

Modification of Notice 2014-21

Notice 2023-34

SECTION 1. PURPOSE

Notice 2014-21, 2014-16 I.R.B. 938, provides that convertible virtual currency is treated as property for federal tax purposes and that general tax principles applicable to property transactions apply to transactions using convertible virtual currency. This Notice modifies Notice 2014-21 by revising a sentence in the Background section of that Notice to remove the statement that virtual currency does not have legal tender status in any jurisdiction and to make other changes. This Notice also explains that the revision to the Background section of Notice 2014-21 does not affect the answers to the frequently asked questions (FAQs) set forth in section 4 of Notice 2014-21.

SECTION 2. BACKGROUND

Notice 2014-21 describes how existing general tax principles apply to transactions using convertible virtual currency.¹ The Notice provides the guidance in the form of FAQs.

Notice 2014-21 provides that convertible virtual currency is treated as property for federal tax purposes and that general tax principles applicable to property transactions apply to transactions using convertible virtual currency. The Background section of Notice 2014-21 defines virtual currency as a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. The Background section also states that virtual currency does not have legal tender status in

¹ While the Background section of Notice 2014-21 describes both virtual currency and convertible virtual currency, Section 3 of Notice 2014-21 explains that the term “virtual currency” as used in section 4 of the Notice refers only to convertible virtual currency.

any jurisdiction. Rev. Rul. 2019-24, 2019-44 I.R.B. 1004, subsequently clarified that virtual currency does not include a representation of the United States dollar or a foreign currency.

The Background section of Notice 2014-21 describes convertible virtual currency as virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency. The Background section of the Notice also identifies Bitcoin as an example of a convertible virtual currency and explains that Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.

SECTION 3. MODIFICATION OF NOTICE 2014-21

The Department of the Treasury and the Internal Revenue Service are aware that certain foreign jurisdictions have enacted laws that characterize Bitcoin as legal tender. Thus, the sentence in the Background section of Notice 2014-21 stating that virtual currency does not have legal tender status in any jurisdiction is no longer accurate as to Bitcoin. In addition, the Background section of Notice 2014-21 may be misinterpreted as overstating the similarity between convertible virtual currency and “real” currency because the use of convertible virtual currency, including Bitcoin, to perform “real” currency functions is limited.² Accordingly, Notice 2014-21 is modified by

² See U.S. Department of the Treasury, Crypto-Assets: Implications for Consumers, Investors and Businesses at 1 and 20 (September 2022), available at https://home.treasury.gov/system/files/136/CryptoAsset_EO5.pdf. See also OECD, Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues, at 20 (Oct. 12, 2020), available at <https://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf>.

revising the third sentence in the first paragraph of the Background section to read as follows:

In certain contexts, virtual currency may serve one or more of the functions of “real” currency -- i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance -- but the use of virtual currency to perform “real” currency functions is limited.

This change to the Background section of Notice 2014-21 does not affect the answers to the FAQs set forth in section 4 of Notice 2014-21, including Q&A-2, which concludes that convertible virtual currency is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes.

SECTION 4. EFFECT ON OTHER DOCUMENTS

This Notice modifies Notice 2014-21 by revising its “Background” section.

SECTION 5. DRAFTING INFORMATION

The principal author of this Notice is Raphael J. Cohen of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Raphael J. Cohen at (202) 317-6938 (not a toll-free call).