

Cryptocurrencies and Tax

One of the core motivations for creating Bitcoin was to create an alternative monetary system outside the province of existing governments and financial institutions. Yet, each person who uses Bitcoin or any other cryptocurrency physically lives in a sovereign nation, and is subject to that nation's laws. The power to tax is amongst the most fundamental sovereign powers, and governments have been working over the past decade to determine how to treat cryptocurrencies from a tax perspective.

This week, we will examine the still unsettled U.S. landscape around tax and cryptocurrencies.

READINGS:

Kathleen R. Semanski, *Income, From Whatever Exchange, Mine, or Fork Derived: The Basics of U.S. Cryptocurrency Taxation*, 37 No. 6 Banking & Fin. Services Pol'y Rep. 8 (2018). (available on Westlaw).

IRS Guidance 2014-21 on the taxation of virtual currencies.

<https://www.irs.gov/pub/irs-drop/n-14-21.pdf>

Letter to IRS Commissioner Koskinen from Senator Hatch, Congressman Brady and Congressman Buchanan, May 17, 2017.

https://waysandmeansforms.house.gov/uploadedfiles/coinbase_letter_hatch_bradley_buchanan.pdf

Jerry Brito, *IRS inaction on cryptocurrency can hurt taxpayers, but Congress can help*, CoinCenter Blog, August 21, 2018.

<https://coincenter.org/entry/irs-inaction-on-cryptocurrency-can-hurt-taxpayers-but-congress-can-help>

Letter to the IRS from Congressmen Brady, Schweikert, Wenstrup, Jenkins, and LaHood, September 19, 2018.

<https://coincenter.org/files/brady-letter-9-19-18.pdf>

Jeff John Roberts, *Why Bitcoin Splits Are Both a Cash Windfall and a Tax Nightmare*, Nov. 16, 2017.

<http://fortune.com/2017/11/16/bitcoin-cash-irs/>

Letter to IRS from American Institute of CPAs (AICPA), May 30, 2018.

<https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180530-aicpa-comment-letter-on-notice-2014-21-virtual-currency.pdf>

Comments to IRS Commissioner from American Bar Association, March 19, 2018.

<https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/031918comments2.authcheckdam.pdf>

Jeff John Roberts, *IRS Wins Bitcoin Fight, Gets Access to 14,000 Coinbase Accounts*, Fortune, November 30, 2017.

<http://fortune.com/2017/11/29/irs-coinbase/>

United States v. Coinbase, Inc., 2017 WL 5890052, U.S. District Court, N.D. California (2017). (available on Westlaw).

REFLECTION QUESTIONS

- 1) How does the IRS treat cryptocurrencies under its 2014 guidance? What are the consequences of treating cryptocurrencies as property rather than currency? What are the practical realities involved in complying with this tax categorization?
- 2) What is the argument that gains from cryptocurrencies are taxable?
- 3) Why is there so much confusion about how taxpayers should treat cryptocurrencies in their tax filings? What are some of the big open questions?
- 4) What have been some of the proposed ways of resolving big open questions, such as the treatment of hard forks?
- 5) How common is it for cryptocurrency owners to pay taxes in accordance with IRS requirements? What factors are behind the low rate of compliance? What are the implications for governments of tax avoidance in this area?
- 6) What is the core issue in *U.S. v. Coinbase*? What was the outcome? What reasoning supported the outcome? What are the larger implications of this case? What open questions remain?