

FinCEN Announces Intention to Require Foreign Bank Account Reporting (FBAR) for Virtual Currency Accounts

PROFESSIONALS

John Samtoy

John Samtoy, International Tax Partner

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PRACTICE AREAS

International Tax

Key Takeaways

- The Financial Crimes Enforcement Network (FinCEN) recently indicated that Treasury plans to amend the Bank Secrecy Act (BSA) regulations
- U.S. persons with more than \$10,000 in foreign bank accounts—including cryptocurrency—are required to report those holdings annually on a foreign bank account report (FBAR).
- Foreign bank account reporting is critical where required. The penalties for failing to file are steep.

On December 31, 2020 the Financial Crimes Enforcement Network (FinCEN) issued a notice ([Notice 2020-2](#)) indicating that Treasury plans to amend the Bank Secrecy Act (BSA) regulations. The intended change is that holders of offshore virtual currency accounts (aka cryptocurrency) must disclose those holdings on a foreign bank account report (FBAR).

FinCEN is a bureau at the U.S. Department of the Treasury that oversees FBAR reporting among other activities. At a high level, FBAR reporting rules require that U.S. persons, who have financial interests or signature authority over foreign bank and financial accounts exceeding \$10,000, file a Form 114. The Form 114 discloses each foreign bank or financial account owned by the U.S. person and the highest balance for each account during the reporting year.

It's important to be diligent about FBAR reporting because the penalties for a missed FBAR are significant. The default penalty is \$10,000 and the penalty can go as high as 50% of the value of the account if the failure to report is willful. In

the case of a willful violation, criminal penalties (jail time) can also be imposed.

Virtual currency held offshore must be reported

FinCEN's [Notice 2020-2](#), indicates that FinCen intends to propose an amendment to the BSA regulations that would require anyone holding foreign virtual currency accounts to report those holdings on their FBAR. The notice is short on details, including the timing of the proposed amendment and for what year the amendment could be effective. If you hold virtual currency offshore, it might be a good idea to ensure that all reporting requirements have been satisfied now.

Virtual currency (i.e. cryptocurrency) has been in the spotlight for some time and it remains an area of significant concern for many governments, including the U.S. The IRS Large Business and International Division (LB&I) has an active compliance campaign targeting virtual currency transactions. That campaign includes outreach to taxpayers and targeted examinations of taxpayers who may have virtual currency transactions.

U.S. Treasury Secretary, Janet Yellen, has indicated that she believes that cryptocurrency is a “[particular concern](#)” when it comes to tools that terrorists use to finance their illicit operations. She also noted that the U.S. should look closely at how to “[encourage \[crypto’s\] use for legitimate activities while curtailing their use for malign and illegal activities.](#)” With Yellen’s comments, it is possible that we see more attention focused on virtual currency prospectively.

Holders of virtual currency should be diligent in ensuring that all of their reporting requirements associated with that virtual currency are met. This is especially true given the notice issued by FinCEN, the attention being given to virtual currency, and the potential for increased reporting requirements.

If you have any questions about reporting requirements for your virtual currency or FBAR reporting, please do not hesitate to contact us.