

GUIDANCE BEFORE COMPLIANCE: BITCOIN, TAXES AND IRS NOTICE 2014-21

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For years, taxpayers who engage in virtual currency transactions, and the lawyers and accountants who advise them, have been *virtually* begging the IRS for some help in terms of dealing with some of the issues that come into play when reporting those transactions for tax purposes. Other than a Notice issued in April 2014 ([Notice 2014-21](#)), the IRS has been *virtually* silent on those issues.

[IRS News Release, IR-2018-71](#). So it was with a measure of excitement that I saw, on March 23, 2018, on one of the many online services that inform me of developments in the tax world, a headline stating, "IRS reminds taxpayers to report virtual currency transactions."

"At last," I thought. "The long-awaited guidance! Surely the IRS would not have such chutzpah as to bang on us for compliance without giving us some help!"

(**Aside:** "Chutzpah" is a Yiddish word loosely translated as "nerve," as in, "You've got chutzpah, buddy, banging on us for compliance without giving us some help.")

Turns out the IRS does have such chutzpah.

In its 7-paragraph News Release, the IRS reminded us of Notice 2014-21, by summarizing some of its highlights:

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- Virtual currency is treated as property for tax purposes.
- If you are paid in virtual currency, you have to report it to the same extent as any other payment made in property.
- If you pay it to independent contractors, you might have to issue a Form 1099.
- If you pay an employee's wages using virtual currency, you have to withhold and issue Form W-2.
- If you are a third party settling payments in virtual currency on behalf of merchants, don't forget about Form 1099-K.
- Gains or losses from sales or exchanges of virtual currency are capital or ordinary depending upon whether virtual currency is a capital asset in the hands of the taxpayer.

The News Release also contained this helpful reminder: If you don't properly report your virtual currency transactions, you can be audited, owe more taxes, maybe penalties and interest and, "in more extreme situations," subject to criminal prosecution. The News Release concluded with this sentence: "[More information can be found on IRS.gov.](#)"

I have three words in response to that concluding sentence: **No, it can't.**

A visit to the IRS website yields nothing more than access to the text of Notice 2014-21 itself. **And Notice 2014-21 isn't all that helpful.**

Don't just take my word for it. Ask the AICPA, TIGTA, and the ABA Section of Taxation.

AICPA Responds to the IRS

In June 2016 the American Institute of Certified Public Accountants, also known as the [AICPA](#), sent a [letter to the IRS in response to Notice 2014-21](#). The letter asked the IRS to provide further guidance on 10 specific topics not addressed by Notice 2014-21. These topics included how to value virtual currency, identification of virtual currency sold for the purposes of calculating gains and losses, the extent to which certain property transaction rules (such as section 1031 like-kind exchange provisions) apply to virtual currency, and a bunch of others.

The IRS response, to the best of my knowledge, was silence.

The TIGTA Recommendation Report

In the fall of 2016, the Treasury Inspector General for Tax Administration, also known as TIGTA, weighed in on the subject. [TIGTA issued a report](#) which contained three specific recommendations for the IRS with respect to virtual currency.

The second of the three suggested that the IRS

"provide updated guidance to reflect the necessary documentation requirements and tax treatments needed for the various uses of virtual currencies. The third suggested the revision

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The IRS response, set forth in the report itself, amounted to, Good ideas, we'll get around to them when we can.

The ABA Comments on Cryptocurrency

Most recently, the Section of Taxation of the American Bar Association, this past March 19, [sent a letter to the IRS containing the Section's recommendations](#) as to "the federal income tax treatment of cryptocurrency hard forks that have taken place in 2017".

A "hard fork" refers to a split in a cryptocurrency's underlying blockchain which causes holders of a cryptocurrency to receive an equivalent number of units of a new cryptocurrency created as a result of the split.

The Section suggested, among other things, that the hard fork be treated as an event of realization at the time the fork occurs and that the deemed value of the "forked coin" at the time of that realization event be zero, which would also be the taxpayer's basis in the forked coin.

It's only been a couple of weeks since the Section's letter. It might be unrealistic to expect the IRS to have responded quickly. But it strikes me as unseemly that the IRS would issue, just 4 days after the ABA letter, its News Release reminding taxpayers to report their virtual currency transactions (and threatening criminal prosecution to some of those who don't) while having ignored the pleas of taxpayers and their advisors for more guidance.

Or, to put it more succinctly, what **chutzpah**.

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