

IT'S OFFICIAL (SORT OF): VIRTUAL CURRENCY NEED NOT BE REPORTED ON FBARS

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Ever since virtual currencies such as Bitcoin appeared on the scene, a multitude of questions has followed in their wake concerning the tax treatment of these new types of assets. Over the past decade, the IRS has been slow to issue guidance to taxpayers on these issues.

Past IRS Guidance to Taxpayers

But for high-level commentary in [Notice 2014-21](#) (issued March 25, 2014), which stated that the IRS regarded virtual currency as property, and [Revenue Ruling 2019-24](#) and a series of [Frequently Asked Questions](#) (both published on October 9, 2019, with an update to the FAQs coming out this past December), the IRS was virtually silent on the topic.

The Treasury Department office known as "FinCEN" (short for the Financial Crimes Enforcement Network) has also, from time to time, weighed in on certain legal topics relating to virtual currency. FinCEN, for example, issued lengthy published guidance in [March 2013](#), and again in [May 2019](#).

One question that has – until now – remained unanswered is whether someone who holds virtual currency in an account outside the United States must report the account on FinCen Form 114, more

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commonly known as the FBAR, an information form requiring taxpayers to report certain interests in foreign financial accounts. The FBAR has become more widely known in recent years because of the IRS's attention on combatting taxpayers who avoid or evade tax through the use of offshore bank accounts. The FBAR requirement comes about as a result of a law called the Bank Secrecy Act, and FinCEN has primary responsibility for enforcing the Bank Secrecy Act.

Around March of last year, information (or rumors??) circulated around the internet that FinCEN had advised the American Institute of Certified Public Accountants that taxpayers were not required to report on the FBAR virtual currency held in an offshore account. I searched high and low for a document corroborating this rumor and could not find anything, although one of my contacts at the AICPA told me it was true.

United States Government Accountability Office Report

Well, last week, the United States Government Accountability Office issued a report called, "[Virtual Currencies: Additional Information Reporting and Clarified Guidance Could Improve Tax Compliance](#)." Attached as an exhibit to that report is a letter from FinCEN, dated January 22, 2020 and signed by FinCEN's director, Kenneth A. Blanco.

The letter states, "Currently, the FBAR regulations do not define virtual currency held in an offshore account as a type of reportable account For that reason, at this time, virtual currency held in an offshore account is not reportable on the FBAR."

The letter cautions, however, that "FinCEN . . . in consultation with the IRS, continues to evaluate the value of incorporating virtual currency held offshore into the FBAR regulatory reporting requirements."

What does this line mean? To me, it means FinCEN reserves the right to change its mind.

So there you have it. Unanswered questions remain, including this one:

What about Form 8938, a form that somewhat, but not completely, overlaps the information required on an FBAR?

It might be tempting to conclude that Director Blanco's statement should cover that form, but that might be a questionable conclusion given that the IRS, and not FinCEN, decides what Form 8938 must contain.

Perhaps some day a letter attached as an exhibit to a future GAO report will answer this question. Perhaps.

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