapore

Digital currencies are taxed on the income derived from or received in Singapore, 2017 guidance from the Inland Revenue Authority of Singapore said.

Employers and employees that choose to use digital currencies for their remuneration or revenue are generally subject to standard income tax rules. Tax deductions are to be allowed when permissible under Singapore's tax laws.

Employers using digital currencies as a payment method may be required to keep records in Singapore dollars. If the open market value of the services exchanged in Singapore dollars cannot be determined, the digital currency exchange rate at the point of the transaction may be used.

## United States

Employers and payroll professionals are responsible for ensuring that the value of each digital currency payment satisfies all wage and hour obligations at the time of the payment.

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U.S. employers must ensure that non-exempt employees are paid minimum wage.

In the United States, the Fair Labor Standards Act (FLSA) requires employers to pay employees "prescribed wages, including overtime compensation, in cash or negotiable instrument payable at par." The U.S. Department of Labor has allowed employers to pay with foreign currencies to comply with the FLSA, as long as the amounts paid, when converted into U.S. currency, meet the relevant FLSA thresholds. It remains unclear whether the Department of Labor considers payment in digital currency to be a lawful method of payment of wages under the FLSA.

Employers are also required to ensure that non-exempt employees are paid the applicable minimum wage rates as well as overtime wages. The minimum salary requirement under the FLSA salary basis test is required to be paid in U.S. currency or a negotiable instrument. Once that threshold is met, employers may pay employees the rest of the amount in digital currency. For nonexempt employees, there is some gray area as to how to value digital currencies for the regular rate calculation for overtime purposes. The timing of the valuation may have a significant economic impact due to the potentially volatile nature of some digital currencies. Digital currency valuation may also present issues when calculating the regular and back pay if an employee is misclassified as exempt.

Potential instability and fluctuations in the value of digital currencies complicate compliance with minimum wage and overtime laws.

It is important for employers and payroll professionals to evaluate whether platforms used to pay employees in digital currencies charge fees to the employees since those fees may count against the amount paid to employees for the purpose of determining compliance with minimum wage or overtime rules. Some laws may also require that employees are given an opportunity to access wages without being charged a fee.

Paying a combination of digital currency and fiat currency or legal tender is one method employers and payroll professionals have employed to protect themselves from the risk of noncompliance due to potential instability in the value of digital currencies.

Some payroll professionals recommend paying any applicable minimum wage rate and overtime thresholds in fiat currency then an additional portion of remuneration in digital currency while other payroll professionals recommend giving employees a choice to be paid in a set amount fiat currency then immediately converting that amount to digital currency for employees who opt in to be paid in digital currency and agree in writing to such a conversion.

It is crucial that employees provide their employees' base compensation in standard currency that meets state and federal limits for minimum wage and overtime. For non-exempt employees, employers also would need to use the correct bitcoin value to determine the employee's average regular rate for purposes of calculating overtime. This is further complicated in jurisdictions, in or outside of the United States, that require legal tender.

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Digital currency payments must satisfy wage and hour obligations.

"A more cautious approach would be satisfying minimum wage and overtime obligations in legal tender required by a jurisdiction," Benjamin M. Ebbink, of counsel at the Sacramento, Calif. office of Fisher Phillips LLP, told Bloomberg Tax in a phone interview March 28, 2018.

Even if permitted, employees may want to avoid singular payment in bitcoin due to the fluctuations in value that may jeopardize minimum wage dangers if there is a dramatic drop in the value of a digital currency during payroll processing. A best practice is not to mandate payment, but rather permit employees to "opt in" voluntarily or pay bitcoin only as a discretionary bonus, Ebbink said.

Some U.S. employers may find relief from some of the complex payroll calculations of paying employees regular wages in digital currencies by instead offering bonus payments in the form of digital currency. However, a bonus still may be considered part of an employee's regular wages for purposes of overtime calculations even if the bonus is made using property such as digital currency, unless the bonus is made as a discretionary gift and is not correlated to hours worked, production achieved, or efficiency attained.

Digital currency payments to employees generally are treated as in-kind payments for U.S. federal tax purposes. Consequently, the fair market value of the payment generally is subject to federal income tax withholding and payroll taxes. Payments to employees made in digital currency generally would be subject to U.S. federal income tax withholding, Federal Insurance Contributions Act (FICA) taxes, and Federal Unemployment Tax Act (FUTA) tax. This means that U.S. employers paying employees in digital currency generally would be required to withhold income tax on the payment in a comparable manner to any other remuneration made in property and take the payment into account for FICA taxes and FUTA contributions.

The fair market value of digital currency paid to employees as wages is required to be reported on Form W-2, Wage and Tax Statement. The computation of gross income for U.S. federal income tax purposes includes the fair market value of the digital currency measured in U.S. dollars as of the date that the digital currency was received, according to U.S. Internal Revenue Service guidance. The fair market value at the time of payment or exchange is dependent on the market rate at that time, which may widely vary by the day or even by the minute.

The basis of digital currency received as payment for goods or services is generally calculated from the fair market value of the digital currency in U.S. dollars as of the receipt for U.S. federal tax purposes. If a digital currency is listed on an exchange and the exchange rate is established by market supply and demand, the fair market value of the digital currency generally is determined by converting the digital currency into U.S. dollars or into another fiat currency which in turn can be converted into U.S. dollars in a reasonable manner that is consistently applied to each digital currency payment and transaction.

The difference between the fair market value of the services received and the employer's adjusted basis in the digital currency exchanged may result in taxable gain to the employer. The exchange of convertible digital currency for services could also potentially trigger the additional burden of having to withhold and pay employment taxes on services.

Digital currency is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes, so foreign currency rules under Internal Revenue Code Sections 987 and 988 generally would not apply, as clarified in IRS Notice 2014-21. Instead, the exchange of digital currency for fiat currency would generally generate a taxable event subject to a capital gain or loss.

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U.S. tax law generally treats employee digital currency pay as in-kind payments.

Employers and payroll professionals are required to ensure that all applicable withholding and deductions are made and remitted appropriately. The vast majority of tax agencies, including the U.S. Internal Revenue Service, do not accept digital currency as a means of payment at the present time. Some national and state or regional tax agencies have, however, considered the idea of testing payment options using digital currencies. Employers paying employees in digital currency are required to have payroll taxes withheld in U.S. dollars and issue W-2s recorded in U.S. dollars the following year. Employers paying employees in digital currency also are required to file employment tax forms such as Form 940 and Form 941.

Digital currency payments generally are subject to backup withholding to the same extent as other payments made in assets or property. Payroll professionals making reportable payments using digital currency and who are responsible for soliciting a taxpayer identification number (TIN) from an employee may be required to backup withhold from the digital currency payment if a TIN is not obtained prior to payment or if the employee receives notification that backup withholding is required.

## **Zimbabwe**

Digital currencies are not considered legal tender in Zimbabwe. No tax guidance has been issued regarding payments made in digital currency and payment in digital currency is subject to no present financial regulation, a press statement from the Reserve Bank of Zimbabwe said Dec. 20, 2017.

## CONCLUSION

Advances in payroll practices incorporating digital currency potentially could benefit both employers and employees seeking to take advantage of new technology.

It is, however, important for employers to remember that these forms of payment are still evolving and regulations may be subject to as much volatility as the value of digital currency on any given day.

It is incumbent upon employers and payroll professionals to keep abreast of restrictions on the use of digital currencies for payment purposes. Careful record-keeping also is essential to accurately calculate taxes and to report gains or losses throughout the year.

Payroll professionals and employers should do their homework before implementing the latest technology regarding digital currency to minimize the risk of noncompliance later.



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