



Tax Considerations

Your Legal Guide to NFTs, the Metaverse, and Web3



Theresa Clardy

Counsel | 310-229-9609 | TClardy@Venable.com

Friedemann Thomma

Partner | 415-653-3751 | FThomma@Venable.com

VENABLE LLP

CLE Credit

This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour, of which 1 hour applies to the general credit requirement, and by the State Bar of New York in the amount of 1 credit hour, of which 1 credit hour can be applied toward the Areas of Professional Practice requirement. Venable certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California and the State Bar of New York, which govern minimum continuing legal education. Venable is a State Bar of California and State Bar of New York approved MCLE provider.

Disclaimer: This presentation is intended as a summary of the issues presented and is not intended to provide legal advice. It is provided for the general information of the attendees. Legal counsel and advice should be sought for any specific questions and before taking any action in reliance on the information presented.

Why Are We Talking About This?

- Roughly sixteen percent of Americans own some form of virtual currency.
- This technology is not going away.
- The tax consequences can be significant, but the tax compliance is low.
 - CNBC reported a Barclays estimate that the IRS may be missing more than \$50 billion a year in unpaid taxes relating to crypto transactions.
 - The real figure could be much higher when you account for NFTs, etc.
- The IRS is cracking down on non-compliance. Other countries are doing the same.

Agenda

- Tax Enforcement for Virtual Currency (including NFTs)
- IRS Guidance
- Income Tax Considerations
 - Cryptocurrency
 - DeFi
 - NFTs
 - DAOs
- Other Tax Considerations



Tax Enforcement

Tax Enforcement

Government Crackdown

- IRS has been expanding its virtual currency tax enforcement.
 - IRS has educated staff with mandatory trainings.
 - IRS has developed major working groups to aid enforcement in this area (e.g., Operation Hidden Treasure).
 - IRS has created new positions and departments dedicated to crypto/NFT tax enforcement.
 - Significant virtual currency cases are assigned to an IRS-Criminal Investigation Special Agent.
 - IRS has increased its use of data analytics.
 - IRS closely collaborates with other agencies, including the Department of Justice.
 - In 2021, the DOJ created the National Cryptocurrency Enforcement Team (“NCET”).
 - In 2022, the NCET’s first director was appointed.
 - IRS and DOJ have issued “John Doe” summonses for account holder information.
 - IRS has issued warning letters to taxpayers.

Tax Enforcement

Government Crackdown

- IRS's goals are to combat the fraud and tax evasion in this space (i.e., those who falsely report their income connected to virtual currency transactions).
- IRS plans to make more referrals for criminal prosecution if there is tax fraud involving virtual currencies.
- IRS audit questions aimed at virtual currency.
- IRS has been aided by new reporting rules and legislation.

Tax Enforcement

New Reporting Rules

Form 1040 Department of the Treasury—Internal Revenue Service (99) U.S. Individual Income Tax Return		2021		OMB No. 1545-0074	IRS Use Only—Do not write or staple in this space.
Filing Status <input type="checkbox"/> Single <input type="checkbox"/> Married filing jointly <input type="checkbox"/> Married filing separately (MFS) <input type="checkbox"/> Head of household (HOH) <input type="checkbox"/> Qualifying widow(er) (QW)					
Check only one box. If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QW box, enter the child's name if the qualifying person is a child but not your dependent ▶					
Your first name and middle initial		Last name		Your social security number	
If joint return, spouse's first name and middle initial		Last name		Spouse's social security number	
Home address (number and street). If you have a P.O. box, see instructions.				Apt. no.	
City, town, or post office. If you have a foreign address, also complete spaces below.			State	ZIP code	
Foreign country name		Foreign province/state/county		Foreign postal code	
Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.					
<input type="checkbox"/> You <input type="checkbox"/> Spouse					
At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency? <input type="checkbox"/> Yes <input type="checkbox"/> No					

Virtual currency. If, in 2021, you engaged in a transaction involving virtual currency, you will need to answer "Yes" to the question on page 1 of Form 1040 or 1040-SR. See *Virtual Currency*, later, for information on transactions involving virtual currency. Do not leave this field blank. The question must be answered by all taxpayers, not just taxpayers who engaged in a transaction involving virtual currency.

Tax Enforcement

New Reporting Rules

2021 Instructions To Form 1040

Virtual Currency

Virtual currency is a digital representation of value, other than a representation of the U.S. dollar or a foreign currency (“real currency”), that functions as a unit of account, a store of value, or a medium of exchange. Some virtual currencies are convertible, which means that they have an equivalent value in real currency or act as a substitute for real currency. The IRS uses the term “virtual currency” to describe the various types of convertible virtual currency that are used as a medium of exchange, such as digital currency and cryptocurrency. Regardless of the label applied, if a particular asset has the characteristics of virtual currency, it will be treated as virtual currency for Federal income tax purposes.

Tax Enforcement

New Reporting Rules

Instructions To Form 1040

Virtual Currency (Continued)

If, in 2021, you engaged in any transaction involving virtual currency, check the “Yes” box next to the question on virtual currency on page 1 of Form 1040 or 1040-SR. A transaction involving virtual currency includes, but is not limited to:

- The receipt of virtual currency as payment for goods or services provided;
- The receipt or transfer of virtual currency for free (without providing any consideration) that does not qualify as a bona fide gift;
- The receipt of new virtual currency as a result of mining and staking activities;
- The receipt of virtual currency as a result of a hard fork;
- An exchange of virtual currency for property, goods, or services;
- An exchange/trade of virtual currency for another virtual currency;
- A sale of virtual currency; and
- Any other disposition of a financial interest in virtual currency.

Tax Enforcement

New Reporting Rules

Instructions To Form 1040

Virtual Currency (Continued)

A transaction involving virtual currency does not include the holding of virtual currency in a wallet or account, or the transfer of virtual currency from one wallet or account you own or control to another that you own or control. If your only transactions involving virtual currency during 2021 were purchases of virtual currency for real currency, including the use of real currency electronic platforms such as PayPal and Venmo, you are not required to check the “Yes” box next to the virtual currency question. You must not leave the field blank even if you are not required to answer “Yes”. If you disposed of any virtual currency that was held as a capital asset through a sale, exchange, or transfer, check “Yes” and use Form 8949 to figure your capital gain or loss and report it on Schedule D (Form 1040).

If you received any virtual currency as compensation for services or disposed of any virtual currency that you held for sale to customers in a trade or business, you must report the income as you would report other income of the same type (for example, W-2 wages on Form 1040 or 1040-SR, line 1, or inventory or services from Schedule C on Schedule 1).

For more information, go to [IRS.gov/virtualcurrencyfaqs](https://www.irs.gov/virtualcurrencyfaqs).

Tax Enforcement

New & Old Reporting Rules

- **Domestic**
 - **Forms W-2, 1099-K, 1099-MICS, etc.** – A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property.
 - **Forms 1099B** (beginning for 2023) – Brokers must file and furnish this form reporting transactions involving digital assets.
 - **Form 8300** (beginning for 2023) – Each person engaged in a trade or business who, in the course of that trade or business, receives \$10,000 or more in digital assets in a transaction or multiple transactions must file this form.
- **Foreign**
 - **OECD's CARF** – Would require exchanges, brokers, dealers, and others to report certain virtual currency transactions (including crypto and NFT). Not yet in force.

Tax Enforcement

SOL & Penalties

- **Statute of Limitations (Civil)**
 - Willful tax violation - never runs
 - Non-willful tax violation
 - 3 years for federal / 4 years for CA - begins to run from the later of the due date for the return or whenever it was filed.
 - 6 years for substantial omissions (omits (1) more than 25% of the gross income reported, or (2) more than \$5,000 that is required to be reported on Form 8938).
- **Penalties (Civil)**
 - Willful tax violation - 75% of the portion of the underpayment attributable to fraud.
 - Non-willful tax violation - between 20-40%, depending on the facts.
- **Interest** - Short-term AFR + 3%

Tax Enforcement

Required Record Keeping

- In audits, expect the IRS to ask for the disclosure of all wallet IDs and blockchain addresses owned or controlled by the taxpayer.
- The Internal Revenue Code and regulations require taxpayers to maintain records that are sufficient to establish the positions taken on tax returns. Taxpayers should therefore maintain records documenting receipts, sales, exchanges, or other dispositions of virtual currency and the fair market value of the virtual currency.
- IRS's FAQs provide that to use the specific identification method (instead of using FIFO), the documentation must show:
 1. The date and time each unit was acquired,
 2. The taxpayer's basis and the fair market value of each unit at the time it was acquired,
 3. The date and time each unit was sold, exchanged, or otherwise disposed of,
 4. The fair market value of each unit when sold, exchanged, or disposed of; and
 5. The amount of money or the value of property received for each unit.



IRS Guidance

IRS Guidance

Notice 2014-21 & IRS FAQs

- Describes how existing general tax principles apply to transactions using virtual currency.
- The sale or other exchange of virtual currencies, or the use of virtual currencies to pay for goods or services, or holding virtual currencies as an investment, generally has tax consequences that could result in tax liability.
- For federal tax purposes, virtual currency is treated as property. General principles applicable to property transactions apply to transactions using virtual currency.
- The IRS doesn't specify the type of property. But the consensus is that cryptocurrency and NFTs should be considered intangible personal property. Tax rules specific to intangible property should be considered.

IRS Guidance

Notice 2014-21 & IRS FAQs (Continued)

- Clarifies that the tax rules governing foreign currencies do not apply to transactions in cryptocurrencies.
- General employment or self-employment tax rules apply if virtual currency is received in exchange for services.
- General character rules apply – depends on whether it is a capital asset in the hands of the taxpayer.
- Basis recovery on sale – FIFO default, unless you can specifically identify.
- Does not address transactions involving NFTs, although the principles of the notice should generally apply.

IRS Guidance

Other

- **Rev. Rul. 2019-24; CCA 202114020**
 - Air dropped tokens or new tokens received from a “hard fork” (i.e., a division of network into two networks) are taxable at such time the token recipient has dominion and control over the new token(s).
- **Chief Counsel Advice Memorandum 20203511**
 - Discusses tax consequences for an individual who receives convertible virtual currency for performing microtasks through a crowdsourcing or similar platform.
 - The convertible virtual currency received must be reported on the taxpayer’s income tax return as ordinary income and may be subject to self-employment tax.
- **Chief Counsel Advice Memorandum 202124008**
 - No like-kind treatment for crypto-to-crypto exchanges.



Income Tax Considerations

Income Tax Considerations

Questions for Analysis

- **Was there a “tax event” (receipt, disposal, exchange, use as payment, etc.)?**
 - What is the nature of the activity – business, investment or personal?
 - How is the investment held (directly or through an entity)?
 - What is the character of the income or losses? Capital or Ordinary?
 - When did the taxable event occur (i.e., timing)?
 - How do you value the amount realized?
 - What’s the basis? FIFO, specific identification, etc.
 - Are there deductions available?
 - Are losses deductible?
 - What is the tax rate for income or gain?
 - What is the source of income (if applicable)?
 - Are there foreign or indirect tax considerations (state sales or use tax, state income tax, VAT, etc.)?
- **What are the reporting requirements?**



Cryptocurrency

Cryptocurrency

Overview

- Fungible unit of data stored on a blockchain, a form of digital ledger, that can be sold and traded.
- A digital representation of value that functions as a medium of exchange, a unit of account, or a store of value.
- Has a private key associated with proving ownership.



Crypto market cap falls below \$1 trillion as Bitcoin drops 65% from all-time high.

June 13, 2022

Cryptocurrency

Types of Taxable Transactions - Basics

- **Sale of Cryptocurrency**
 - Income from the sale can be ordinary income or capital gain.
 - The initial sale is likely ordinary income for the issuer.
 - A secondary sale typically will be capital gain.
 - Taxpayer has gain to the extent the FMV of the property received exceeds the taxpayer's basis.
 - Tax rate will depend on the holding period. NIIT?
- **Receipt of Cryptocurrency** (for providing services, mining, staking, hard fork, or lending)
 - Typically, ordinary income treatment. There may be employment or self-employment tax too.
- **Exchange of Cryptocurrency** (for example, trading crypto for NFTs)
 - Typically, capital gain treatment.

Cryptocurrency

Example 1

Jamie owns five types of virtual currencies on various exchanges. She trades virtual currency for other virtual currency on a regular basis. Jamie also buys NFTs with cryptocurrency. How is Jamie taxed on her sales for the year?

- Taxable exchange? Yes. The gain or loss generally will be recognized on each exchange based on the difference between Jamie's basis and the fair market value of the property.
- Does she hold them for investment? Or is she in a trade or business?
- Capital asset or 1231 property?
- Basis recovery – FIFO or specific identification?
- Do any special rules apply that might limit the loss or gain recognition (e.g., wash sale rules, etc.)?

Cryptocurrency

Example 2

Jamie lost her wallet's private key. Can she claim a loss for the virtual currency stored in her wallet?

- Identifiable Event?
- Theft or Casualty? Abandonment?
- Personal? Investment? Business?

Cryptocurrency

Example 3

BVICrypto is a cryptocurrency trading platform in the British Virgin Islands. It has 10 owners (5 foreign and 5 U.S. residents) owning equal parts. There is only an organization document; no shareholder type agreement. Foreign owners are only listed as owners because of regulatory limitations of the crypto exchange. BVICrypto trades on the cryptocurrency exchange fulltime, and in 2022 has \$20 million of net profit.

- Structuring Decisions
- U.S. citizens taxed on (and must report) their worldwide income.
- U.S. citizen/owners in a non-US entity are subject to various rules for tax recognition and reporting.



DeFi or “Decentralized Finance”

DeFi

Overview

- Use of crypto/blockchain for finance. This term encompasses many types of transactions. It also can involve NFTs being used as collateral for lending arrangements.
- Examples of DeFi transactions:
 - **Lending or Borrowing of Cryptocurrency** – can occur between two network addresses, or they can occur on a pooled basis allowing different participants to contribute or remove assets from a lending pool. It can also involve cryptocurrency being used as collateral for a loan administered through a smart contract.
 - Will the transferor receive cryptocurrency identical to the lent cryptocurrency?
 - **Wrapping Tokens**: Sometimes protocols require wrapping coins before they can be deposited into a specific smart contract. Wrapped tokens allow crypto (like bitcoin and ether) to be traded, lent and borrowed on a DeFi platform.
 - Do the benefits and burdens of ownership change?
 - Does the custodian have the right to transfer the cryptocurrency to another person?
 - **Receiving of Interest or Fees for Loans**: Receiving interest or fees for loans in the form of crypto or other tokens will be a taxable event.

NFTs or “Non-Fungible Tokens”

NFTs

Overview

- An NFT is a non-fungible unit of data stored on a blockchain, a form of digital ledger, that can be sold and traded.
- Each NFT is unique and has a unique value that can't be duplicated or split.
- NFTs can be used by artists, musicians, and anyone creating one-of-a-kind content.
- Types of NFT data units may be associated with digital files such as photos, videos, and audio.
- The technology surrounding NFTs is still evolving.

Decentraland

7-Day Sales Volume: \$6.6 million

Number of 7-Day Sales: 339

Average Sale: \$19,469



Decentraland, one of the most popular metaverses Decentraland press kit

Explainer: Decentraland is a virtual reality platform powered by the Ethereum blockchain. Users can create, experience, and monetize content and applications.

Market Insider

NFTs

Overview

Bored Ape Yacht Club

7-Day Sales Volume: \$52.2 million

Number of 7-Day Sales: 695

Average Sale: \$75,107



This Bored Ape is just one of the NFTs auctioned at Sotheby's recently. Sotheby's

Explainer: "BAYC is a collection of 10,000 Bored Ape NFTs—unique digital collectibles living on the Ethereum blockchain. Your Bored Ape doubles as your Yacht Club membership card, and grants access to members-only benefits."

The Sandbox

7-Day Sales Volume: \$33.1 million

Number of 7-Day Sales: 2,182

Average Sale: \$15,169



A snapshot from The Sandbox virtual metaverse [The Sandbox](#)

Explainer: "The Sandbox is a community-driven UGC-voxel platform where users own their LAND and host their creative magic."

Market Insider

NFTs

Uses

- Represent ownership of digital art, merchandise or collectibles.
- Represent real-world assets (e.g., real estate, watches, etc.).
- Represent access to music, concerts, events, or online communities.
- Represent access to games, content, or an experience.
- Represent a membership interest in a DAO.
- Used as collateral for lending arrangements and other DeFi transactions.
- Used by charities for fundraising.
- Used for sweepstakes and contest promotions.
- More uses will develop.

NFTs

Initial Offerings - Tax Consequences for **Issuer**

- **Creation of an NFT shouldn't be taxable until the issuer receives income.**
- **When income is received, the tax treatment for the issuer depends on the facts.**
 - **Does the token represent debt, equity or neither?**
 - **Equity:** Does the token represent an ownership in the issuer akin to stock?
 - **Debt:** Is there a promise to repay the issuer a specified sum by a particular date?
 - **Is the token a sale, license or provision of services?**
 - **Sale:** Was there a transfer of property for money or other consideration? Were all the benefits and burdens of ownership transferred?
 - **License:** Did the token represent a right to access the blockchain platform (or other content) for a limited period of time?
 - **Services:** Did the token represent access to hosting or streaming content maintained by the issuer? Can the issuer replace the content with comparable content?
 - **Is the issuer (or are any of the issuer's owners) foreign?**

NFTs

Initial Offerings - Tax Consequences for **Issuer**

- Generally, NFTs don't represent debt or equity (although such a transfer generally would be tax free).
- Most NFT transactions would be considered sales of intangible property (sometimes with a license or services component).
 - If considered inventory or held for sale to customers or self-created intangible property, the income from the sale would be *ordinary*.
 - Royalty or services income would also be *ordinary*.

NFTs

Initial Offerings - Tax Consequences for **Purchaser**

- If the NFT is purchased with U.S. dollars, there should be no tax event for the purchaser.
- If the NFT is purchased with cryptocurrency (or other property), the purchaser would recognize gain or loss equal to the difference between the FMV of the NFT and the purchaser's tax basis in the cryptocurrency (or other property).
- The purchaser's basis in the NFT will be equal to the purchase price in U.S. dollars (or the FMV of the property used for the purchase), with certain adjustments.

NFTs

Subsequent Transfers - Tax Consequences for Subsequent **Sellers**

- **A sale or exchange of an NFT for money or other property will be a taxable event.**
- **Income:** There is income when the FMV of the money or property received exceeds the seller's basis in the property sold. Generally, the income will be capital gain.
 - **If held for more than one year, the income should be long-term capital gain.**
 - What would the tax rate be – 15%/20% or 28% for collectibles?
 - Is the NFT a “collectible” within the meaning of IRC § 408(m)?
 - Any work of art, any rug or antique, any metal or gem, any stamp or coin, any alcoholic beverage, or any other tangible personal property specified by IRS for this purpose, but not including exceptions for certain coins and bullion.
 - **Does the 3.8% NIIT apply?** For purposes of the NIIT, investment income includes, interest, dividends, capital gains, rental and royalty income, non-qualified annuities, and income from businesses involved in trading of financial instruments or commodities and businesses that are passive activities to the taxpayer (within the meaning of IRC § 469).

NFTs

Subsequent Transfers - Tax Consequences for Subsequent **Sellers**

- **Loss:** There is a loss when the FMV of the money or property received is less than the seller's basis in the property sold.
 - If for **individual investment**, the losses for individuals are deductible to the extent of capital gains generated in the same period, plus an additional \$3,000 deduction against other income.
 - If for **personal/hobby** purposes, losses generally are not deductible.
 - Hobby losses for individuals are not deductible after TCJA.
 - But hobby losses are potentially deductible for state tax purposes.
 - If for **business**, the losses generally would be deductible (subject to other potential limitations depending on how the investment is held).
 - For individuals, the deductibility will depend on the nature of the activity and may be subject to limitations (such as the excess business loss limitation).
 - For flow-through business entities, losses may be limited (1) to the extent of basis, (2) under the at-risk rules, (3) under the passive activity loss rules, and (4) under the excess business loss rules (in effect through 2025).

NFTs

Example 1

Seth Green fell victim to a phishing scam resulting in the theft of 4 of his NFTs. One of the NFTs, Bored Ape #8398, was set to star in a new show Green was developing called White Horse Tavern. His Bored Ape NFT had an estimated value of \$200,000 at the time it was stolen from his wallet. Someone subsequently bought Green's stolen Bored Ape for \$268,000.

- Theft loss (IRC § 165(e))?
- What is the amount of the loss?
 - For business or investment property, the loss is equal to the adjusted basis in the property (less any insurance or other compensation received).
 - For personal property, the loss is the lesser of the FMV or adjusted basis, reduced by insurance or other compensation received.
- Is the loss deductible?
 - Losses of business or investment property may be deductible.
 - TCJA got rid of the deduction for personal theft losses until 2026.

NFTs

PE Funds

- **Private equity funds are investing \$\$\$ in NFTs.**
- **Tax considerations are the same as with other PE structures.**
 - **Who are the investors?**
 - Individuals? Entities?
 - Tax-Exempt?
 - Foreign?
 - **What are the investors' tax wants?**
 - Individuals: No entity-level tax, no phantom income, capital gain preferred.
 - Tax-Exempt: Fully exempt income (if not available, how to mitigate UBTI).
 - Foreign: Income exempt from U.S. taxation (i.e., not ECI or FDAP), and if not available, may prefer a blocker corporation.
 - **How does the PE fund make money?**
 - **What are the PE funds activities and timeline?**



DAOs or “Decentralized Autonomous Organizations”

DAOs

Overview

- Essentially a group of individuals who use blockchain technology (also referred to as Web3) to form a group whereby each member contributes virtual assets (tokens) to obtain an ownership interest or right to have a voice in the governing of the assets purchased by the DAO.
- The ownership interest or right is represented by a token(s) in the DAO (i.e., token for token). In general, a DAO has no formal legal structure under state law.
- Many DAOs are formed for investment purposes, like an investment fund.
- Token holders may vote to pick investments. Like an investment fund, the members (i.e., token holders of the DAO) share in the profits or losses of the investment(s).
- Some DAOs wrap themselves in LLCs, where each governance token is an LLC interest that also shares in profits. DAOs can be wrapped in other ways.

DAOs

Overview

- Examples:
 - Protocol DAO – found behind DeFi protocols.
 - Investment DAO – like an investment fund that operates with invested capital.
 - Collector DAO – pools funds to purchase collectibles, such as NFTs and real-world art and music.
 - Social DAO – a social club for which the membership fee is paid through a certain number of tokens.
 - Other DAO – other uses exist and are still evolving.

DAOs

Tax Considerations

- **The tax treatment for a DAO and its owners depends on many factors.**
- **Business Entity for Tax Purposes?**
 - A business entity for tax purposes does not depend on whether the organization is recognized as an entity under local law. “A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom.” However, mere co-ownership is not enough. Treas. Reg. § 301.7701-1(a).
- **Domestic or Foreign?** Treas. Reg. § 301.7701-5
 - A business entity is domestic if it is created or organized in the U.S.
 - A business entity is foreign if it is not a domestic entity.
- **Partnership or Corporation?** Treas. Reg. § 301.7701-3
 - A domestic business entity is by default a partnership if it has two or more owners.
 - A foreign business entity is by default a corporation if all the members have limited liability. If any member has unlimited liability, the foreign business entity is by default a partnership.

DAOs

Tax Considerations

- **Classification as a Domestic Partnership**
 - If a DAO is a partnership, it would have an obligation to file partnership returns and withhold taxes on foreign partners.
 - Each partner would have to report and pay tax on their share of the DAO's income and gain (regardless of whether the DAO made a distribution).
 - Foreign partners may be required to pay U.S. income tax and file U.S. income tax returns.

DAOs

Tax Considerations

- **Classification as a Foreign Partnership**
 - Some or all of the foreign partnership's income could be subject to U.S. tax to the extent there is income from U.S. sources or effectively connected to a U.S. trade or business.
 - A foreign partnership that is engaged in a US trade or business activity is required to file an annual information return on Form 1065.
 - There may be special reporting for any U.S. partners (e.g., Form 8865).
 - U.S. partners would be required to pay U.S. income tax with respect to the DAO's activities. Foreign partners may be required to pay U.S. income tax and file U.S. income tax returns as well.
 - The foreign partnership may be required to withhold certain taxes.

DAOs

Tax Considerations

- **Classification as a Foreign Corporation**
 - If the DAO is a foreign corporation, it would be subject to U.S. corporate income tax if it engages in a U.S. trade or business or has U.S. FDAP income.
 - Where is the location of the trade or business?
 - What is the source of the income?
 - U.S. shareholders of the DAO may be subject to the CFC/PFIC rules, depending on the situation.
 - U.S. shareholders would also be subject to various reporting requirements with respect to the interest in the DAO (i.e., Forms 8938, 5471, 8865, 926, etc.).

DAOs

Tax Considerations - Important Questions for Analysis

- Does a contribution of money or property to a DAO result in a tax event?
- Are distributions from a DAO taxable?
- Do the owners of a DAO have income from the DAOs activities, even if there are no distributions?
- Do the owners have reporting requirements for a DAO?

Other Tax Considerations

Other Tax Considerations

- State income tax
- State sales/use tax
- VAT (non-U.S. country)
- Charitable giving issues
- Transfer tax (property, gift, estate, and GST)

Our Team



Theresa Clardy
(Los Angeles)

Counsel
Transactional Tax
TClardy@Venable.com



Friedemann Thomma
(San Francisco)

Partner
Co-Chair, Transactional Tax Group
FThomma@Venable.com



© 2022 Venable LLP.

This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

VENABLE LLP