

Virtual Currency Regulation

Virtual currency, also known as digital currency or crypto-currency, is a medium of exchange not authorized or adopted by a government. There are many different digital currencies being used over the internet, the most commonly known being Bitcoin. In Washington, digital currency is included in the definition of "Money Transmission" in the Uniform Money Services Act (UMSA), chapter 19.230 RCW:

"Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" does not include the provision solely of connection services to the internet, telecommunications services, or network access. "Money transmission" includes selling, issuing, or acting as an intermediary for open loop stored value and payment instruments, but not closed loop stored value.

Companies wishing to transmit money for Washington residents in a digital currency form can contact DFI for a determination whether licensure under the UMSA is required. If it is, a license is required before the company can engage in the activity.

At the federal level, digital currency is regulated by the Financial Crimes Enforcement Network (FinCEN). In its first guidance on virtual currency, FinCEN defined the parties in virtual currency transactions and identified those considered money services businesses (MSB). A money service business must register with FinCEN and is subject to reporting and recordkeeping requirements. Parties defined as administrators and exchangers are MSBs under the guidance while users are not. The first guidance document is here:

March 18, 2013: http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf

Recently FinCEN issued two more guidance documents, further clarifying the applicability of the MSB designation to the parties in virtual currency transactions.

As to miners of virtual currency, more detailed guidance provides that for certain mining and conversion activities, the party is deemed a user of the virtual currency and is not therefore subject to the registration, reporting and recordkeeping requirements. The guidance on miners is here: January 30, 2014: http://www.fincen.gov/news_room/rp/rulings/html/FIN-2014-R001.html

As to a company developing software to facilitate the purchase of virtual currency for sale to and from other parties, all exclusively as investments for its own account that company is a user of virtual currency and is not therefore subject to the registration, reporting and recordkeeping requirements. The guidance on the purchase and sale of virtual currency as a user is here: January 30, 2014: http://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2014-R002.pdf

The FinCEN website on money services businesses is here:
http://www.fincen.gov/financial_institutions/msb/index.html

Additionally, on March 25, 2014, the IRS published its guidance document, IR-2014-36. The IRS said:

The notice provides that virtual currency is treated as property for U.S. federal tax purposes. General tax principles that apply to property transactions apply to transactions using virtual currency. Among other things, this means that:

Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to federal income tax withholding and payroll taxes.

Payments using virtual currency made to independent contractors and other service providers are taxable and self-employment tax rules generally apply. Normally, payers must issue Form 1099.

The character of gain or loss from the sale or exchange of virtual currency depends on whether the virtual currency is a capital asset in the hands of the taxpayer.

A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property.

You can view the guidance document and link to an FAQ here:
<http://www.irs.gov/uac/Newsroom/IRS-Virtual-Currency-Guidance>