

VIRTUAL COFFEE TALK

Cryptocurrency Tax Developments

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Wolters Kluwer



Protocol Labs

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Agenda

- 1 Overview
- 2 Mining / Staking Rewards
- 3 Reporting Obligations
- 4 Token Compensation
- 5 FY23 Green Book Proposals

Cryptocurrency Overview

- Started by Satoshi Nakamoto in 2008
- Cryptocurrency v. blockchain
- Consensus mechanisms
- Different token types
- In 2021, \$3 trillion industry



Cryptocurrency Tax Basics

- Notice 2014-21
- “Virtual currency”
- Character is property
- Sales, swaps, and purchases
- No like-kind exchanges
- Cost basis methods
- Forks and airdrops



Mining/Staking Rewards

Mining Rewards

- IRS FAQs
- Ordinary income and self-employment tax when received

Staking Rewards

- No guidance
- Service v. production v. dilution
 - Service: NYSBA report
 - Production: *Jarrett* case
 - Dilution: Sutherland article
- Liquid v. illiquid staking





POLLING QUESTION

How is cryptocurrency treated for tax purposes?

- A. Currency**
- B. Property**

US Reporting Obligations

- Form 1040 – checkbox
- Form 1099 – “broker” reporting
- Form 8300 – \$10,000+ crypto payments
- Form 14457 – voluntary compliance



OECD CARF and CRS Amendments

Crypto-Asset Reporting Framework (“CARF”)

- “Crypto-assets”
- 4 types of reportable transactions
- Intermediary reporting
- Intermediary due diligence requirements (AML/KYC)

CRS Amendments

- Extend CRS to cover electronic money products and CBDCs
- Derivatives that reference crypto-assets covered by CRS
- Entities investing in crypto-assets covered by CRS



Loss Harvesting

- Crypto market down 40% this year
- Capital losses and limitations
- Wash sales
- Abandonment losses





POLLING QUESTION

Which country first recognized Bitcoin as legal tender?

- A.** El Salvador
- B.** Central African Republic

Non-Fungible Tokens (“NFTs”)

- Unique digital assets recorded on a blockchain
- Digital art, music, sports memorabilia, etc.
- Tax Character – depends on context; collectible?
- Treatment of recurring royalties
- Treatment to creators
- FDII?



Decentralized Autonomous Organizations (“DAOs”)

- New type of company governed by rules set forth in a smart contract
- Purpose unrelated to legal/tax obligations
- Unlimited liability partnership
- “Wrap” in entity form
 - Wyoming LLC
 - Cayman/Malta
 - 501(c)(3)





POLLING QUESTION

Which crypto company first went public?

- A. Coinbase**
- B. Circle**

Token Compensation

- Effective instrument for employee compensation
- Restricted tokens / 83(b) elections
- Restricted token units
- Token options?
- Simple Agreements for Future Token (“SAFTs”)
- Lockups



FY23 Green Book Proposals

Substantive Proposals

- Securities lending
- Mark-to-market for dealers and traders

Reporting Proposals

- Form 8938 reporting
- FATCA info reporting



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Virtual Coffee Talk — Cryptocurrency Tax Developments

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Chris Kotarba

Chris Kotarba (“Chris K”) is a **Managing Director with Alvarez & Marsal Taxand**. He specializes in international tax and his primary areas of concentration are planning, structuring, and transfer pricing, both outbound and inbound, for multinational companies of all sizes.

Chris K has worked with clients across various industries, including retail, technology (both software and hardware), pharma, medical devices, and financial services. He has specialized expertise in transactions involving cryptocurrencies, NFTs, and other digital assets, including ICOs, forks, and token swaps.

Prior to joining A&M, Chris K spent eight years as an attorney with DLA Piper in Palo Alto. He led more than a dozen global expansions and other corporate restructuring projects, developed a focus for US companies with Asian operations and closed a high-profile joint venture in China. He also helped companies onshore their IP to the US, both permanently and temporarily. He was briefly seconded to DLA Piper’s Hong Kong office, where he worked with Asian companies expanding to the US.

Chris K earned a J.D. from Columbia Law School and a LL.M. in taxation from NYU School of Law. He is admitted to practice law in California, New York, and Massachusetts. He is the former President of the Bay Area Young Tax Lawyer and the San Francisco Foreign Tax Club.

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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sectors.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.

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Liz Chien

Liz Chien is the Head of Global Tax at Protocol Labs, a Web3 and digital asset company focusing on building the next generation of the internet and a decentralized technology future. Previously, she served as a policy advisor at the Organisation for Economic Cooperation and Development (OECD), where she worked on international tax reform relating to the digital economy in Action 1 of the BEPS Project. Liz has extensive industry experience as the former head of tax for Ripple Labs, GE Digital and Google in the Asia-Pacific region and as a tax director for Softbank Group International. Liz also served on the Blockchain Working Group for the State of California, the world's 5th largest economy, to evaluate California's use and regulation of blockchain technology.


Liz received her Bachelors (Economics and International Relations) and Masters (Organizational Sociology) degrees from Stanford University, and her Juris Doctor (tax concentration) from the University of California, Hastings College of the Law.





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