

DEC 10, 2017

By Robert W. Wood

IRS Bitcoin Hunt Ramps Up, But Tax Amnesty Could Follow: Expert Blog



EXPERT TAKE

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Don't get excited or fearful just yet. The [IRS](#) has not yet announced a tax amnesty for people who failed to report their gains and income from Bitcoin and other virtual currencies. But there has long been speculation that it might happen. And given recent developments, we may now be one step closer.

It is well-known that the [IRS is looking hard at Bitcoin and other cryptocurrency transactions](#), hoping to scoop up some tax dollars. Frighteningly, much of the IRS attention now appears to be focused on the criminal end of the spectrum. IRS Criminal Investigation Agents evidently are being trained in the field.

The IRS Criminal Investigation Division not only ordered training for its agents. It also entered into a contract with Chainalysis for tracking. We may expect this area to unfold materially in the coming years and not in a happy way.

A Justice Department attorney recently noted that IRS scrutiny on tax reporting could prompt new procedures for users to get right with the IRS. Mark F. Daly, senior litigation counsel in the Justice Department Tax Division, made the remarks in a Nov. 3, 2017 symposium held by the State Bar of Texas Tax Section. It was released by webcast on Nov. 9.

Mr. Daly also noted the widely publicized statistic that only 807 people reported Bitcoin to the IRS between 2013 and 2015. In contrast, there are hundreds of thousands of Coinbase account holders and climbing all the time. The sheer transaction volume of all those property transactions is frankly staggering. The IRS is not blind to this.

Then there is the Coinbase summons case, mentioned below. There have been more than a few comparisons raised with the Swiss and other offshore bank controversies. For models on special amnesty programs, the IRS has good examples. The Swiss bank controversies of a decade back prompted two programs, and they are both still in existence.

If you have undisclosed offshore accounts or income, you can enter the IRS program called the [Offshore Voluntary Disclosure Program](#), or OVDP. It involves filing up to eight years of amended tax returns, other disclosure forms, and paying taxes, interest and penalties. But it is formulaic get out of jail free card. What's more, you can fix your *other* tax problems too, even if they have nothing to do with offshore income or accounts.

For less serious offshore tax problems, the second IRS program is called the [Streamlined program](#). It involves only three amended tax returns, up to six years of FBAR foreign account reports, and paying taxes and interest you owe. The penalties are much smaller than the OVDP. Moreover, if you live outside the US, you don't even pay *any* penalties in the Streamlined program.

These could be helpful blueprints. Way back in 2013, the Government Accounting Office (GAO) said that the [IRS needed to ramp up for digital currencies](#). The IRS started watching such issues in 2007. In 2009, the IRS posted information on its website on the tax consequences of virtual economy transactions.

However, other than the [2014 "it is property" notice](#), the IRS has not provided taxpayers with more information. Some kind of amnesty seems almost inevitable, eventually. After all, IRS efforts to find untaxed offshore funds hidden in offshore accounts were wildly successful. Some of it was clearly hardball. The IRS has prosecuted big foreign banks for helping Americans stash money and assets overseas. The IRS collected handsome and in some cases punitive settlements.

The IRS has also prosecuted high-profile individuals for hiding their money in offshore accounts. The IRS used whistleblowers and foreign bankers who had to take deals or go down with the ship. The IRS also strong-armed foreign governments, as well as foreign banks to make them turn over more data about US taxpayers holding accounts overseas.

But perhaps the greatest coup in the IRS's strategy was a type of limited amnesty. The IRS has won big. It has collected more than \$10 bln in these efforts. The money train isn't done yet either. Remember, it all started with the John Doe Summons to UBS, the Swiss bank. It was a John Doe Summons against Coinbase too.

Both the IRS and Coinbase have declared partial victories in that dispute. But some records are going to start flowing like a river. US Magistrate Judge Jacqueline Scott Corley [ruled](#) that the exchange must supply the tax agency with the identities of all users in the US who conducted at least one Bitcoin transaction equivalent to at least \$20,000 between 2012 and 2015. The order says that a "reporting gap" gave the IRS legitimate reason to demand the information.

Magistrate Corley wrote in her judgment:

"That only 800 to 900 taxpayers reported gains related to Bitcoin in each of the relevant years and that more than 14,000 Coinbase users have either bought, sold, sent or received at least \$20,000 worth of Bitcoin in a given year suggests that many Coinbase users may not be reporting their Bitcoin gains."

With the order, Coinbase will be required to turn over the names, addresses and tax identification numbers on 14,355 account holders out of its nearly six mln customers. The UBS release that started the Swiss avalanche was only 4,250 names. The Court has ordered Coinbase to produce the following customer information: (a) taxpayer ID number, (b) name, (c) birth date, (d) address, (e) records of account activity, including transaction logs or other records identifying the date, amount, and type of transaction (purchase/sale/exchange), the post transaction balance, and the names of counterparties to the transaction and (f) all periodic statements of account or invoices (or the equivalent).

This has to be at least unnerving to affected taxpayers. At least this information is limited to *those accounts with at least \$20,000 in any one transaction type (buy, sell, send, or receive) in any one year from 2013 to 2015*. No other records must be produced now. Still, it seems highly unlikely that this is the end of the story, with Coinbase or more generally.

Bitcoin values have gone meteoric. It seems likely that the IRS will start formulating some way to offer carrots to taxpayers who have not been reporting their Bitcoin and other digital currency gains. So, stay tuned. In the meantime, the latest in the Coinbase saga can be read [here](#).

Bio: Robert W. Wood is a tax lawyer with a nationwide practice in the US. The author of more than 30 books, including "Taxation of Damage Awards & Settlement Payments." Often listed among the best tax lawyers in America, Rob Wood has broad experience in corporate, partnership and individual tax matters.