

OVERSEAS ACCOUNTS AND TRUSTS: WHAT TO DO IF MY CLIENT HAS OFFSHORE ASSETS

Bitcoin (Convertible Virtual Currency “CVC”)

- The Big Picture on CVC
- Useful Rules and Definitions for CVC
- CVC as Property and the Tax Implications
- Reporting CVC Transactions to the IRS and Recordkeeping
- Tax Tips for Merchants and Businesses

Bitcoin (“CVC”)

- The Big Picture on CVC
 - CVC is considered “property” for tax purposes.
 - Individuals compensated for services with CVC are treated as receiving income.
 - CVC are actually two transactions in one, disposing of the CVC and spending the dollar equivalent amount.

Bitcoin (“CVC”)

- Useful Rules and Definitions for CVC
 - Virtual currency that has an equivalent value or acts as a substitute for real currency, is referred to as CVC.
 - Bitcoin is an example of a virtual currency because, it can be digitally traded, purchased for or exchanged into dollars, Euros, and other real or virtual currencies.

Bitcoin (“CVC”)

- Reporting CVC Transactions to the IRS and Recordkeeping
 - CVC is reported on the tax return using Form 1040, Schedule D and Form 8949 or Form 4797
 - Gain from a disposition is also subject to the 3.8% NIIT
 - Maintain complete records, substantially similar to stock.

Bitcoin (“CVC”)

- CVC as Property and the Tax Implications
 - Every CVC transaction is taxable, you will have a gain or loss when disposing of CVC.
 - Determine the character of the gain or loss using normal holding period rules.

Bitcoin (“CVC”)

- **Tax Tips for Merchants and Businesses**
 - Taxes are paid in dollars, not CVC.
 - Convert CVC to dollars on a regular schedule
 - If paying employees in CVC, first withhold all applicable payroll taxes in U.S. dollars, and net pay can be in CVC, as appropriate.

Filing and Reporting Requirements Under BSA and FBAR

- Statutory and Regulatory Compliance and Definitions
- Reporting Under BSA and FACTA
- No Reporting for Domestic Trusts
- Penalties for Failure to Comply with BSA and FACTA

Filing and Reporting Requirements Under BSA and FBAR

- Statutory and Regulatory Compliance and Definitions
 - 31 USC § 5316 – Bank Secrecy Act of 1970 (“BSA”)
 - 26 USC § 6038D – Foreign Account Tax Compliance Act (“FATCA”)

Filing/Reporting Requirements Under BSA and FBAR

- Important BSA Definitions for FBAR Filing:
 - Foreign financial account
 - U.S. person (citizen, resident alien or entity)
 - Financial interest – 31 CFR § 1010.350(c)
 - Reportable account – 31 CFR § 1010.350(c)

Filing and Reporting Requirements Under BSA and FBAR

- Reporting Under FACTA and 26 USC § 6038D
 - Any interest in a “specified foreign financial asset” must be attached to an income tax return if it exceeds the statutory dollar threshold
 - If threshold is met, you must report all specified foreign assets including any with a *de minimus* maximum value

Filing and Reporting Requirements Under BSA and FBAR

- Reporting Under FACTA
 - Attach Form 8938 if assets exceed \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year
 - If an individual resides outside of the U.S., report if the assets exceed \$200,000 on the last day of the tax year or \$300,000 at anytime during the tax year

Filing and Reporting Requirements Under BSA and FBAR

- Non-FACTA Reporting for Domestic Trusts
 - Form 3520: Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
 - Form 3520-A: Annual Information Return of Foreign Trust With a U.S. Owner

Filing and Reporting Requirements Under BSA and FBAR

- Civil Penalties for Failure to Comply
 - Statute of Limitations – 31 USC § 5321(b)
 - Penalties under BSA for failure to file
 - Non-willful failures – \$10,000 per violation, adjusted for inflation
 - Willful failures – greater of 50% of amount in account at the time of violation or \$100,000, adjusted for inflation

Filing and Reporting Requirements Under BSA and FBAR

- Criminal Penalties – 31 USC § 5321(b)
 - Willful violation penalties:
 - fine of not more than \$250,000 or imprisonment for not more than five year, or both
 - Willfully violating while also violating other U.S. laws or in a pattern of illegal activity has additional penalizations.

Filing and Reporting Requirements Under BSA and FBAR

- **FACTA Penalties for Failure to File Form 8398**
 - Civil penalty for first failure to report is up to \$10,000
 - If failure continues more than 90 days after the Secretary notifies an individual, there is an additional penalty of \$10,000 for each 30 day period after the 90 days up to \$50,000

Offshore Voluntary Disclosure Program ("OVDP")

- Delinquent FBAR Submission Procedures
- Why participate in OVDP?
- Requirements to participate in OVDP
- Submission Process
- Streamlined Offshore Procedures
- Domestic Offshore Procedures for U.S. Citizens
- Foreign Offshore Procedures for U.S. Citizens

OVDP

- **Delinquent FBAR Submission Procedures**
 - May choose to not use OVDP or Streamlined procedures if:
 - Have not filed required FBAR;
 - Not under civil or criminal investigation by IRS; and
 - Haven't been contacted by IRS about delinquent FBARs
 - Risk associated with delinquent procedure

OVDP

- Why Participate in OVDP?
 - Avoid substantial civil penalties and generally eliminate the risk of criminal persecution for all issues relating to tax noncompliance and failing to file FBARs;
 - Taxpayers filing amended returns or who use streamlined procedures DO NOT eliminate the risk of criminal persecution

OVDP

- **Requirements to Participate in OVDP:**
 - Provide all required documents
 - Cooperate in voluntary disclosure process
 - Pay 20% accuracy related penalties
 - Pay failures to file and failure to pay penalties
 - Miscellaneous Title 26 offshore penalty
 - Submit full payment of any Title 26 tax liabilities
 - Execute a Form 906

OVDP

- Submission Procedures
 - Pre-submission period and preclearance
 - Submission process – must be sent in two parts;
 - Payment to the Department of Treasury; and
 - All other required documents
 - Post submission process
 - Applicable penalty rates

OVDP

- Streamlined Offshore Procedures
 - Available to taxpayers who can certify that failure to report is not from willful conduct
 - Designed for taxpayers filing amended or delinquent returns and terms for resolving their tax and penalty obligations
 - Available indefinitely unless otherwise announced

OVDP

- **Domestic Offshore Procedures for U.S. Citizens**
 - Eligibility for streamlined program
 - Fail to meet applicable non-residency requirement
 - Previously filed a U.S. tax return
 - Failed to report gross income from a foreign financial asset
 - Procedure for filing under streamlined program

OVDP

- Procedure for filing under streamlined program
 - File amended tax returns with all required forms for the most recent 6 years for which the FBAR due date has passed
 - File any delinquent FBAR's
 - Pay a Title 26 Miscellaneous Offshore Penalty
 - For the most recent 3 years, include a Form 1040X
 - Payment of all tax due as reflected on the tax returns

OVDP

- Foreign Offshore Procedures for U.S. Citizens
 - Eligibility for streamlined program
 - Meet applicable non-residency requirement
 - Failed to report income from a foreign financial asset and pay tax as required by U.S. law. (non-willfully)
 - Everything else is the same as the streamlined program for taxpayers residing in the U.S. except without a miscellaneous penalty.

The End

Questions???