Preparing For and Managing an IRS Examination with Virtual Currency Issues

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Preparing For and Managing an IRS Examination with Virtual Currency Issues

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CRYPTOCURRENCY – WHAT IS IT?

1. A Medium of Exchange (like Regular Currency).
2. But it is a Peer to Peer Payment Network that does not have either physical existence or legal tender status by act of any government (unlike regular currency).
3. However, it can be used to purchase goods and services and is convertible to regular currency (like regular currency).
4. And unlike regular currency it has existence in the virtual world only (no physical location).
TYPES OF CRYPTOCURRENCIES

• Over 1,500 exist
• Most popular ones are:

<table>
<thead>
<tr>
<th>#</th>
<th>Cryptocurrency</th>
<th>May 2018 Unit Value</th>
<th>Current Unit Value</th>
<th>Market Cap.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bitcoin (BTC)</td>
<td>$7,565.85</td>
<td>$10,069.21</td>
<td>$180B</td>
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<tr>
<td>2.</td>
<td>Bitcoin Cash (BCH)</td>
<td>$995.44</td>
<td>$316.49</td>
<td>$5.7B</td>
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<tr>
<td>3.</td>
<td>Ethereum (ETH)</td>
<td>$577.18</td>
<td>$221.37</td>
<td>$23.9B</td>
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<tr>
<td>4.</td>
<td>Ripple (XRP)</td>
<td>$0.59</td>
<td>$0.30</td>
<td>$30.3B</td>
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### BITCOIN STATISTICS

<table>
<thead>
<tr>
<th>Metric</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>In Circulation</td>
<td>17,945,437</td>
</tr>
<tr>
<td>Maximum Supply</td>
<td>21,000,000</td>
</tr>
<tr>
<td>All Time High</td>
<td>$20,089.00 (12/7/17)</td>
</tr>
<tr>
<td>All Time Low</td>
<td>$65.53 (7/5/13)</td>
</tr>
<tr>
<td>ROI</td>
<td>7,342.17%</td>
</tr>
</tbody>
</table>
THE GOVERNMENT’S CONCERN

Because Cryptocurrency is a digital currency, owned through investments (derivative, fund, etc.), that utilizes peer-to-peer exchange and encryption—rather than a central bank—to issue, exchange, and transfer value represented by the currency unit (Bitcoin, Ethereum, etc.), no bank or government authority verifies the transfer of value and no public “paper trail” (electronic or otherwise) is created.

Cryptocurrency can be acquired by

- “Mining” (solving complex mathematical algorithms);
- Purchase (Exchange for regular (Fiat) currency);
- Received in Payment for goods or services; or
- Exchanged for another digital currency.
EXISTING IRS GUIDANCE

• No IRS initial reaction to the launch of cryptocurrencies starting with Bitcoin in 2009, followed by Likecoin in 2011 and Ripple in 2012. This created uncertainty as to what tax rules govern cryptocurrency transactions.

• In 2014, the IRS issued Notice 2014-21, which declared that cryptocurrency, unlike USD, Euros, etc., is property for tax purposes.

• Notice 2014-21 generally provided that for an investor buying and then selling a cryptocurrency, that is a capital asset in his/her hands and is subject to tax (if held more than one year) at capital gain, rather than ordinary income, rates based on the difference between the investor’s basis and the value realized at the time of disposition.
UNANSWERED QUESTIONS IN NOTICE 2014-21

• If cryptocurrency is property, prior to 2018, do the provisions of IRC § 1031 apply to exchanges of one cryptocurrency for another?**

• Must a taxpayer use FIFO to determine his/her basis in virtual currency that is sold or otherwise disposed?

• For charitable contributions of cryptocurrency do the regular rules for gifts of appreciated property apply?

• Do the wash sale rules applicable to sales of securities under IRC § 1091 apply?

**The TCJA legislation signed into law in December 2017 amended IRC § 1031(a)(1) to limit like-kind exchanges to transaction involve real property although legislation (the Token Taxonomy Act of 2019) was proposed in April 2019 (but not acted on) which would amend the TCJA to include exchanges of virtual currencies as property qualifying for like kind exchange treatment.
• How are “Hard Forks” (the split of a virtual currency into two or more coins with a shared history) to be treated? Bitcoin split into Bitcoin and Bitcoin Cash in 2017; Bitcoin holders received Bitcoin Cash in addition to their original Bitcoin. Is it similar to a stock split or stock dividend (not taxable income but split basis) or receipt of a new asset?

• Are losses on stolen cryptocurrency (pre-2018) deductible as theft losses under IRC § 165? What about lost cryptocurrency (lost private keys, etc.)?
RECENT IRS GUIDANCE ON “CRYPTO” ISSUES

• After almost five years, on October 9, 2019, the IRS issued Revenue Ruling 2019-24 and an announcement containing a new set of 43 FAQs that answer some, but definitely not all, of the open questions that had been raised over the time since the initial guidance (IRS Notice 2014-21) was issued in 2014.
Revenue Ruling 2019-24

• Addresses the taxability of “hard forks” either separately or as part of an “air drop”.

• A “hard fork” occurs when a cryptocurrency on a distributed ledger (e.g. Bitcoin) undergoes a protocol change that results in a permanent diversion from the existing ledger, such as:
  • A new cryptocurrency on a new ledger (e.g. Bitcoin Cash) or
  • Additions to the amount of the existing cryptocurrency on the old ledger.

• An “air drop” is the distribution of units of a cryptocurrency to the distributed ledger addresses of multiple Taxpayers.
Revenue Ruling 2019-24 (continued)

• A cryptocurrency received in an airdrop is generally deemed to be received (for tax purposes) at the time it is recorded on the distributed ledger of that currency.

- Revenue Ruling 2019-24 states that although units of new cryptocurrency may be constructively received before they are recorded on the distributed ledger, generally it is the recording date that determines receipt provided the Taxpayer can exercise dominion and control over the airdropped cryptocurrency immediately (e.g. convert, use, or exchange it).
Revenue Ruling 2019-24 (continued)

• Constructive receipt does not occur if the Taxpayer receives the airdrop to a wallet managed by a cryptocurrency exchange that does not yet support the new cryptocurrency and the new units are not immediately available to the Taxpayer to sell, transfer, or otherwise dispose.
PRELIMINARY INDICATIONS OF WIDESPREAD TAXPAYER NON-COMPLIANCE

• According to an Affidavit filed in the Coinbase John Doe Summons Case, between 2013 and 2015, IRS database searches of its e-filed return databases for 2013-2015 showed that less than 900 U.S. tax returns were electronically filed in each of those years reporting cryptocurrency transactions in Bitcoin out of over 120,000,000 filed returns surveyed.

• A Fundstrat Global Advisors survey estimated that approximately 30% of the World’s investors in cryptocurrency are in the U.S. and that, in 2017, the market value of all cryptocurrencies increased between January and December by almost $500 billion.
• The IRS’ Information Reporting Advisory Committee (IRAC) estimates that approximately 2.5% of the $458 billion U.S. tax gap is now made up of unreported cryptocurrency income.
COINBASE INC.

• A Delaware corporation founded in June 2012 to operate a Bitcoin Wallet and exchange business.

• In October 2012, Coinbase launched the ability to buy and sell Bitcoin through bank transfers.

• At the time of the IRS “John Doe” Summons to Coinbase in 2016, it offered buy/sell trading functionality in 33 countries, served 5.9 million customers, and exchanged $6 billion in Bitcoin.

• By December 2015, Coinbase was the fourth largest exchange globally of Bitcoin into USD and the largest in the United States.
COINBASE MENU OF SERVICES

1) An exchange for trading Bitcoin and regular (Fiat) currency which was funded through bank or wire transfers;

2) Wallet services for storage of Bitcoin transactions;

3) An “application programming interface” (API) for developers and merchants to build applications and accept Bitcoin payments; and

4) “Shift Card” as a U.S.-issued, VISA branded debit card that enabled users in 41 U.S. states, the District of Columbia, and Puerto Rico to spend Bitcoin anywhere VISA is globally accepted.
IRS JOHN DOE SUMMONS TO COINBASE

On November 17, 2016, the IRS (with prior U.S. District Court approval based on statistics suggesting massive non-compliance by taxpayers using cryptocurrencies) issued a “John Doe Summons” to Coinbase, the largest cryptocurrency exchange in the United States seeking the identities and transaction information of its U.S. customers.

• Numerous similar cryptocurrency exchanges operate outside the U.S.

• These exchanges can function as a market maker or simply facilitate someone either buying cryptocurrency with regular (Fiat) currency or exchange cryptocurrency for regular currency.
COINBASE SUMMONS LITIGATION

- Coinbase objected to the John Doe Summons as overbroad and burdensome as it had approximately 5.9 million users.
- In 2017, Coinbase partially succeeded and was ordered to produce the records of only those customers who had the equivalent of $20,000 or more in any one type of transaction (buy, sell, send, or receive) in any one of the years 2015 through 2017.
- This covered about 14,000 Coinbase customers.
- The records to be produced were:
  - Name and address;
  - Tax Identification Number;
  - Birth date; and
  - All periodic statements of account.
RECENT DEVELOPMENTS AFTER COINBASE

• In early 2018, IRS-CI announced the creation of a new investigative team focusing on “international crimes, including ones involving cryptocurrency, tax evasion, and the use of unlicensed cryptocurrency exchanges.”

• In January 2018, South Korean authorities raided that country’s largest cryptocurrency exchanges, citing concern over potential tax evasion. This was followed by South Korea issuing new regulations that provided for increased government reporting, continual monitoring of cryptocurrency exchanges, and the banning of anonymous transactions in cryptocurrency.

• In March 2018, the G-20 tasked the OECD and central bank presidents with developing regulatory recommendations on cryptocurrency.
• In March 2018, IRS issued IR-2018-71 to “remind U.S. taxpayers” that income from virtual currency transactions is reportable on income tax returns and that Taxpayers who do not properly report the income tax consequences of virtual currency transactions face audit and “where appropriate, can be liable for penalties and interest.”

• IR-2018-71 also added that “in more extreme situations, taxpayers could be subject to criminal prosecution for failing to properly report the income tax consequences of virtual currency transactions.”
LB&I “VIRTUAL CURRENCY” CAMPAIGN

• In July 2018, the IRS’ Large Business & International (LB&I) Division announced a series of new “educational” campaigns that were identified through IRS data analysis and internal deliberation as representing “a risk of non-compliance,” requiring IRS to make the greatest use of limited resources. Among the five new items was a Virtual Currency campaign headed by LB&I’s International Individual Compliance (IIC) group, which “will address non-compliance related to the use of virtual currency through multiple treatment streams including outreach and examinations.”

• The announcement added that “Taxpayers with unreported virtual currency transactions are urged to correct their returns as soon as practical.”

• It noted pointedly that the IRS is not contemplating a voluntary disclosure program specifically to address tax non-compliance involving virtual currency.”
THE START OF THE IRS “VIRTUAL CURRENCY” CAMPAIGN

• On July 26, 2019, the IRS issued IR-2019-132 and announced that it had began sending so-called “educational letters” to more than 10,000 taxpayers regarding their potential failure to report income and pay taxes from or improperly reporting cryptocurrency transactions.

• The IRS said that the names of the U.S. taxpayers who received the letter were obtained “through various on-going IRS compliance efforts”.

• These efforts are believed to include information gathered as a result of the Coinbase “John Doe” Summons, information exchange with other taxing authorities, and the IRS’ use of artificial intelligence and data analytics.
THREE TYPES OF “EDUCATIONAL” LETTERS
1- LETTER 6173

• Why we are writing to you:

• “We have information that you have one or more accounts containing virtual currency and may not have met your U.S. filing and reporting requirements.”

*   *   *

• “For one or more of the tax years 2013 through 2017 we have not received either a federal income tax return or an applicable form or schedule reporting your virtual currency transactions.”
THREE TYPES OF “EDUCATIONAL” LETTERS
1- LETTER 6173 (continued)

• What you need to do by the ”respond by” date above:

1) If you failed to file a return, file the delinquent returns and report your virtual currency transaction as soon as possible.

2) If you made a mistake on your return such as not reporting your virtual currency transactions or incorrectly calculating your income, gain or loss you can file an amended return.
   • These amended or delinquent returns should be labelled “Letter 6153” on the top of the first page and filed to an address at the IRS Philadelphia Service Center.

3) “If you believe you followed all tax and information reporting requirements relating to your virtual currency accounts,” submit a statement of facts explaining your position which must be signed under penalty of perjury.
THREE TYPES OF “EDUCATIONAL” LETTERS
2- LETTER 6174

• Why we are writing to you:

• “We have information that you have or had one or more accounts containing virtual currency but may not know the requirements for reporting transactions involving virtual currency.”
THREE TYPES OF “EDUCATIONAL” LETTERS
2- LETTER 6174 (continued)

• **What you need to do:**

• “If you believe you did not accurately report your virtual currency transactions on a federal income tax return, you should file amended returns or delinquent returns...(to the same address at the Philadelphia Service Center as for letter 6173 but first page labelled ‘Letter 6174’).”

• If you do not accurately report your virtual currency transactions you may be subject to future civil and criminal enforcement activity.

  • **NOTE:** Unlike Letter 6173, a response is not required if the Taxpayer does not file an amended or delinquent return.
THREE TYPES OF “EDUCATIONAL” LETTERS

3- LETTER 6174-A

- Why we are writing to you:
  - “We have information that you have or had one or more accounts containing virtual currency but may not have properly reported your transactions involving virtual currency.”
• What you need to do:

• “If you believe you did not accurately report your virtual currency transactions on a federal income tax return, you should file amended or delinquent returns if you did not file a return for one or more taxable years (to the same address at the Philadelphia Service Center as for letters 6173 and 6174 but first page labelled ‘Letter 6174-A’).”

• If you do not accurately report your virtual currency transactions, you may be subject to future civil and criminal enforcement activity.

• **NOTE:** Unlike Letter 6173 (but like Letter 6174), no response is required if the Taxpayer does not elect to file an amended or delinquent return.
WHAT TO DO AFTER RECEIVING ONE OF THESE ‘EDUCATIONAL’ LETTERS

Proceed with Caution

• The letters were not idly or randomly sent—the IRS sent one to your client based on it having some indication that the client has a cryptocurrency reporting issue.

• Letter 6173 looks to be the most ominous as it actually requires affirmative response in all cases (suggesting IRS may view the situation as more serious based on the information it has).

• If you are not an attorney, and even if you are but are not functioning as one for this client (i.e. you are not providing legal advice-only tax preparation services), your client may not have an attorney-client privilege if he/she has a discussion with you about “crypto” activities after receiving this letter.

• Getting your client to seek competent legal counsel is the best advice you can give.
The Possible Reporting Implications

• Due to the rapid appreciation of Bitcoin particularly, your client may have made a huge amount of money by owning it and then exchanging it for goods or services or for regular (Fiat) currency. The potential tax liabilities may be very large (and suggestive of a knowing rather than an inadvertent non-compliance issue).

• Does your client have a potential criminal tax issue? Does he/she need protections offered by formal voluntary disclosure, or can he/she simply correct his/her prior reporting and move on?

• This is not as simple a question as it seems; the answer is usually not simple either.
FOREIGN OR DOMESTIC

• If your client may need to consider voluntary disclosure, is his/her ‘crypto’ issue a domestic reporting issue or potentially an offshore one?

  - If the client’s virtual currency exchange is a foreign one (not Coinbase or its U.S. counterparts) or his virtual Wallet is held offshore in some way, there may be FBAR and international information return reporting issues involved, (e.g. Form 8938).

  - A formal Offshore or domestic voluntary disclosure under the “Updated Voluntary Disclosure Practice” memo dated November 20, 2018, issued by the IRS Deputy Commissioner for Services and Enforcement following the end of the 2014 OVDP on September 28, 2018, now involves a much harsher penalty structure and much more rigid IRS treatment of taxpayers entering the new program.
OTHER REMEDIAL OPTIONS

• The IRS’ pre-existing Streamlined Filing Compliance Procedure (SFCP), Delinquent FBAR Filing Procedure, and Delinquent International Information Return Filing Procedures survived the end of OVDP and are still available to qualified taxpayers as a way to come into compliance with minimal or no penalties.

  - However, each of these programs has limitations and other requirements (e.g. minimal or no unreported income, residency limits, etc.). In addition, submissions of a Non-Willful Certification or Reasonable Cause Statement under penalty of perjury may be problematic and should be thought about in advance carefully.
FILING QUALIFIED AMENDED RETURN

• A “Qualified Amended Return” essentially is the same as filing a corrected original return before the statutory due date, i.e. the corrected income and corrected reported tax liability are considered the “originally reported” amounts for purposes of calculating possible penalties under IRC § 6662.

• However, a “Qualified Amended Return” does not include an amended return filed after:

  1) The date the Taxpayer is first contacted by the IRS for any civil examination or criminal investigation with respect to the return (letters like Letters L-6173, 6174 and 6174-A are not the start of civil examination for this purpose); or

  2) The date the IRS issues a John Doe Summons with respect to the tax liability of a group or class that includes the Taxpayer (if your client was a Coinbase customer he/she is disqualified).
OTHER POSSIBLE OPTIONS

• Quiet disclosure
• “Semi-Quiet” Disclosure
• Compliance Going Forward
  - Each client’s case will likely present a number of unique features (good and bad) that must be carefully evaluated before deciding on how to address the compliance issues presented.
CONSIDERATIONS GOING FORWARD

• There was no penalty relief:
  - Penalty protection will depend on each client’s facts and circumstances.
  - Each type of guidance receives a different level of deference but is still taken into account in a substantial authority determination.

• There are no transition rules, making this effectively retroactive.
  - There is no *de minimis* exception for reporting with respect to tax years prior to the published guidance.

• There is no simplified process.
  - The IRS suggested that private letter rulings could be used, but they come with a $30,000 user fee on top of the cost of representation.
“Digital Currency” – an Internet-based medium of exchange which has characteristics similar to physical currency.

“Virtual Currency” – defined by European Banking Authority as “a digital representation of value that is neither used by a central bank or public authority nor necessarily attached to a Fiat currency but is accepted by a natural or legal persons as a means of payment and can be transferred, stored or traded electronically.”

“Cryptocurrency” – a type of virtual currency in which encryption techniques are used to regulate how units of currency are generated and to verify the transfer of funds. (Bitcoin, Ethereum, Bitcoin Cash and Ripple are examples of “cryptocurrencies”.)
GLOSSARY (continued)

• “Wallet” – A digital computer file which a user creates which contains information used in sending and receiving units of virtual currency. When a wallet is created an “address” (similar to an email address) is generated as a unique alphanumeric identifier.

• A “Wallet” holds any number of public keys associated with their private keys (similar in concept to a User ID and digital signature, respectively).

• Someone using virtual currency will electronically send their public key (User ID) to a person he/she wants to exchange virtual currency with. The public key contains information verifying the Wallet address/location. The private key (electronic signature) is then used to authenticate the transaction.

• Once the transaction is signed by both parties, it is complete and it is then added to the blockchain.
• All transactions in a virtual currency blockchain are visible and viewable to the public on the Internet but the information on the internet only shows the date, time and amount of the virtual currency involved and the alphanumeric Wallet addresses of the parties but not their actual identities.

• The blockchain is a public ledger for all virtual currency transactions but does not publicly identify the parties.
In order to buy virtual currency, the person will have to find a way to transfer regular (Fiat) currency to someone who already has it and wishes to exchange it for regular currency.

This exchange can be conducted directly (peer to peer) but it is usually handled through a virtual currency exchange that trades between virtual and regular currency.

In a blockchain transaction conducted through a virtual currency exchange, the exchange will have information identifying the parties involved.

A virtual currency exchange may also provide Wallet services which allow a user to access his account through a computer or smartphone and quickly authorize a virtual currency transaction through the use of a regular currency account at the exchange (like a margin account with a broker).
Revenue Ruling 2019-24 Examples

#1 A holds units of cryptocurrency M. On 1/1/2020 cryptocurrency M has a “hard fork” and cryptocurrency N is created but it is not airdropped or otherwise transferred to a cryptocurrency account controlled by A.

#2 B holds 50 units of cryptocurrency R on 2/2/2020, cryptocurrency R has a “hard fork”; cryptocurrency S is created, and 25 units of cryptocurrency S are airdropped to B’s distributed ledger account giving B the right to immediately dispose of them. The FMV of the 25 units of cryptocurrency S is $50 at this point.
Holdings – Revenue Ruling 2019-14 Examples

#1  A is not deemed to have received the units of new cryptocurrency N resulting from the hard fork in cryptocurrency M and does not have any accession to wealth or reportable income upon receipt of it.

#2  B has ordinary income of $50 (the FMV of the 25 units of cryptocurrency S airdropped to his wallet on 2/2/2010) because he has immediate dominion and control over the new units and can immediately dispose of them. B’s basis in the 25 new cryptocurrency S units is $50 (the amount of income realized).
KEY ASPECTS OF THE FURTHER GUIDANCE IN THE NEW FAQs

• **FAQ #4**: When a T/P sells units of a cryptocurrency held as a capital asset, the T/P will recognize capital gain or capital loss on the sale (subject to T/P’s ability to deduct any capital loss).

• **FAQ #5**: The capital gain/loss is long term if the units have been held over one year; otherwise, the capital gain/loss is short term.
• **FAQ #6**: If T/P sells cryptocurrency for real currency, T/P will realize gain or loss based on the difference between USD value of the real currency received and the adjusted basis of the cryptocurrency.

• **FAQ #7**: The basis of cryptocurrency acquired for real currency includes any commissions, fees and acquisition costs (stated in USD).
• **FAQ #18**: Property held by the T/P as a capital asset and transferred for cryptocurrency will result in capital gain or loss; otherwise, the resulting gain or loss is ordinary.

• **FAQ #21**: A “hard fork” which does **not** result in the holder receiving any new cryptocurrency either in an airdrop or some other kind of transfer does **not** result in receipt of any taxable income.
• **FAQ #23**: Cryptocurrency received in an airdrop after a hard fork results in the receipt of ordinary income equal to the FMV of the new cryptocurrency.  See, Rev. Rul. 2019-24.

• **FAQ #24**: The basis of cryptocurrency received as a result of a hard fork is equal to the Fair Market Value of the new cryptocurrency received (which also should be the same as the amount of income reported on the T/P’s return from the transaction).  See, Rev. Rul. 2019-24.
• **FAQ #25:** The value of cryptocurrency resulting from a hard fork and airdropped to an exchange based wallet is the amount recorded (in USD) by the exchange for that transaction.

  • If the transaction is not recorded on the exchange’s distributed ledger, the FMV of the cryptocurrency received is the amount the cryptocurrency was trading for on the exchange at the date and time it would otherwise have been recorded as an “on-chain” transaction.
FAQ #26: If cryptocurrency is received peer to peer or otherwise not facilitated by an exchange, the FMV is determined as of the date and time the transaction is recorded on the distributed ledger of the cryptocurrency.

• The IRS will accept as indicative of FMV, the value as listed on a cryptocurrency or block chain explorer that analyzes worldwide indices of a cryptocurrency and calculates a value for the cryptocurrency “at an exact date and time.”

• If there is no “explorer value”, the T/P must establish to the IRS’ satisfaction that the value used “is an accurate representation of the value of the cryptocurrency.”
• **FAQ #27**: If cryptocurrency is received for services or property but does not have a published value, the FMV is equal to the FMV of the property or services it was exchanged for on the date the transaction occurs.
• **FAQ #28**: The T/P’s holding period for cryptocurrency begins on the day after it is received and ends on the day it is sold or exchanged.

• **FAQ #29**: A “soft fork” occurs when the distributed ledger for a cryptocurrency undergoes a protocol change that does not cause a diversion of the ledger and/or does not result in the creation of a new cryptocurrency. Soft forks do not result in income recognition by the holders of the affected cryptocurrency because the T/P is in the same position he was in before the soft fork.
GIFTS

• **FAQ #30:** Cryptocurrency received by a T/P as a “bona fide” gift does not result in any income recognition by the donee until the donee sells or otherwise disposes of it.

• **FAQ #31:** If sold or disposed of at a gain, the donee’s basis is the donor’s basis increased by any gift tax paid by the donor on the gift.
  - If sold at a loss, the T/P’s basis is equal to the lesser of the donor’s basis or the FMV of the cryptocurrency at the time the T/P the gift.
  - If the T/P does not have any documentation to substantiate his basis, the basis is zero.
• **FAQ #32**: The donee’s holding period for cryptocurrency received as a gift includes the donor’s holding period. If donor does not have documentation supporting the donor’s holding period, T/P’s holding period begins the day after T/P receives the gift.
CHARITABLE CONTRIBUTION

• **FAQ #33**: If T/P donates cryptocurrency to an IRC §170(c)(3) charitable organization, T/P does not recognize any gain or loss or recognize income on the donation.

• **FAQ #34**: The amount of the charitable deduction generally equals the FMV of the cryptocurrency at the time of donation if T/P has held it for more than one year.
• **FAQ #35:** Charitable organizations may provide contemporaneous written acknowledgements for donations of virtual currency worth at least $250. The charitable organization is generally required to sign the T/P’s Form 8283 if the donation of virtual currency is worth more than $5,000. Note that the signature only represents acknowledgement of receipt and not a concurrence of value.

• **FAQ #36:** Charitable organizations receiving virtual currency should treat the donations as noncash contributions, reporting them on Form 990 and Schedule M. The charitable organization must file Form 8282 if they sell, exchange, or otherwise dispose of the virtual currency within three years of receiving the currency.
• FAQ #37: If a T/P owns multiple digital currency wallets, accounts or addresses capable of holding cryptocurrency and transfers some from one wallet, etc. to another the transfer is **not** a taxable event even if the platform issues the T/P a Form 1099 for the transaction.

• FAQ #38: A T/P who acquired units of a cryptocurrency at different times (and each lot has a different basis as a result) and sells, exchanges, or otherwise disposes of some units can choose which units are deemed to be disposed of only if T/P can specifically identify which units are involved in the transaction **and** can substantiate his basis in those units.
• **FAQ #39**: A T/P can specifically identify units of cryptocurrency by either:
  
  • Documenting the specific unique digital identifier such as a private key, public key and address **or**
  • By records showing the transaction information for all units of a specific cryptocurrency held in a single account, wallet or address.
The T/P’s information must show:

1) Date and time each unit was acquired;
2) T/P’s basis in and the FMV of each unit at the time acquired;
3) The date and time each unit was sold, exchanged or disposed of; and
4) The FMV of each unit when sold, etc. and the amount of money and value of property received for each unit.
• **FAQ #40**: If T/P cannot identify the specific units of cryptocurrency in the manner required by the FAQs, units are deemed to have been sold, etc. in chronological order beginning with the earliest units acquired or purchased, i.e. FIFO.
REPORTING ISSUES

• **FAQ #41**: T/P must report income, gain or loss from all taxable cryptocurrency transactions on his/her return for the year of the transaction whether or not a Form 1099 or payee statement is received.

• **FAQ #42**: Most sales and other capital transactions involving cryptocurrency require T/P to calculate a gain or loss in accordance with the applicable IRS forms and instructions, including Forms 8949 and Schedule D.

• **FAQ #43**: Ordinary income from cryptocurrency transactions must be reported on Form 1040, Schedule 1.
• FAQ #45: The code and regulations generally require T/Ps to maintain records sufficient to establish all positions taken on a tax return.

• For cryptocurrency transactions this means T/Ps should maintain records documenting receipts, sales, exchanges and other dispositions of cryptocurrency and the FMV of it on the relevant dates.