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IRS Not Contemplating Separate Voluntary Disclosure Program to Assist Taxpayers Who've Not Reported Cryptocurrency Income

A separate voluntary disclosure program to assist a significant number of taxpayers who have failed to report income resulting from transactions involving virtual currency will likely not be available according to a recent statement made by an IRS official. As a result, taxpayers who have failed to report these transactions will need to consider other options to address these issues in the wake of the IRS's announced enforcement initiative on these transactions.

Chatter that the IRS was going to implement a voluntary disclosure program directed towards virtual currency transaction reporting were dealt a significant blow at the International Tax Symposium held in Houston in early November when Daniel N. Price of the IRS Office of Chief Counsel said "[t]he IRS is not contemplating a separate program related to offshore [virtual] currencies." Indeed, many practitioners felt that a logical next step for the IRS would be to offer taxpayers a way to come back into compliance through a disclosure initiative similar to the program the IRS offered to taxpayers who had undisclosed foreign bank accounts.

Over the last several years, the IRS has become aware of a staggering non-compliance regarding the failure of individuals to report income from cryptocurrency transactions on their tax returns. In 2014, the IRS provided written guidance regarding the taxation of virtual currency transactions, including the proper tax treatment

of cryptocurrency received for services or gains/loss on the sale of cryptocurrency. The 2014 guidance also explained how consumers and businesses that regularly use cryptocurrency to buy goods or pay employees may have a significant number of taxable events each year. This guidance, however, has had little effect. According to 2017 data from the IRS, fewer than 1,000 taxpayers reported virtual currency transactions on tax returns.

To address this problem, the IRS has announced that cryptocurrency enforcement is a high priority, and following the playbook from the successful Swiss Bank program, issued a John Doe summons to a major virtual currency exchange. As a result, the IRS will obtain information pertaining to tens of thousands of cryptocurrency account holders, which could be used to conduct civil audits and commence criminal investigations. Further, in July 2018, the IRS Large Business and International Division announced a campaign (*i.e.*, an initiative to conduct audits) focused

on cryptocurrency transactions. The IRS has also recently announced the hiring of 250 new special agents.

Accordingly, taxpayers with unreported virtual currency transactions should seek assistance from experienced tax counsel who can navigate the various paths of coming back into compliance and assist with the collection of any records to be prepared for any audit. While a special voluntary disclosure program may not be available, the IRS still offers a domestic voluntary disclosure program that enables taxpayers to come back into compliance in a manner that mitigates the risk of criminal prosecution. In some cases, the IRS will discount the penalties when individuals voluntarily amend their prior years' tax returns. The time to address these issues, though, is now.

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