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Bitcoin Tax Tips For Congress And Everyone Else

[Congress](#) wants to know all about Bitcoin, the popular virtual currency. Meantime, [Bitcoin Surges To \\$600 Heading Into Senate Hearings](#). With no banking or government involvement, Bitcoin is [more anonymous than cash](#). And market reactions make it a darling. It's pushing the boundaries of its digital currency niche.



(Photo credit: antanacoins)

What about taxes? Back to earth, Bitcoin. Sure, it may be attractive for someone who intentionally tries **not** to pay tax. But our tax system is built on self-reporting. And most people report their income to the IRS regardless of whether it shows up on a [Form W-2 or 1099](#).

Even so, as Bitcoin becomes ever more popular, it's going to become more mainstream. Already a Government Accountability Office [report](#) says the IRS could do a better job telling people they have to pay tax on Bitcoin transactions. Bitcoin is peer-to-peer so there's no central bank or government. Still, if you swap one product or service for another, the IRS taxes it, as the IRS explains at its [Bartering Tax Center](#).

The Treasury unit called [FinCEN](#), the Financial Crimes Enforcement Network, already has rules about Bitcoin. [FinCEN rules](#) say Bitcoin exchanges

and Bitcoin miners should register as Money Services Businesses and comply with anti-money laundering regulations. Ordinary Bitcoin users don't have to register just to purchase goods and services.

But will Forms 1099 and other nettlesome signs of tax civilization soon bite Bitcoin? Maybe, but the tax rules seem pretty clear. If you provide services or sell goods for Bitcoin, you have income. If you exchange Bitcoins for cash, whether you have gain may depend on whether Bitcoin is really currency or commodity.

The latter seems more likely, so you have gain to the extent of any appreciation in your Bitcoin. Income is income, whether in cash or in kind. Bitcoin may be accepted as currency and may not be easy to trace. However, when you barter or swap one item for another, both parties have tax consequences even if one party wants credit for later. How to classify Bitcoin?

Transactions in Bitcoin could be property, barter, foreign currency, or a financial instrument. Barter seems the most logical treatment, but not everyone agrees. And investing excitement doesn't encourage calm reflection. Facebook Co-founders Tyler and Cameron Winklevoss [announced](#) an SEC filing for the "[Winklevoss Bitcoin Trust](#)." It would allow institutional investors to dabble in the virtual currency without having to buy it directly from a Bitcoin Exchange. See [Overview](#).

In [Are Cryptocurrencies 'Super' Tax Havens?](#), [Omri Y. Marian](#) notes the pressures now facing financial institutions to hand over account holders, withhold and remit taxes. Indeed, FATCA is forcing foreign banks worldwide to report on American account holders. In some cases, Bitcoin may be an alternative.

The fact that Bitcoin is not dependent on the existence of financial intermediaries is key. However, more government regulation seems inevitable once the authorities recognize Bitcoin's potential for tax evasion. Since FinCEN already has [rules about Bitcoin](#), the IRS is likely to follow.

In fact, IRS Forms 1099 can't be too far off. If you pay a consultant with a new car or in Bitcoin you may have to issue a Form 1099 for that value. If you are paying wages with Bitcoin, you can hardly withhold some of the Bitcoin and send it to the IRS.

If you exchange Bitcoins for cash, whether you have gain may depend on whether Bitcoin is really currency or commodity. Most casual barter exchanges probably aren't on the tax radar. Most Bitcoin transactions aren't either. But even [simple trades trigger multiple tax rules](#).

If you make a trade, how will the IRS know about your swap? They probably won't unless you receive a [Form 1099](#). Still, the IRS says you must report any income on your return regardless of whether you receive a Form 1099. For the time being, that may be sufficient. But if Bitcoin's fortunes continue to rise, we should expect the IRS to issue rules to help nudge those who might forget to self-report.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.