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The Taxman Cometh
Update on U.S. Enforcement Efforts to Regulate Cryptocurrencies

by: Travis W. Thompson

About the Author: Travis is an associate in the Tax and Criminal Defense practice groups with Sideman & Bancroft, LLP in San Francisco, California. He handles all aspects of taxpayer controversies against the Internal Revenue Service and represents clients in litigation in the U.S. Tax Court, U.S. District Courts, the U.S. Court of Appeals, and California state courts. Travis also advises clients on the tax consequences of Bitcoin, cryptocurrency, or other blockchain-related technology transactions, and consults with clients on how artificial intelligence impacts modern business strategy and domestic and international tax compliance.

The golden age of cryptocurrency has been stymied yet again. On May 12, 2018, IRS Criminal Investigation division Chief Donald Fort spoke to an early morning crowd of tax attorneys at the 2018 ABA Tax Section May Meeting in Washington, D.C. Fort's message was simple, the U.S. government is ramping up its enforcement efforts related to cyber-related crimes, and the Criminal Investigation division considers cryptocurrency an "emerging and emerged-threat."

For criminal tax enforcement purposes, Fort explained the IRS is focused on how cryptocurrency holders may be avoiding the payment of capital gains tax on the sale of cryptocurrencies, or using offshore crypto-accounts to escape foreign bank account reporting requirements. According to Fort, all significant crypto-cases are now assigned an IRS Special Agent, and the IRS now has the finest expertise in the world tracking cryptocurrency.

Administratively the IRS has made strides to educate staff and put infrastructure in place to enforce cryptocurrency transactions. Two major IRS cryptocurrency groups now exist in Los Angeles and Washington D.C. Every IRS office in the United States is staffed with a cyber-crimes employee, and the IRS implemented mandatory training for all IRS Criminal Investigation employees on cryptocurrency.

The IRS is getting results on its cryptocurrency enforcement efforts, exclaimed Fort, because of its close collaboration with other agencies, including the Department of Justice and international enforcement agencies, to track down "abuses of cryptocurrency accounts." "We have tens of millions of records from various investigations and are making connections to select new cases," said Fort. Representatives from the Department of Justice later confirmed "there are significant resources being spent" on cryptocurrency investigations and taxpayers should be mindful of that.

For cryptocurrency owners, there is no better time than now to consult with a trusted tax practitioner about the future tax consequences of buying and selling digital currencies.

The Leftovers: Section 956 and Tax Reform

By: Joshua Wu

About the Author: Josh is a partner with Clark Hill Strasburger and works out of the firm's San Antonio and Washington, DC offices. Josh advises large corporations, midsize businesses, startup companies, and high-net-worth individuals on all aspects of federal tax law.

The Tax Cuts and Jobs Act of 2017 ("TCJA") made significant changes to the U.S. international tax system. Despite Congressional drafts that proposed to repeal Section 956, it was one of the few international tax provisions not directly modified by the TCJA. However, other modifications to Subpart F and the controlled foreign corporation ("CFC") rules have an impact on Section 956, making it both more expansive yet potentially less relevant.

Under prior and current law, U.S. shareholders of CFCs must include income on their tax return in the amount of the CFC's Subpart F income. This anti-deferral regime