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The Real Undiscovered Godfather In Bitcoin: FinCEN

The controversy roiling the [Bitcoin](#) community continues with the outing and then cloaking of the man [fingered by Newsweek](#) as Bitcoin's Louis Pasteur. But the unassuming Dorian S. Nakamoto, a Japanese-American man in California, [denied](#) having anything to do with the digital currency in an [interview with the Associated Press!](#)

So who is Bitcoin's [Keyser Söze](#), or if you prefer, its [Walter White](#)? As the search for the inventor, er founder, er messiah continues, I'd say the IRS and [FinCEN](#), the Financial Crimes Enforcement Network. Well, neither may have *founded* Bitcoin, but either or both could turn out to be its Keyser Söze. It's not [Warren Buffett](#), though he did say [Bitcoin is "not a currency."](#)

FinCEN is on to Bitcoin, requiring some to register as Money Service Businesses. FinCEN is part of the Treasury Department with a mission of safeguarding the financial system, combating money laundering and promoting national security. That's a mouthful, and most regular people now seem to worry more about their filings with FinCEN (we're talking [FBARs](#)) than with the IRS.

The [FinCEN rules](#) say Bitcoin exchanges and Bitcoin miners should register as Money Services Businesses and comply with anti-money laundering regulations. Given the pressures now facing financial institutions to hand over account holders, withhold and remit taxes, expect more from FinCEN and the IRS. U.S. taxpayers must report [worldwide income](#) on their tax returns.

Plus, foreign accounts aggregating more than \$10,000 at any time during the year, trigger a FinCEN [Form 114](#), also known as an [FBAR](#). That goes to FinCEN, not the IRS. Speaking of the IRS, the peer-to-peer nature of Bitcoin doesn't obviate taxes.

If you swap one product or service for another, tax is due, as the IRS explains at its [Bartering Tax Center](#). 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 currency or commodity.

A key question is whether you are taxable on the appreciation in Bitcoin you bought at \$20 that is now worth \$700. Currency wouldn't be, and [Japan says Bitcoin is not a currency](#). The IRS remains frustratingly mum about what it thinks Bitcoin is. Transactions in Bitcoin could be property, barter, foreign currency, or a financial instrument. Barter seems most logical, but not everyone agrees.

Some suggest marking Bitcoin to market each year, which would be a good deal for the IRS. Essentially, holders would value and report gain or loss at the end of each year even if they continue to hold it. But until the IRS rules differently, if you are holding highly appreciated Bitcoin, you probably won't be taxed until you dispose of it.

That should be easy to track if you buy Bitcoin for cash and then sell it for cash. The difference is income, either capital or ordinary. But if you swap for either services or goods on either or both ends, determining value may not be so easy. Bitcoin may be accepted as currency and may not be easy to trace, similar to trades and barterers.

The IRS is after them too. When you barter or swap one item for another, [both parties have tax consequences](#). Even straight up trades are taxed. Earning trade or barter dollars through a barter exchange is considered taxable income, just as if your product or service was sold for cash. Most Bitcoin transactions probably aren't on the tax radar. The IRS may not know about your swap 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](#).

How will the IRS come out on all of this? The more Bitcoin is mainstream, the more the IRS will care.

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.