

# F.B.A.R. UPDATE: WHAT YOU NEED TO KNOW

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## Tags

Tax Compliance  
F.B.A.R.

## NOTWITHSTANDING OFFICIAL COMMENTS, BITCOIN EXCHANGE ACCOUNTS SHOULD BE REPORTED ON F.B.A.R.'S

As noted in our previous issue, the I.R.S. clarified the tax treatment of Bitcoin, ruling that Bitcoin will not be treated as foreign currency but will be treated as property for U.S. Federal income tax purposes. As a result, the I.R.S. ruling may allow for capital gains treatment on the sale of Bitcoin. However, the ruling did not address whether Bitcoin is subject to Form 114 reporting.

This month, pursuant to a recent I.R.S. webinar, an I.R.S. official stated that Bitcoins are not required to be reported on this year's Form 114. However, the official noted that the issue is under scrutiny, and caveated that the view could be changed in the future.

Notwithstanding the official's comments, whether Bitcoin is a reportable asset will depend on the nature and manner it is held.

- If Bitcoin is treated as property (not currency), the situation is analogous to a U.S. person who directly holds non-U.S. real property or any other valuable asset, which is not a foreign financial account.
- If Bitcoin is held through an entity (e.g., a (non-grantor) trust), the situation is analogous to the "look-through" rule, in which case reporting is required only with respect to the entities foreign financial accounts if and to the extent the indirect holder has control of the entity (using a greater than 50% test).
- However, if and to the extent a U.S. person holds Bitcoin or shares of an entity that holds Bitcoin through, e.g., an offshore custodial account or other financial account, the account will likely be an F.B.A.R. reportable asset.

An interesting question involves exchange accounts. Exchanges that convert Bitcoin in and out of other currencies function similarly to brokerages and offer a variety of financial services similar to banks or other financial institutions. Without official guidance that can be relied upon, we would advise our clients to disclose these accounts under a protective filing. *United States v. Hom*, discussed above, is noteworthy. The court ruled an online poker player was liable for penalties after concluding that online poker sites PokerStars.com and PartyPoker.com operated

as commercial banking financial institutions under the Bank Secrecy Act, and therefore, non-U.S. accounts held with them were F.B.A.R. reportable assets.

## **MUTUAL FUNDS IN BROKERAGE ACCOUNTS DON'T HAVE TO BE SEPARATELY REPORTED ON F.B.A.R.'S**

Mutual funds held in brokerage accounts generally don't have to be separately reported on the FinCEN Form 114. Therefore, an I.R.S. official recently confirmed that the taxpayer would be reporting only on the brokerage account that holds the mutual fund. However, if the mutual funds and the brokerage accounts were separate, they would each require separate F.B.A.R.'s. This would also be true of other types of financial holdings in the brokerage account.

## **CHILD FILING REQUIREMENTS**

Recent updates to the instructions to Form 114 (06/11/2014) provide that, in general, a child is responsible for filing his or her own F.B.A.R. report. If a child cannot file his or her own F.B.A.R. for any reason, such as age, the child's parent, guardian, or other legally responsible person must file it for the child. In addition, if the child cannot sign his or her F.B.A.R., a parent or guardian must electronically sign the child's F.B.A.R. and in item 45 Filer Title enter "Parent/Guardian filing for child."