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How to Guarantee a More Predictable Tax Result Until IRS Has a Special Crypto Amnesty: Expert Blog



EXPERT TAKE

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There has long been speculation that a special IRS amnesty program will be announced for Bitcoin and other digital currency taxpayers. It seems overdue. There's a good deal of

tax cleanup that some people need to do. But so far, we don't have one. In the meantime, we still must file tax returns every year.

For crypto investors who need to fess up to past transgressions, there is no formal IRS program to control risks and to guarantee a particular formulaic result. A predictable tax and penalty result is what IRS amnesty programs usually provide. You can address this without a formal amnesty, of course.

For instance, amending a few returns to pick up additional income you failed to report is usually pretty safe. Of course, timing is key. If the IRS finds you first through an audit, you won't be protected. In some cases, even criminal prosecution is possible.

But what if you aren't comfortable just preparing and filing a few tax returns or a few amended tax returns to correct your mistakes? For more serious transgressions, traditionally, if you voluntarily go to the IRS through a lawyer to correct your tax problems before the IRS discovers them, you won't be prosecuted.

Although there is not yet a special IRS amnesty for crypto, there still is one for offshore accounts. So, if you have an offshore account, the IRS amnesty can offer crypto investors a back door. With extensive data swapping deals between the IRS, foreign governments and foreign banks, almost no offshore account is secret anymore.

Even so, the IRS amnesty is still on offer. Offshore account holders can still safely fix their problems, even if they intentionally evaded reporting in the past. The cost of the IRS amnesty can be small compared to the risk of vastly larger civil penalties, and the threat of criminal prosecution. For offshore bank accounts, civil FBAR (Report of Foreign Banks and Financial Accounts) penalties alone can entirely wipe out foreign accounts.

There are two IRS programs. The OVDP or Offshore Voluntary Disclosure Program is a clean wash-your-hands kind of way to correct past tax filings and come clean. It involves filing up to eight years of tax returns (or amended tax returns) and FBARs.

You pay taxes, interest and a 20 percent penalty on whatever you owe. For most people, there's also a 27.5 percent penalty on your highest offshore account balance. In some cases, that penalty can be 50 percent, [depending on the bank](#) and timing.

In contrast, the Streamlined program involves only three years of tax returns. You file six FBARs instead of three, to match the longer FBAR statute of limitations. The Foreign Streamlined program (for US persons abroad) has no penalty. The Domestic one involves a five percent penalty pegged to the highest offshore account balance over the six FBAR years.

The Streamlined program requires a non-willfulness statement that can be risky in some cases. And Streamlined filings are subject to IRS audit. These audits can be brutal, so [in choosing OVDP or streamlined, you should consider IRS audits](#). Thus, for crypto investors with risk, the OVDP seems a far better hook for resolving crypto tax problems.

As long as you are filing amended tax returns, other corrections unrelated to your foreign accounts can be handled too. After all, before you sign amended tax returns under penalties of perjury, you need to make sure they are accurate. If you failed to report any other income, you should include it on your amended returns.

By its terms, the OVDP applies to foreign account matters. Other corrections are technically not part of it, so the IRS could pursue these items outside the OVDP. In reality, though, the IRS appears to be processing them all together. In short, if you have other unrelated corrections to your returns, by all means, make them.

Cleaning up domestic tax problems is a feature [of many OVDP cases](#). The IRS appears to be accustomed to the usual full disclosure including domestic tax problems too.

The domestic issues might be large, particularly given the dramatic run-up of crypto investments. However, the OVDP should still allow the IRS to collect taxes, interest, plus a 20 percent penalty on any unreported income. Remember, a key IRS tradition is that tax evaders who voluntarily step forward before they are found are usually not prosecuted.

OVDP tax return packages can fix domestic tax problems unrelated to foreign accounts. All usually seems to go fine, and there may be no real alternative. Given the costs, most taxpayers have an easier time deciding to file Streamlined rather than the more expensive OVDP.

The OVDP precludes criminal prosecution and ends in a closing agreement. In contrast, Streamlined filers can face a civil audit or conceivably even prosecution. A key for any Streamlined filer is to be non-willful and to certify that.

Negligence, inadvertence or mistake are all OK, but intent to conceal or to evade taxes is not. And the IRS has criteria for objective indicators. It is hard to say you were non-willful if you behaved secretively, did partial reporting of accounts or income, etc.

Everyone knows that tax compliance with crypto has been poor. That's why the IRS has trained criminal IRS agents to pursue this. It's why the IRS is using tracking software. And it's why the IRS successfully [went after Coinbase accounts via summons](#).

The bottom line is that crypto investors with tax problems might consider the OVDP. Using it until the IRS has a special crypto amnesty might be worth a look.

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