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# Congress of the United States

## U.S. House of Representatives

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September 19, 2018

The Honorable David Kautter  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Acting Commissioner Kautter:

On May 17, 2017, we wrote to the IRS to raise questions about the enforcement actions being taken against those holding virtual currencies and the lack of a comprehensive virtual currency strategy. More than a year after our initial letter, the IRS continues to expand its enforcement activities without issuing any further guidance for taxpayers. We therefore write again today to strongly urge the IRS to issue updated guidance, providing additional clarity for taxpayers seeking to better understand and comply with their tax obligations when using virtual currencies.

Since the emergence of virtual currencies, the IRS has struggled with how to treat virtual currencies for tax purposes and the amount of guidance necessary to assist taxpayers in understanding their tax obligations. In March 2014, the IRS began working to clarify tax issues related to virtual currencies by issuing guidance indicating that virtual currencies would be treated as property for tax purposes.<sup>1</sup> However, in September 2016, the Treasury Inspector General for Tax Administration reported that the IRS had yet to develop a comprehensive virtual currency tax strategy, citing a need for the IRS to update its initial guidance to reflect the various uses of virtual currencies. The Association of International Certified Professional Accountants, the American Bar Association, and other organizations have all raised similar concerns, each noting the need for additional clarity through updated guidance. Furthermore, the IRS Commissioner, in his response to our May 2017 letter, described Notice 2014-21 as “preliminary guidance,” leaving the Committee to conclude that the IRS intended to issue additional guidance. However, to date, the IRS has not issued any additional guidance that taxpayers may rely upon to better understand their tax obligations.

Despite the issuance of only preliminary guidance on this issue, the IRS has made enforcement of this guidance a priority, undertaking robust enforcement actions on a number of fronts. For example, the IRS has used its John Doe Summons authority to seek the records of approximately half a million Americans who held virtual currencies between 2013 and 2015. In addition, on

<sup>1</sup> IRS, *IRS Virtual Currency Guidance*, Notice 2014-21 (March 25, 2014).

July 2, 2018, the IRS's Large Business and International division announced five new compliance campaigns, one of which focuses on non-compliance related to virtual currencies. At the same time, the IRS also announced that it would not be providing leniency for taxpayers by allowing for a voluntary disclosure program to address tax non-compliance related to virtual currencies.<sup>2</sup>

The IRS has also sought to remind taxpayers of the penalties for non-compliance with its preliminary guidance. In March 2018, the IRS reminded taxpayers that those who do not properly report the income tax consequences of virtual currency transactions can be audited for those transactions and held liable for penalties and interest. In more extreme situations, taxpayers can be subject to criminal prosecution for failing to properly report the income tax consequences of virtual currency transactions.<sup>3</sup>

While the Committee appreciates the IRS's need to undertake enforcement actions to ensure that taxpayers generally meet their tax obligations, in this case, we are concerned that the IRS is seeking to enforce guidance that does not adequately advise taxpayers of their tax obligations when using virtual currencies. Furthermore, while the issues surrounding virtual currencies are complicated and ever evolving, a key component of the IRS's duties as the nation's tax administrator is to assist taxpayers in understanding what their tax obligations are and how they may best meet them. A failure to put forth adequate guidance severely hinders taxpayers' ability to do so. The IRS has had four years to work through these issues since its preliminary guidance was issued, providing more than adequate time for the IRS to thoughtfully consider what additional information is needed.

We therefore strongly urge the IRS to expeditiously issue more robust guidance clarifying taxpayers' obligations when using virtual currencies. We also ask that you provide a written response outlining where the IRS is in its efforts to issue updated virtual currency guidance, what the IRS intends to cover in this guidance, and a timeline for its release. In addition, to assist the Committee in better understanding this issue, we will be asking the Government Accountability Office to undertake an audit on this matter.

Thank you in advance for your prompt response to this request. We ask that you provide this information to the Committee no later than October 17, 2018. As always, we also ask that you answer the questions on a question by question basis, indicating which questions that you are answering. If you have any questions or concerns, please contact Lindsay Steward of the House Ways and Means Committee at (202) 225-9263.

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<sup>2</sup> *IRS Announces the Identification and Selection of Five Large Business and International Compliance Campaigns*, <https://www.irs.gov/businesses/irs-announces-the-identification-and-selection-of-five-large-business-and-international-compliance-campaigns> (July 2, 2018).

<sup>3</sup> Criminal convictions for possible charges such as failure to file or tax evasion can lead to prison terms of up to three years or five years, respectively and fines of up to \$250,000.



Sincerely,



Kevin Brady  
Chairman  
Committee on Ways and Means



Lynn Jenkins, CPA  
Chairman  
Committee on Ways and Means  
Subcommittee on Oversight



David Schweikert  
Member of Congress



Darin LaHood  
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Brad Wenstrup  
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