

Section of Taxation

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March 19, 2018

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Tax Treatment of Cryptocurrency Hard Forks for Taxable Year 2017

Dear Acting Commissioner Kautter:

Enclosed please find comments regarding the federal income tax treatment of cryptocurrency hard forks that have taken place in 2017 (“Comments”). These Comments are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association.

The Section of Taxation will be pleased to discuss the Comments with you or your staff.

Sincerely,

Karen L. Hawkins
Chair, Section of Taxation

Enclosure

cc: Hon. William M. Paul, Acting Chief Counsel and Deputy Chief Counsel
(Technical), Internal Revenue Service
Hon. David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury
Thomas West, Tax Legislative Counsel, Department of the Treasury
Rochelle Hodes, Associate Tax Legislative Counsel, Department of the Treasury
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**AMERICAN BAR ASSOCIATION
SECTION OF TAXATION
COMMENTS ON THE TAX TREATMENT OF HARD FORKS**

The following comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Omri Marian, Vice Chair of the Section’s Teaching Taxation Committee (the “Committee”), and Kerry Ryan, Chair of the Committee, had the principal responsibility for preparing these Comments. Substantive contributions were made by Adam Chodorow, James Creech, Elizabeth Crouse, Diane Ring, and Lisa Zarlenga. The Comments were reviewed by Lisa Zarlenga, Chair of the Section’s Committee on Government Submissions.

Although some of the members of the Section who participated in preparing these Comments have clients who may be affected by the federal income tax principles addressed herein, no such member, or the firm or organization to which such member belongs, has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: March 19, 2018

Executive Summary

In 2014, the Internal Revenue Service (the “Service”) issued Notice 2014-21 (the “2014 Notice”),¹ addressing the federal income tax treatment of “virtual currencies.” The Section offered comments to the 2014 Notice in a letter dated March 24, 2015.² Since then, several important developments in the cryptocurrency³ economy have taken place that are not addressed in the 2014 Notice. These developments raise important federal income tax questions, and we appreciate the opportunity to respond to the Service’s request for comments on these issues.

An important issue, and the focus of these Comments, is the proper federal income tax treatment of a cryptocurrency hard fork (“Hard Fork”). A Hard Fork is a “change to the software of the digital currency that creates two separate versions of the blockchain with a shared history.”⁴ After a Hard Fork takes place, the original owner of the cryptocurrency retains its interest in the original coin and also has the right to use the forked coin. Hard Forks raise unique tax issues. Specifically, does a holder of a cryptocurrency that experiences a Hard Fork realize income for federal income tax purposes? If so, how much and when? The significant volatility in the exchange prices of cryptocurrency make valuation difficult and inconsistent among taxpayers.

As discussed further in these Comments, current law provides no clear answers to these questions. There are reasonable analogies to both taxable and nontaxable events. In light of the legal ambiguity, the significant valuation issues, and need for immediate guidance regarding the 2017 Hard Forks, the Section recommends that the Service consider issuing guidance that offers a temporary rule, in the form of a safe-harbor, to taxpayers who were able to transact in a forked currency as a result of a Hard Fork during the 2017 tax year. We recommend that such guidance prescribe the following:

1. Taxpayers who owned a coin that was subject to a Hard Fork in 2017 would be treated as having realized the forked coin resulting from the Hard Fork in a taxable event.
2. The deemed value of the forked coin at the time of the realization event would be zero, which would also be the taxpayer’s basis in the forked coin.

¹ Notice 2014-21, 2014-16 I.R.B 938.

² <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/032415comments.authcheckdam.pdf>.

³ These Comments also refer to virtual currency as “digital currency,” “cryptocurrency,” or “coins.”

⁴ David Farmer, *What is a Bitcoin fork?*, THE COINBASE BLOG (Jul. 27, 2017), <https://blog.coinbase.com/what-is-a-bitcoin-fork-cba07fe73ef1>.

3. The holding period in the forked coin would start on the day of the Hard Fork.
4. Taxpayers choosing the safe harbor treatment as set forth in the guidance would be required to disclose this on their tax returns.⁵
5. The Service would not assert that any taxpayer who availed themselves of the safe harbor treatment as set forth in the guidance has understated federal tax liability because of the receipt of a forked coin in a 2017 Hard Fork.
6. The Service, with input from the Section and other stakeholders, will continue to develop its position regarding the tax treatment for future Hard Forks, and such position may be different from the one noted above and will apply prospectively.

This temporary rule has the benefit of encouraging consistency among taxpayers with respect to 2017 Hard Forks, avoiding difficult timing and valuation issues (including the ability of taxpayers to benefit from hindsight depending on how the values fluctuated during 2017), and providing information to the Service regarding holders of the original and forked cryptocurrencies. Although the treatment may result in capital gain as opposed to ordinary income treatment, it preserves the full value of the forked coin for taxation when the taxpayer sells it. In addition, it restarts the holding period, thus resulting in sales occurring within a year being taxed as short-term capital gains.

The Section will continue to develop its position on the tax treatment of future Hard Forks and is considering other issues for comment in the cryptocurrency area. The Section looks forward to working with the Service on these issues.

⁵ The guidance could provide for a simplified disclosure procedure for taxpayers who may already have filed a 2017 return, but who otherwise have taken a position consistent with the guidance with respect to Hard Forks.

I. Hard Forks in General

Cryptocurrencies are digital tokens, the ownership of which is recorded on a decentralized ledger. Cryptocurrencies are held in “wallets,” which may be a type of hardware (*e.g.*, a device similar to a USB drive) or a type of software. Hardware wallets must be physically available to access certain security keys stored on the hardware that are required to control the disposition of the relevant cryptocurrency. Software wallets are just that: software stores the security keys that are required to control the disposition of the relevant cryptocurrency. Software wallets may be hosted in a variety of ways, including on the cloud, a desktop computer, or a mobile phone.

The security keys necessary to transfer cryptocurrency consist of a public key and a private key. Both are large strings of numbers that are mathematically linked to the wallet address. The private key is used to generate a “signature” for each blockchain transaction a user sends out. The private key is used to mathematically derive the public key, which is transformed with a hash function to produce the address that other people can see.

Cryptocurrencies generally may be traded for other cryptocurrencies or fiat currencies, for example the U.S. dollar, on exchanges that function much like stock exchanges. Cryptocurrency exchanges may also provide a software wallet in which users can store security keys for relevant cryptocurrencies. Trading on these platforms occurs in a manner analogous to trading in “street name” when an owner has an account with a large brokerage. That is, the exchange controls the owner’s security keys and conducts batch trades for multiple users. This is a high-level description of how some intermediaries operate, though there are numerous variations.

Because the software that runs the ledger generally is open-source, and the network of computers that verify transactions generally operates via consensus, the software can be modified if enough participants on the network agree to do so. Hard Forks, sometimes also known as “Chain Splits” or “Coin Splits,” are one example of such modifications. When a Hard Fork occurs, a new “branch” splits from the original ledger and is thereafter separately maintained. This means that the network of computers separates into subgroups, which separately verify transactions on the original ledger and the split or forked ledger. Those people whose ownership of a cryptocurrency was recorded on the original ledger maintain their ownership of the original cryptocurrency, but they are also entitled to claim ownership of the cryptocurrency maintained on the forked ledger. When an owner holds a cryptocurrency wallet directly (rather than through a custodial wallet), the owner does not actually receive anything new in a Hard Fork. Instead, the owner—once he or she has taken the necessary steps (as described

below)—is able to use the same private key to transact on each of the ledgers. If the owner uses his or her private key to transact in the original cryptocurrency, the network participants verifying transactions on the original ledger will add it to that ledger, but the network participants verifying transactions on the forked ledger will not recognize it. This enables the owner to use his or her private key separately to transact in the forked coin and the original coin. The ownership history of both the original and forked cryptocurrency trace back to the same block on the blockchain, but going forward, the ledger of each cryptocurrency is independent (*i.e.*, they are not interchangeable).

It may be helpful to compare Hard Forks with “soft forks,” which are more similar to a software upgrade. In a soft fork, the same blockchain is maintained (there is no split or branching), but some changes to the related software are made such that the blockchain functions somewhat differently after the soft fork. By analogy, a soft fork is more similar to the release of a new version of an existing variety of word processing software, for example, Microsoft Word. The new version typically recognizes documents created using the original version, but the original version may not recognize documents created using the new version unless the original software is updated.

There are many reasons for network participants to agree to Hard Forks. For example, one reason for Hard Forks is that users of the network agree that a fundamental upgrade to the ledger software is required. For example, on August 1, 2017, Bitcoin split into bitcoin (BTC) and bitcoin cash (BCH).⁶ The purpose in creating BCH was to allow for a quicker generation of forked coins, as well as other improvements. Nonetheless, both BCH and BTC remain in existence, and both enjoy considerable trust of the cryptocurrency community. In contrast, some forks are a response to user mistrust in the original coin. For example, in 2016, the Ethereum blockchain was split into two in response to a hacking attack that affected the original ledger. In that case, the value of the original coin (Classic Ethereum) and the volume of trading in it plummeted due to the loss of user trust, while the forked coin (Ethereum), which is viewed more favorably by the market, essentially usurped the original coin. Even though original owners of Ethereum owned both the original and forked coins on the day of the split, the original coins became nearly worthless in comparison on that day (though both still trade and the original coin has since reached a greater price than it had prior to the fork).

In the case of a Hard Fork, an owner of the original coin must take active steps in order to transact in the forked coin. An owner that holds the original coin in a basic wallet (whether hardware or software), generally must download new software to a computer to use the forked coin. This requires some level of technological sophistication

⁶ Other examples of Bitcoin chain splits include bitcoin gold in October 2017, bitcoin diamond in November 2017, and superbitcoin, bitcoin hot, and lightning bitcoin in December 2017.

and is inconvenient, but is not unduly burdensome for a reasonably experienced computer user. An owner that holds the original coin through certain other types of wallets is not required to download the software because the wallet service provider downloads the software, thus “supporting” the forked coin created in the Hard Fork. This is much easier for the average owner, but means that owners who use a custodial wallet service depend on the wallet service provider to permit them access to the forked coin.

For example, a few days before the BCH Hard Fork, Coinbase sent an e-mail to its customers stating that Coinbase has “no plans to support the Bitcoin Cash fork... Customers will not have access to, or be able to withdraw, bitcoin cash.”⁷ Only three days after the Hard Fork happened, Coinbase announced that it would support BCH, and would credit their customers’ accounts accordingly.⁸ Similarly, Xapo announced that customers had until December 14, 2017 to transfer or convert their BCH to BTC, or they would automatically convert it.⁹ Many owners and wallet service providers take no action to claim the forked currency until the security risks have been sufficiently evaluated and mitigated. Nonetheless, it is generally possible for an owner to transfer the original coin from one wallet that will not support a Hard Fork and into another wallet that will support the Hard Fork prior to the occurrence of the Hard Fork. In that manner, the owner generally should be able to go through the processes necessary to claim the forked coin, at least if the owner is aware that a Hard Fork is going to occur.

II. Potential Tax Treatments of Hard Forks

Hard Forks raise the question of whether owners of an original coin who become entitled to use a forked coin by reason of a Hard Fork, realize income. We believe reasonable arguments may be made both ways because Hard Forks may be analogized to existing taxable and nontaxable events.

A. Hard Fork as a Realization Event

The Supreme Court in *Commissioner v. Glenshaw Glass*¹⁰ liberally construed the term “gross income” as “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion,” reflecting Congress’ intent to tax

⁷ David Farmer, *Update for customers with bitcoin stored on Coinbase*, THE COINBASE BLOG (Jul. 27, 2017), <https://blog.coinbase.com/update-for-customers-with-bitcoin-stored-on-coinbase-99e2d4790a53>.

⁸ David Farmer, *Update of Bitcoin Cash*, THE COINBASE BLOG (Aug. 3, 2017), <https://blog.coinbase.com/update-on-bitcoin-cash-8a67a7e8dbdf>.

⁹ Xapo Bitcoin Cash Update, <https://support.xapo.com/xapo-bitcoin-cash-update>.

¹⁰ 348 U.S. 426, 431 (1955).

all gains except those specifically exempted. One could argue that the ability to use the forked coin in addition to the original coin represents such an accession to wealth.

In *Eisner v. Macomber*, the Supreme Court considered whether a pro-rata stock dividend paid to a common shareholder by a corporation with one class of stock constituted income. In holding that it did not, the Court distinguished taxable “gain derived from capital” from unrealized—and therefore nontaxable—“gain accruing to capital or a growth or increment of value in the investment.”¹¹ The pro-rata stock dividend in *Macomber* fell into the latter category because it was simply an additional piece of paper evidencing the increased worth of the taxpayer’s original investment in the company—the shareholder has received nothing out of the corporation’s assets for his use and benefit, and the corporation has not experienced a change in its aggregate assets or its outstanding liabilities.¹² In contrast, the Court defined a taxable “gain derived from capital” as “something of exchangeable value proceeding from the property, severed from the capital . . . and received or drawn by the [taxpayer] for his separate use, benefit and disposal.”¹³

In *Macomber*, the receipt of additional stock was a consequence of owning the original stock, and the same could be said for forked coins, such as BCH, received in a Hard Fork. However, unlike in *Macomber*, BCH has unique properties, and it is unrelated to BTC except by the shared historical ownership. Thus, unlike the taxpayer in *Macomber*, one could argue that an owner of BTC who received BCH at the time of the fork received a new and different asset of exchangeable value for the owner’s separate use rather than something representing an increase in the underlying value of the previously held BTC.

The regulations under section 1001¹⁴ define a realized gain or loss as, *inter alia*, one from “the exchange of property for other property differing materially in either kind or extent.”¹⁵ The Supreme Court in *Cottage Savings Association v. Commissioner* defined materially different properties as those where “their respective possessors enjoy legal entitlements that are different in kind or extent.”¹⁶ Although there was not an exchange of BTC for BCH at the time of the Hard Fork, such that *Cottage Savings* is not precisely on point, the definition is useful in determining whether a holder of BTC at the

¹¹ 252 U.S. 189, 207 (1920). This case involved a number of Constitutional issues that are not relevant here. Rather, we cite the case for the proposition that realization is an important element of income.

¹² *Id.* at 210-11.

¹³ *Id.* at 207.

¹⁴ References to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise indicated.

¹⁵ Reg. § 1.1001-1(a).

¹⁶ 499 U.S. 554, 555 (1991).

Hard Fork received something materially different than the previously held BTC. One might argue that the upgrade reflected in the forked cryptocurrency represents a significant change in the protocol that mattered to users (otherwise the fork would not have been permanent), thus representing a material change. Although the forked cryptocurrencies share a pre-split transaction history, a Hard Fork represents a permanent split in the blockchain. Thereafter, transactions on the original blockchain are valid only in BTC, but invalid in BCH, and vice versa. In addition, BTC and BCH are traded separately, each with its own value.

Based on the above authorities, we believe a reasonable argument can be made that the receipt of a forked coin resulting from a Hard Fork constitutes a realization event.¹⁷ However, even if one accepts such a view, there remains ambiguity as to *when* the realization occurs, and what is the *amount* realized.

Timing of realization

As mentioned above, the Supreme Court in *Commissioner v. Glenshaw Glass* defined taxable income as “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.”¹⁸ It is the last part of this definition—complete dominion—that raises an issue as to the timing of realization with regard to Hard Forks.

One possible argument is that realization happens at the time of the Hard Fork. At that point, an owner of the original coin becomes (at least in theory) unconditionally eligible to claim the forked coin, and he or she therefore must include the value of the forked coin at that time. However, when an owner holds an original coin in an account maintained by an intermediary such as Coinbase, the timing of realization becomes murky. In that case, a financial intermediary—whether the owner’s agent or not—is preventing the owner from controlling the forked coin, which arguably may prevent the owner from experiencing a realization event.¹⁹ On the other hand, cryptocurrencies are virtual currency and can be transferred to other intermediaries or the owner relatively easily and quickly. Consequently, it can be argued that the owner has voluntarily failed

¹⁷ Other possible analogies to taxable transactions include dividends of property (§§ 301, 316), found property or treasure trove (Reg. § 1.61-14(a); *Cesarini v. United States*, 296 F. Supp. 3 (N.D. Ohio 1969)), awards (*Hornung v. Commissioner*, 47 T.C. 428 (1967)), or free samples (*Haverly v. United States*, 513 F.2d 224 (7th Cir. 1975)).

¹⁸ 348 U.S. at 431.

¹⁹ See, e.g., *Maryland Casualty v. U.S.*, 251 U.S. 342 (1920). Even if the owner does not hold an original coin through a third-party wallet, he or she may still take no action to claim the forked currency until the security risks have been sufficiently evaluated and mitigated.

to meet the conditions under which the forked coin can be claimed and is in constructive receipt of it.²⁰

Amount Realized

Assuming realization, one must determine the amount realized, meaning, the value of the forked coin when realization occurs. Given the complexities in the cryptocurrency market, valuation is as much a problem of administrability and predictability as it is of consistency with existing U.S. federal income tax law.

After a Hard Fork occurs, there is a process of market price discovery. However, this process often takes place on multiple exchanges that do not “talk” to each other. As a consequence, the same type of cryptocurrency—even established cryptocurrencies such as BTC—may have different values on different exchanges at the same time. Thus, even though market values for a forked coin may emerge quickly (though, in some cases, a market may fail to materialize), the same coin may have different market values on different exchanges even within the same country at any point in time. Nonetheless, at the moment that a Hard Fork occurs—the first moment at which an owner of the original coin may obtain an interest in the forked coin—the forked coin arguably has no market value because it has not been previously traded and it is not clear whether a market will emerge for the coin.

We note that in some instances (such as in the case of BCH), an exchange may permit futures contracts in a forked coin to be traded before a Hard Fork occurs. However, to the best of our knowledge, no such websites constitute an “established market”—a concept to which many provisions in the Code refer as a method for determining market price—and therefore should not be used as a definitive source for determining the value of the underlying property (*i.e.*, the forked coin) for tax purposes.²¹

If one determines that realization occurs when an owner first has clear control over the forked coin resulting from a Hard Fork, then it is reasonable to argue that the fair market value of the forked coin must be determined at that time. It is reasonable to argue that in the case of third-party exchanges that also function as a wallet provider (*e.g.*, Coinbase), the amount realized would be the U.S. dollar value of the forked coin on that exchange at the time it is credited to an owner’s account (*i.e.*, the first moment that the

²⁰ Reg. § 1.451-2. If the value of the forked currency is included in income immediately upon the fork, but the modifications to the blockchain are ultimately not adopted by participants on the network so that the fork is not permanent and the blockchain re-merges, the owner should arguably be able to take a loss equal to its adjusted basis in the forked currency. I.R.C. § 165(c)(2).

²¹ *See, e.g.*, Reg. § 1.1.1273-2(f) (determining issue price for purposes of determining original issue discount).

intermediary elects to recognize the forked coin on behalf of the owner). As a result, the owner would report the fair market value of the coin at the time of crediting as ordinary income, since the forked coin was not received in a sale or exchange, and would take a basis in the forked coin equal to its fair market value at that time.

However, an owner who holds the forked coin through another wallet provider or technological method that recognizes the forked coin and credits it to an owner's account at the moment of the Hard Fork may include a very different amount in ordinary income due to the different timing of the realization event (*i.e.*, when the user obtained clear control over the forked coin). The owner may also be able to select the most favorable exchange rate by shopping the various exchanges. This is not necessarily a problem of fairness given that the owner has a choice regarding how he or she holds the original coin involved in the Hard Fork, but it is a problem of predictability and administrability (and an opportunity for taxpayers to attempt to game the U.S. federal income tax system).

B. Hard Fork as a Non-Realization Event

Given that a forked coin resulting from a Hard Fork shares transactional and ownership history with the original coin, one could also argue that the original coin has always included the future potential to create a forked coin. For example, one could argue that part of the potential of BTC has always been the creation of additional coins (such as BCH), and that such a possibility is capitalized into the market value of BTC. In other words, the forked coin is like the stock dividend in *Macomber* in that it simply represents part of the value of the original coin and therefor is more in the nature of a change in the form of ownership than a realization event. In this way, a Hard Fork is arguably similar to the birth of young from pregnant livestock, which generally has not been treated as a realization event.²² Notably, the fact that BCH has modestly different properties from BTC should not be seen as conclusively establishing that a realization event has occurred; a calf has different properties from the cow that gives birth to the calf, and stock received in a nontaxable stock dividend need not be identical to the stock on which the dividend is paid.

If this position is accepted, the creation of BCH should not be treated as a realization event until the disposition of BCH by the owner (and taxed as a capital gain if the cryptocurrency is held as a capital asset). This position is supported by a reduction in

²² See, e.g., *Metz v. United States*, 10 AFTR 2d 5443 (E.D. Ky. 1962); *Gamble v. Commissioner*, 68 T.C. 800 (1977); Rev. Rul. 86-24, 1986-1 C.B. 80. Other possible analogies to nontaxable transactions include the sale of minerals extracted (Reg. § 1.61-3(a)) or timber cut from land (*cf.* I.R.C. § 631(a)), the partition of property (Reg. § 1.61-6(a)), or the severance of a joint tenancy (Rev. Rul. 56-437, 1956-2 C.B. 507).

price of BTC that happened at the time of the Hard Fork with BCH.²³ One could argue that the reduction of BTC value was attributable to the split with BCH, the value of which was no longer integrated with the value of BTC. It is difficult, however, to empirically prove that the prices of BTC and BCH are so associated due to the volatility of both currencies.

Alternatively, one may view the forked currency as not materially different than the original currency under the standard of *Cottage Savings*. The owner continues to use the same private key that permitted the owner to spend BTC prior to the Hard Fork to access BCH after the Hard Fork, and each are verified by a subset of the same network of computers. In addition, the ownership history of both BTC and BCH trace back to the same block on the blockchain; any changes emerge only going forward.

Even if one accepts the position that a Hard Fork is not a realization event, an important question remains. Specifically, one has to decide how to divide the basis between the original coin and the forked coin. One possible approach would be to adopt rules similar to those used in stock distributions, in which the basis is split based on the fair market value of the original and distributed stock.²⁴ However, in such a case, it will be necessary to determine the value of the forked coin at the time of the Hard Fork. As discussed above, there are real practical difficulties with determining the value of a forked coin.

III. PROPOSAL FOR 2017

The original intent of the Section was to fully develop the issues discussed herein. However, given that multiple Hard Forks took place in 2017, it is apparent that these issues are pressing and must be addressed in time to be of assistance for taxpayers during the current filing season. Therefore, the Section decided to leave the full development of these issues for later and instead proposes a temporary solution to apply only for the 2017 tax year.

Under the proposed temporary solution, we recommend that the Service issue guidance that offers a safe harbor to taxpayers who were able to transact in a forked coin as a result of a Hard Fork occurring during the 2017 tax year. Such safe harbor would prescribe the following:

²³ Laura Shin, *Bitcoin Cash Skyrockets, Bitcoin Price Drops As Civil War Continues*, FORBES (Nov. 12, 2017), <https://www.forbes.com/sites/laurashin/2017/11/12/bitcoin-cash-skyrockets-bitcoin-price-drops-as-civil-war-continues/#3968e99135b5>.

²⁴ Reg. § 1.307-1.

1. Taxpayers who owned a coin that was subject to a Hard Fork in 2017 would be treated as having realized the forked coin resulting from the Hard Fork in a taxable event.
2. The deemed value of the forked coin at the time of the realization event would be zero, which would also be the taxpayer's basis in the forked coin.
3. The holding period in the forked coin would start on the day of the Hard Fork.
4. Taxpayers choosing the safe harbor treatment as set forth in the guidance would be required to disclose this on their tax returns.
5. The Service would not assert that any taxpayer who availed themselves of the safe harbor treatment as set forth in the guidance has understated federal tax liability because of the receipt of a forked coin in a 2017 Hard Fork.
6. The Service, with input from the Section and other stakeholders, will continue to develop its position regarding the tax treatment for future Hard Forks, and such position may be different from the one noted above and will apply prospectively.

While the Section has not concluded that this is the proper U.S. federal income tax treatment of Hard Forks, we believe that such temporary solution represents a reasonable interpretation of current law. In addition, we believe that the temporary solution imposes a reasonable administrative burden on the Service and compliance burden on taxpayers in this filing season, as it avoids difficult timing and valuation issues.²⁵ It also minimizes the ability of taxpayers to benefit from hindsight depending on how the values fluctuated during 2017. Finally, by requiring disclosure, the Service will obtain valuable information about cryptocurrency transactions and taxpayers participating in them.

We acknowledge that the temporary treatment may result in capital gain as opposed to ordinary income treatment (assuming the cryptocurrency is held as a capital asset), but by assigning a zero value, it preserves tax on the full value of the forked currency for taxation when the taxpayer sells it. In addition, this approach restarts the holding period, thus resulting in sales occurring within a year being taxed as short-term capital gains.

The Section will continue to refine its position and is happy to assist the Service in developing a permanent position regarding the tax treatment of Hard Forks. The

²⁵ We note that the Service has previously adopted safe harbors to avoid difficult valuation issues. *See, e.g.*, Rev. Proc. 93-27, 1993-2 C.B. 343, *clarified by* Rev. Proc. 2001-43, 2001-2 C.B. 191.

Section also plans to comment on other issues in the cryptocurrency area and looks forward to prioritizing and working with the Service on those issues.