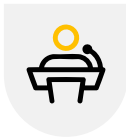




What Happens When You're Paid in Crypto?

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Panelists

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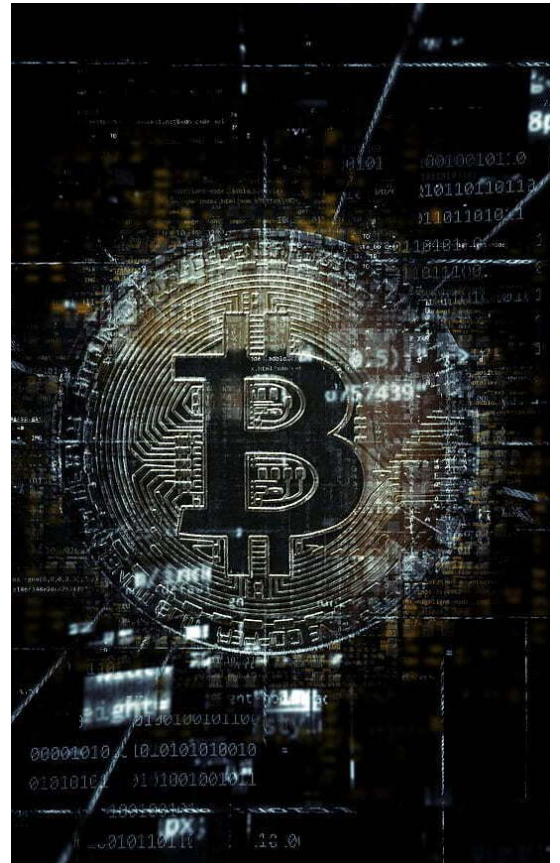
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What Happens When You're Paid in Crypto?

OVERVIEW:



- How do you pay people in Crypto
- Payments to employees and contractors
- Reporting W-2 interplay / 1099-DA interplay
- Payroll / Information reporting
- Fed/State tax rules & thresholds
- Restricted Token Units – RTU's vs. RSU's
- Legal Issues & Labor Laws
- Contracts for employment
- Securities LAW / SEC's view of crypto
- Volatility Issues
- Valuation & Liquidity Timing Issues
- Administrative issues
- Accounting Considerations
- Tech involved
- Other Topics / Practical Realities

3

How Do You Pay People in Crypto?



- Traditional compensation vs. payment in crypto
- Differences in cash pay vs. crypto pay
 - Base salary
 - Bonus
- Types of payment contracts
 - Equity compensation
 - Crypto alternatives
- POLL: who wants to get paid in crypto? Who gets paid in crypto?

4



Tax Implications of Crypto Payments to Employees and Contractors

■ IRS NOTICE 2014-21 TAKEAWAYS:

- Q-1: Virtual currency is treated as property - so should be taxed under IRC Section 83 when paid in connection with employment/ service
- Q-3: Income included at fair market value (less any price paid)
- Q-5: How is FMV determined?
 - FMV on date of settlement determined in a reasonable manner that is consistently applied

- Q-7: Character of gain/loss dependent on how asset is used by taxpayer

- Q-11: Payment for services that constitute wages

- W-2 and subject to FICA / Withholding

- Q-12: Payment to contractors

- 1099-MISC required if payments >\$600

■ OTHER TAKEAWAYS:

- See also IRS FAQs on cryptocurrency, issued in 2019 and updated on [irs.gov](https://www.irs.gov)

5

Reporting W-2 Interplay / 1099-DA Interplay

When does income from digital assets get reported on a W-2, 1099-MISC, or 1099-DA?

- Independent contractor vs employee distinction
- Income sourcing rules
- Sales of digital assets

How is the employer taxed?

Are there more complexities companies face when paying employees with digital assets as opposed to USD?

- (war stories)

Are payroll providers up to speed on ability to report digital assets?



Does it make it any easier if employees are paid with USDC or other stablecoins as opposed to non-stablecoin digital assets?

6

Restricted Token Units - RTU's vs. RSU's

- What are RTU's? ● ● ●
- Are RTU's the same/similar to RSU's? ● ● ●
- Are there other types of compensation arrangements using digital assets? Which are most common? ● ● ●
- Interplay with 409A (valuation rules) ● ● ●
- Interplay with 83(b) elections ● ● ●



Fed / State Tax Rules & Thresholds

- Do states view digital asset compensation the same as other types of compensation? What are some differences?
 - Generally, recipients of digital assets as compensation will be treated as income in states that have an income tax
- Do legal requirements/rules vary between states?
 - States may differ on their classification of digital assets, especially for the purposes of sales and use tax



Legal Issues & Labor Laws



- Any issue with receiving entire salary in Tokens?
 - Conceptually, from a tax perspective, a person could receive all their income in tokens, as the tax law would generally treat it as another form of property received
- But legal/labor law issues need to be considered:
 - **US Fair Labor Standards Act**
 - Non-exempt workers - minimum wage and overtime must be paid in cash or its equivalent
 - Exempt workers - volatility of crypto between payroll and receipt of payment could cause amounts paid to fall below minimum salary requirement
 - **Wage laws of US states may impose similar requirements**
 - Some states require wages to be paid in US currency
 - Others require wages to be readily accessible, without costs, fees, or encumbrances (e.g., California)
- Potential for class action wage and hour claims

9

Legal Issues & Labor Laws (cont'd)



- Dept. of Labor Guidance on Cryptocurrency in 401(k) Plans (March 2022)
 - Plan fiduciaries should exercise "extreme caution" before including crypto in 401(k) core investment slate
 - Speculative and Volatile Investments
 - Challenge for Plan Participants to Make Informed Investment Decisions
 - Custodial and Recordkeeping Concerns
 - Valuation Concerns
 - Evolving Regulatory Environment
 - Appears likely to trigger Employee Benefits Security Administration investigation
 - [Compliance Assistance Release No. 2022-01 | US Department of Labor \(dol.gov\)](#)
- May be subject to change under the new Trump Administration

10

Securities Law / SEC's View of Crypto

- SEC applies "Howey" test - is it a security?
 - Nature of cryptocurrency offered affects regulatory compliance – utility token, coin, virtual currency, etc.
- Rapidly evolving legal landscape. SEC under Biden may not look the same as under Trump
- The CFTC has also taken the position that tokens are commodities and has approved the trading of tokens on various markets



Volatility Issues



- Challenges when crypto fluctuates substantially during the day
- How does Toku help solve challenges for companies?
- Are there major differences in the rules for tracking compensation in the US vs. outside the US?

Valuation & Liquidity Timing Issues



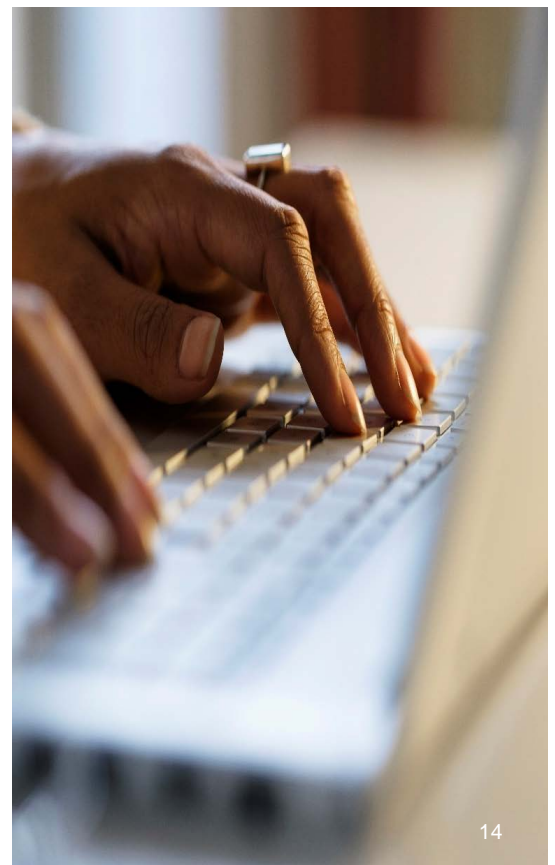
- Common challenges
- Standard practice for valuing crypto – importance of using a consistent method
 - Role of attorneys and valuation experts
- How does Toku approach valuation of crypto and what is the industry standard?
- What time/date is used when there are long delays from time of payment vs. deposit date?
 - Logistics



Administrative Issues



- ✗ How do companies report token comp on their P&L?
- ✗ Accounting for and tracking Unrealized Gain / Losses from tokens on the balance sheet
- ✗ Unrealized Gain / Losses recognition on payment to employees
- ✗ Does keeping digital assets on balance sheet for long periods of time tend to create more administrative complexities for businesses?
- ✗ What should companies look out for or avoid, if possible?



Other Accounting Considerations



- When a company pays an employee a token, what is the accounting treatment?
 - Does this look different if a company creates its own tokens vs. acquiring them, then paying its employees?
 - Accounting for when there is fluctuation in value
 - What if there is a lock-up period?
 - Discussion of SAFT's
 - Token sale and deferred compensation interplay
 - Compare fixed accounting treatment of payment in equity compensation

15

Tech Involved

Any special proprietary technology or shared systems used in payroll industry or by Toku for digital asset compensation?



What does the future look like?



Any special tech required by companies that decide to compensate employees with digital assets?



Are certain type of digital assets better for companies to use to pay their employees (i.e., BTC vs Stablecoins vs Tokens)?



16

Other Topics / Practical Realities



Acceptance concerns



Timing of conversion



Employee education / understanding of tax and legal implications



17

Open Discussion / Takeaways

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