

Recent Global Tax Enforcement Efforts Focus on FinTech and Cryptocurrency

Tax authorities around the globe have focused on combatting tax evasion and other financial crimes associated with cryptocurrency in recent years. More recently, investigative efforts have broadened to include the FinTech industry. In late March 2021, the Joint Chiefs of Tax Enforcement—or the J5—held a coordinated international tax investigation into the FinTech industry and cryptocurrency. As reported in an earlier [post](#), the J5 is a consortium of the taxing authorities of Australia, Canada, the Netherlands, the U.K. and the U.S. formed in 2018 to leverage the agencies' collective resources to root out financial crimes. The group has held an annual event (dubbed “The Challenge”) in each of the last four years that focused on generating investigative leads, including with respect to tax evasion committed in connection with cryptocurrency. Past Challenges have resulted in measurable results, including an [arrest](#) associated with a cryptocurrency mining scheme.

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This year’s J5 Challenge took place virtually and joined investigators, cryptocurrency experts, and data scientists in focusing on tax evasion and financial crimes that may be associated with the FinTech industry. The IRS [press release](#) regarding the exercise indicates that the novel nature of certain FinTech companies may allow their user bases to engage in tax avoidance and money laundering, suggesting that the ultimate targets of the investigations may be end users, and not the FinTech companies themselves. The recent exercise resulted in each country identifying specific companies for further investigation.

On the heels of the Challenge, the IRS sought permission from two federal district courts to serve John Doe summonses on payment technology company Circle¹ and cryptocurrency exchange Kraken.² A John Doe summons is an IRS investigative tool that allows the Service to seek the names of taxpayers (and other related information) where the IRS has reason to believe that anonymous, unknown taxpayers failed to comply with their tax obligations and the information is not readily available from other sources. Through the summonses to Circle and Kraken, the IRS seeks information regarding the exchanges’ account owners and their transaction activity to ensure that users are complying with their tax obligations. The District of Massachusetts granted the IRS’ request to serve the broadly drafted summons on Circle, but the Northern District of California ordered the IRS to “show cause” that the summons to Kraken cannot be narrowed. Subsequently, the IRS narrowed the summons, and the Northern District of California granted the more limited request. In the Justice Department’s [press release](#) announcing the order allowing service of the summons on Kraken, IRS Commissioner Chuck Rettig is quoted as stating, “There is no excuse for taxpayers continuing to fail to report the income earned and taxes due from virtual currency transactions.... This John Doe summons is part of our effort to uncover those who are trying to skirt reporting and avoid paying their fair share.”

The John Doe summonses to Kraken and Circle are not the IRS’ first efforts to obtain information about tax evasion associated with the use of cryptocurrency from exchanges. In 2018, the IRS issued a similar John Doe summons to Coinbase, which resulted in a slew of civil and criminal enforcement actions. One of the targets of the John Doe summons to Coinbase, James Harper, challenged the use of the John Doe summons on constitutional grounds after his records were seized. He argued that he was denied his due process rights in advance of a seizure of property, and that his privacy protections under the Fourth Amendment were violated, notwithstanding the confidentiality agreement he signed

¹ *In the Matter of the Tax Liabilities of John Does*, No. 1:21-mc-91201 (D. Mass. 2021).

² *In the Matter of the Tax Liabilities of John Does*, No. 3:21-cv-02201 (N.D. Cal. 2021).

with Coinbase. After the District of New Hampshire denied the challenge on the grounds that the Anti-Injunction Act prohibits lawsuits constraining the assessment and collection of taxes, Harper appealed to the First Circuit in April 2021.³

The IRS is not limiting its investigative efforts with respect to cryptocurrency and the FinTech industry to John Doe summonses. During a conference in early March 2021, Damon Rowe, head of the IRS' Fraud Enforcement Office, described "Operation Hidden Treasure," a joint effort between the IRS' civil office of fraud enforcement and the criminal investigative unit of the IRS that focuses on blockchains to identify cryptocurrency-related tax evasion. Operation Hidden Treasure is staffed by agents trained in cryptocurrency and virtual currency tracking and who are searching for key indicators of fraudulent activity and identifying taxpayers who omit virtual currency from their returns.

We expect the FinTech industry to come under increased scrutiny as taxing authorities around the world marshal resources to shut down tax evasion and other crimes associated with cryptocurrency. While FinTech companies may not be ultimate targets of tax investigations, the recent J5 Challenge and the IRS' increased reliance on John Doe subpoenas suggest that they play a key role in revenue authorities' strategy to combat tax and financial crimes related to cryptocurrency.

Please contact the Ropes & Gray [tax controversy team](#) with any questions you may have or for further information. To learn more about Ropes & Gray's FinTech practice, please click [here](#).

³ *Harper v. Internal Revenue Service*, No. 1:20-cv-00771-JD (D.N.H. 2021).