

Tax, Benefits, and Private Client



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FinCEN Announces Plan to Require U.S. Persons to Report Foreign-Held Virtual Currency on Foreign Bank Account Reporting Forms

Individuals who own virtual currency should consult with a tax professional to determine if their virtual currency is subject to a reporting requirement.

On December 31, 2020, the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Treasury Department, issued an [advisory](#) stating that it intends to include accounts holding virtual currency as a type of reportable account on FinCEN Form 114, commonly referred to as the foreign bank account reporting (“FBAR”) form. The end-of-year advisory stated as follows:

Report of Foreign Bank and Financial Accounts (FBAR) Filing Requirement for Virtual Currency FinCEN Notice 2020-2 Currently, the Report of Foreign Bank and Financial Accounts (FBAR) regulations do not define a foreign account holding virtual currency as a type of reportable account. (See 31 CFR 1010.350(c)). For that reason, at this time, a foreign account holding virtual currency is not reportable on the FBAR (unless it is a reportable account under 31 C.F.R. 1010.350 because it holds reportable assets besides virtual currency). However, FinCEN intends to propose to amend the regulations implementing the Bank Secrecy Act (BSA) regarding reports of foreign financial accounts (FBAR) to include virtual currency as a type of reportable account under 31 C.F.R. § 1010.350.

Individuals with cryptocurrency held outside the United States should be prepared to respond to these rules.

Under the FBAR reporting rules, U.S. persons who hold signature authority or control over foreign bank accounts whose aggregate value exceeds \$10,000 at any time during the calendar year must file a FinCEN Form 114 (as well as potentially other IRS forms) reporting the existence of this account (or these accounts). If the IRS determines that an individual’s failure to file a FinCEN Form 114 was “willful,” the individual can face civil and criminal penalties including a civil penalty of up to 50 percent of the **balance** of the undisclosed foreign account (in addition to assessments of unpaid taxes and other penalties).

Given the volatility of cryptocurrency, small amounts of cryptocurrency can easily exceed that \$10,000 threshold and trigger an obligation to file FBARs. U.S. persons who own cryptocurrency should determine if their holdings will trigger an FBAR filing requirement.

GROWING TREND TOWARD DISCLOSURE OF VIRTUAL CURRENCY

This change to the FBAR reporting rules is part of an effort by the Treasury Department to improve transparency in virtual currency reporting. Enforcement of the FBAR reporting requirement has been the centerpiece of the IRS's compliance and enforcement efforts. This announcement is one of many recent actions taken by both FinCEN and the IRS to increase compliance in this area. Of note:

- In July 2019, the IRS began sending "educational letters" to U.S. taxpayers whom the IRS suspected had failed to accurately report cryptocurrency transactions. These educational letters were issued after the IRS prevailed in a "John Doe" summons proceeding in federal court against Coinbase, a large cryptocurrency wallet. As a result of that court ruling, Coinbase identified tens of thousands of U.S. taxpayers who had U.S. wallets that held/hold their cryptocurrency.
- In October 2020, FinCEN issued a notice of proposed rulemaking seeking to amend the "Travel Rule," which collects account data for international transactions. Under the Travel Rule, money service businesses ("MSB") (e.g., cryptocurrency wallets) and other financial institutions must collect information about the transmitter's identity, the amount and date of the transmission and the identity of the recipient. Likewise, the recipient MSB or other financial institution must retain information about the recipient's identity. The new rule requires that this information be collected for any international transaction over \$250.

- In December 2020, FinCEN issued a notice of proposed rulemaking requiring MSBs and other financial institutions to collect information about certain transactions over \$3,000 (or \$10,000 in the aggregate) when the institution is sending the cryptocurrency to a counterparty whose account is held by a different MSB or other financial institution.

This December 31 announcement, coupled with these prior actions taken by the IRS and FinCEN, highlight the ongoing need for individuals who have cryptocurrency to be vigilant with regard to their reporting requirements. The decision to treat cryptocurrency as subject to FBAR reporting significantly increases the potential penalties against those who fail to properly identify these accounts to the Treasury Department. Individuals with cryptocurrency holdings should consult with a tax professional.

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