

Tax Notes

Foreign Cryptocurrency: US FBAR and FATCA Reporting Requirements

By Evgenia Belyavskaya, EA, Partner

While U.S. individuals and businesses have long dealt with Foreign Bank and Financial Account Reporting (FBAR) and Foreign Account Tax Compliance Act (FATCA) reporting requirements relating to foreign bank accounts and certain foreign assets, one area that still may be confusing to many is the treatment of cryptocurrency. Given cryptocurrency's novel status, how does it fit into these rules? Does it need to be reported? Could the current rules be in for a change?

Cryptocurrency has been excluded from FBAR requirements to date. However, with the recent proposed regulations, FinCEN (Financial Crimes Enforcement Network) is looking to include foreign cryptocurrency accounts in FBAR reporting. An example of such holdings may include Bitcoin, Ripple or Ethereum that are held in the accounts outside of the United States.

Read on for more information about how the changing standards could affect your reporting.

Current FBAR Reporting Requirements

The FBAR reporting requirements include certain types of reportable foreign accounts:

- Bank account
- Securities account
- Other financial account
- Accounts with mutual fund or similar pooled fund
- Other investment account

To satisfy the FBAR requirement, a U.S. taxpayer uses Form FinCEN114 (which is **not** an IRS form, even though it is generally filed alongside a tax return). The due date to file FBAR is October 15 of the year following the reportable tax year.

The above foreign accounts become reportable on a U.S. taxpayer's FBAR form when – in the aggregate – the maximum value on all accounts at any point during the year exceeds **\$10,000**.

In Notice 2020-2, FinCEN has confirmed that the current FBAR regulations do not define a foreign account holding virtual currency as a type of reportable account. However, FinCEN in Notice 2020-2 indicated that it intends to propose an amendment to the regulation which will include virtual currency as a type of reportable account for the FBAR. This leaves filers with a clear position to not report these accounts now, but one that could change at any time.

It is interesting to note, however, that if the foreign account holding cryptocurrency is “hybrid,” the account could be reportable. A hybrid account would be one that holds some other currency (i.e., Euros) or other reportable assets alongside the virtual currency.

Current FATCA Reporting Requirements

Generally, every bank account that is reportable for FBAR purposes would be reportable for FATCA purposes if the value of all accounts exceeds the threshold imposed by FATCA rules. Unlike the FBAR, the FATCA reporting requirements threshold starts at a **\$50,000** value of the foreign financial assets and

increases depending on the physical presence of the taxpayer and their filing status. The FATCA requirement is fulfilled by filing Form 8938 as part of a taxpayer's U.S. individual income tax return.

Specified Foreign Financial Asset

A reportable account/asset is referred to as a **specified foreign financial asset**.

Specified foreign financial assets include **financial accounts** maintained by a foreign financial institution and include the following **foreign financial assets** if they are held for investment and not held in an account maintained by a financial institution:

- Stock or securities issued by someone that is not a U.S. person (including stock or securities issued by a person organized under the laws of a U.S. possession).
- Any interest in a foreign entity.
- Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person (including a financial contract issued by, or with, a counterparty that is a person organized under the laws of a U.S. possession).

Virtual currency or foreign currency is not included in the above definitions of a specified foreign financial asset. Frequently, crypto accounts are not even held with financial institutions. Furthermore, cryptocurrency is not considered currency at all for purposes of the Internal Revenue Code. Based on IRS Notice 2014-21, it's an intangible asset. However, much like the hybrid account rules for the FBAR, since cryptocurrency can be held in a foreign financial account, it could potentially play a role in valuing that account for FATCA purposes.

While there is no clear guidance that virtual currency is a specified foreign financial asset, there is also no clear guidance excluding it. Thus, for the reporting of virtual currency for FATCA purposes, we recommend reviewing each foreign account that holds cryptocurrency on a case-by-case basis.

PKF O'Connor Davies Guidance

Individuals and businesses with cross-border transactions should be aware of the potential non-compliance issues and should evaluate their foreign cryptocurrency holdings on an ongoing basis when transacting using virtual currency.

Contact Us

Our International Tax Group at PKF O'Connor Davies is available to assist with U.S. tax compliance of cryptocurrency foreign assets or any other delinquent U.S. tax filings related to foreign digital currency holdings. For further assistance, please reach out to your PKF O'Connor Davies client service team or Evgenia Belyavskaya at ebelyavski@pkfod.com.

Our Firm provides the information in this e-newsletter for general guidance only and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.