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Bitcoin Grows Up But That Means FBAR Filings

Remember when you got out of school and started having to abide by all sorts of rules? Bitcoin and its aficionados probably feel that way, starting to feel the pinch of responsibilities. That's growing up.

Bitcoin seems newly minted from a desirable school with incredible promise. The appreciation is heady, but rules are rules. [Bank of America](#) thinks Bitcoin has arrived, starting analyst coverage. And as [China Restricts Banks' Use of Bitcoin](#), the heady news of big values is tempered.

Do I know Bitcoin draws FBAR filing obligations? No, but it's not a stretch to imagine it in some cases. After all, FinCEN is on to Bitcoin, requiring some to register as Money Service Businesses. [FinCEN](#), the Financial Crimes Enforcement Network, is part of the Treasury Department. Its mission is to safeguard the financial system, combat money laundering and promote national security.

U.S. taxpayers are more worried about their own filings. First, you must report your [worldwide income](#) on your tax return. Plus, if you have foreign accounts aggregating more than \$10,000 at any time during the year, you



(Photo credit: jurvetson)

must file FinCEN [Form 114](#), also known as an [FBAR](#). They go to FinCEN, not to the IRS.

Subject to a higher (generally \$50,000 asset threshold), you may also need to file an IRS [Form 8938](#) to report your foreign accounts and assets. The latter is the new FATCA form, part of the dreaded law that ropes in foreign financial institutions to report to the IRS.

Penalties for tax and FBAR violations can be severe. In fact, FBAR violations can draw far worse civil or criminal penalties than tax violations. That encourages the “when in doubt, file” mentality. And if you’re filing an FBAR anyway, it encourages a “when in doubt, disclose it” mentality too.

Remember, in the case of foreign bank accounts, you must file an FBAR even if you’re just a signatory and you have no beneficial or ownership interest. There’s never a penalty for including too much on your form. What’s an account requiring an FBAR?

Foreign bank and brokerage accounts are generally included. So are offshore mutual funds and pooled investments. However, hedge and private equity funds generally don’t count. An account with a U.S. institution that holds foreign assets doesn’t require a filing as long as you can’t directly access foreign assets maintained in a foreign institution. But foreign branches of U.S. institutions are treated as foreign. See [Primer For First Time FBAR Filers](#).

Is a Bitcoin wallet or account with an exchange a foreign account in the eyes of FinCEN? It seems a stretch to me, but then FinCEN already has its eyes on Bitcoin and users. A more than \$10,000 value on account with Mt.Gox, for example, could well trigger an FBAR requirement. Holding that amount of Bitcoin in your own wallet, presumably not.

Still, perhaps some Bitcoin wallets could be seen as a foreign account. A person may spend money to purchase Bitcoin or mine Bitcoin and then exchange the currency for goods and/or services without having to register with FinCEN as Money Service Business. If a miner exchanges mined Bitcoin for money the miner is supposed to register with FinCEN. You’re also supposed to register if you transact in Bitcoin on someone else’s behalf.

Effective July 1, 2013, filers must electronically file FBARs through the [BSA E-File System](#). If unable to e-file, filers may contact the FinCEN Regulatory Helpline at (800) 949-2732 to request an exemption. Help in completing the

FBAR is available Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time at (866) 270-0733 (toll-free inside the U.S.) or (313) 234-6146 (not toll-free, for callers outside the U.S.). Questions regarding FBARs can be sent to FBARquestions@irs.gov. Filers residing abroad may also contact U.S. embassies and consulates for assistance. For E-Filing system questions, call the FinCEN E-Filing Help Desk at (866) 346-9478, option 1 (Monday through Friday, 8 a.m. to 6:00 p.m. Eastern Time).

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.