ARIZONA STATE UNIVERSITY

# CORPORATE AND BUSINESS LAW JOURNAL FORUM

VOLUME 2 | OCTOBER 2020 | NUMBER 12

## *COMMENTARY*

## *OECD RELEASES NEW REPORT REGARDING VIRTUAL CURRENCY TAX ISSUES*

JACOB KING [*]

Over the past decade, virtual currency has exploded as one of the primary forms of payment used online. Virtual currency is preferred by online consumers due to its pseudo-anonymity and convenience. While many consider the pseudo-anonymity and convenience of virtual currency to be advantageous, pseudo-anonymity and convenience are among the many issues presented when it comes to the taxation of virtual currency.[1] As a result of the popularity of virtual currency, the IRS released a notice pertaining to this asset in 2014. IRS Notice 2014-21 classified virtual currency as a form of property.[2] Therefore, virtual currency is taxed according to the gain or loss realized by the taxpayer when the virtual currency is sold or exchanged.[3] Because of this complex taxation system, many taxpayers do not report this event on their respective returns. Consequently, enforcement is extremely important when it comes to virtual currency.

Because of the importance of enforcement when it comes to virtual currency, it is crucial for there to be a system in place to account for the nonpayment of the gains pertaining to virtual currency transactions. Recently, the Organisation for Economic Co-operation and Development (OECD) released a report indicating a new focus on the enforcement of taxes pertaining to

[*]J.D. Candidate, Class of 2021, Arizona State University Sandra Day O'Connor College of Law.
[1] Jason Clark & Margaret Ryznar, *Improving Bitcoin Tax Compliance*, 2019 U. ILL. L. REV. ONLINE 70 (2019), https://illinoislawreview.org/online/improving-bitcoin-tax-compliance/.
[2] I.R.S. Notice 2014-21, 2014-16 I.R.B. 938 (Mar. 25, 2014).
[3] *Id*.

virtual currency.[4] This report explained that this new-found focus was needed because virtual currency represented an overall market capitalization $346B as of September 2020.[5]

While this report did not include any specific recommendations for policymakers, it did include a litany of considerations for policymakers to ponder in the future. The OECD recommended that policymakers establish clear guidance and a clear legislative framework.[6] Clarity and certainty provided by policymakers would make it easier for taxpayers to know how to report gains on this property and, therefore, potentially reduce any cases of nonpayment pertaining to gains on virtual currency.

Moreover, the OECD recommended that policymakers consider how to support improved compliance.[7] The OECD report highlighted the difficulties with compliance concerning virtual currency, stating, "difficulty in complying with tax rules for virtual currencies arises from their fast moving values, differing exchange rates for the same virtual currency, the lack of obvious translation into fiat currency in some cases, and the need to keep complex records of monetary flows and transaction dates."[8] In order to combat these difficulties associated with virtual currency, the OECD suggests that policymakers could reduce the need for valuations and simply exclude transactions between different kinds of virtual currency.[9] Additionally, the OECD recommends that policymakers give simplified tax treatment for occasional or small traders, as this will encourage compliance amongst these respective traders through the use of exemptions.[10]

The future of virtual currency taxation is exciting and rapidly evolving. Many firms are already scrambling to digest the recommendations by the OECD. In a recent publication from PricewaterhouseCoopers, the company stated that it is key for companies to stay on the forefront of issues regarding virtual currency.[11] Regulators all over the world are struggling to formulate an effective tax policy for virtual currency transactions, but hopefully the OECD's recommendations will provide some sort of clarity moving forward.[12] Regardless, the issues regarding the taxation of virtual currency are fascinating and will without a doubt be pertinent to many tax professionals in the near future.

---

[4] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, TAXING VIRTUAL CURRENCIES: AN OVERVIEW OF TAX TREATMENTS AND EMERGING TAX POLICY ISSUES (2020), https://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf.
[5] *Id*. at 7.
[6] *Id*. at 54.
[7] *Id*. at 55.
[8] *Id*.
[9] *Id*.
[10] Organisation for Economic Co-operation and Development, *supra* note 4, at 55.
[11] Press Release, PricewaterhouseCoopers, OECD release on taxing virtual currencies: An overview of tax treatments and emerging tax policy (October 13, 2020) (https://www.pwc.com/us/en/tax-services/publications/insights/assets/pwc-oecd-release-on-taxing-virtual-currencies-an-overview.pdf).
[12] Shehan Chandrasekera, *OECD Encourages Regulators To Form Uniform Crypto Tax Regulations*, FORBES (Oct. 14, 2020, 11:47 AM), https://www.forbes.com/sites/shehanchandrasekera/2020/10/14/oecd-encourages-regulators-to-form-uniform-crypto-tax-regulations/#71bb1d236ef6.