WHERE IS THE TAX ON BITCOIN?

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It's an accounting practice that ultimately determines what type of tax liability someone has. You have to realize that the people who wrote the tax laws created a way for themselves to pay little or no taxes. They also create policy, certifications and licensing for the tax professional so that people like you and me only perceive they are getting tax benefits. What they have really accomplished is tricking the average person into adopting and following certain habits so he will be forever stuck in this tax system.

Keep in mind that while most people are interested in these concepts for tax purposes, you will soon discovery that taxes are the least of your long list of risks to manage. What I'm describing here is far more comprehensive than just reducing or eliminating taxes, even though we'll do that quite effectively.

Here are two videos that explain the concepts, and then this article is written to give you and your accountant references if you want to do more research.

https://youtu.be/3j_arn2XXUo and https://youtu.be/auFFBGsXoMU

In this article, I use the term "Bitcoin" to include all crypto-graphic assets, tokens and coins. What changes in the law, in any country, now impose a tax on Bitcoin? There are no new laws imposing a tax on Bitcoin or any other crypto-graphic assets because they have been defined by every taxing authority to be "property". This brings in all the laws regarding taxation of property and property rights for at least the last one-hundred years. In some counties it will be several hundred years. While most of this article pertains to the United States' system of taxation, I am confident that the tax treatment you will discover in your own country will be identical.

This is also discussed in an interview with VJ at Rogue News here, https://youtu.be/auFFBGsXoMU

Keep in mind that the following concepts assume you have a "know-your-customer" (KYC) process for trading from dollars to Bitcoin, but that www,bitcoin.com now has an application that allows anyone in the world, from any currency, to buy and sell in and out of Bitcoin Cash (BCH) without any KYC. If there is no KYC, you have total privacy and there is no need for the strategies I'm describing here, especially when it comes to smaller amounts of money such as living expenses.

The one exception to the "know-your-customer" relevance when using a business account with Caleb & Brown in Australia, no matter where the business is registered, Caleb & Brown does not report on U.S. citizens. Likewise there are no FinCEN or IRS disclosure requirements for U.S. citizens or U.S. registered businesses such as limited liability companies or limited partnership in the U.K. or Canada who have crypto accounts with Caleb & Brown. This type of account avoids many of the issues described in this article, so you will want to visit the registration website for Caleb & Brown for more information and how to get a 30% discount on trades at partners.calebandbrown.com/aceofcoins.

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The first concept you want to understand is that Bitcoin is defined as property. No new laws are needed, not for taxes or property rights in general. It was defined as property by the IRS in its Revenue Bulletin of 2014. This is very important. Before we continue, let me demonstrate how we are conditioned to believe something a certain way, that can change how we do things. People believe that they pay sales taxes at the grocery store. You look at your receipt and there is the itemization of what you paid, including sales tax on some items and then the total. Ask anyone and he will agree. However, what if we are simply seeing one of the operating costs of the grocery store, and that is being made to appear as if we are paying the tax when in fact the store is not only liable for the tax, but is in fact paying the tax?

Why isn't the store's cost for electricity for that hour pro-rated on the receipt, and how about its labor costs, why don't those appear on the receipt also? Because the sales tax is what the store is paying as part of its operating costs and itemizing it on the receipt makes it appear that the customer is directly paying the sales tax, when in fact the store is responsible for paying this tax, the store is the taxpayer, not the customer. Why does this matter? Well, because if you believe you are the taxpayer in this scenario, you will more easily believe other things that are not true, but that can be used to manipulate your decisions and habits.

The second concept is that any tax will be paid in a government currency for the government agency imposing the tax, not Bitcoin itself. If you are not paying the tax in the thing being taxed, it's not taxable. Only the gains you receive from the disposition of the asset are taxable in the government currency you are using to pay the tax.

If you pay tax because of a Bitcoin transaction, it's likely because you disposed of the property to a third party, not another wallet address or under a different title, such as moving from a paper wallet to another wallet on an exchange where the account holder is "your" limited liability company or trust. The term "your" implies that you or your family are still intended to receive the benefits of the holding, you still haven't sold or conveyed it (Bitcoin, etc.) to a third party.

The same is true for any property or property rights; great examples of this include stock and precious metals. You don't pay a tax on gold just because the price increased.

I recently spoke with an accountant in Australia on these very concepts and she was so quick to talk about paying tax on gains until I asked her where the gains came from and she stated that "...well, eventually you will want to take profits because your holdings (cryptos) are worth more...", and I said "Yes, but at the moment, just because the property is worth more, it doesn't create a tax liability, correct? And she admitted that this was correct, but then asked, "so you're just never going to take profits?" I explained that this wasn't the question, the question is whether or not I have a taxable gain just because my property value increased against the currency and she had to concede that there was no tax liability at that point. I did not go on to explain how it's possible to manage the property rights and retain a tax deferred status.

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I think this is another really good analogy. If I buy Digibyte with my Bitcoin and then the prices change so that I buy back Bitcoin again with my Digibyte and now I have more Bitcoin, that would be "more money" or "profit"; however, it won't be taxable until I price my "gain" in terms of the taxable currency, such as the dollar and then sell my new amount of Bitcoin for dollars. I would then have to at least report the transaction if it were in my name, and possibly pay tax on it. However, even though I now have more Bitcoin, I don't have more dollars. If Bitcoin were truly taxable, I could pay a tax on the "profit" between Digibyte and Bitcoin, in Bitcoin, but I am not required by any law anywhere, to go out and obtain dollars somehow and then pay tax on the Bitcoin. As long as I do not dispose of the asset for the currency being taxed, there will be no tax.

The third concept to understand is that the exchanges are government agencies. Many of them have been delegated certain authorities to collect information and make reports on their account holders. This is not problem, it doesn't change anything as far as whether or not an account holder would have a tax liability, it's just important to know with whom we are dealing. The cleanest way to manage your purchases on these exchanges is to buy only stable coins on the exchanges, then move those to a wallet such as a BitFi or Atomic Wallet, which are decentralized and private wallets, and then allocate your stable coin into the crypto-coins you want. This way you will avoid creating any type of record of which coins you bought on which dates and it would render an audit summons for these records useless. When you take profits, use escrow, loan arrangements and reverse this process with the stable coin through your limited liability company as the account holder. This will create zero tax consequences or at least give you the full control over when and how much tax you want to pay.

My purpose in describing this is not to demonstrate how to hide your money and trick the system or even break the law, there is nothing illegal about keeping your privacy and managing your assets through an investment vehicle.

The fourth concept is understanding the process that would create a tax liability you did not have, if you don't understand, and most accountants don't understand. A report from a third party claiming you sold or disposed of your assets for dollars will eventually cause you to create a tax consequence when you may have had none. Let's examine the audit process, paraphrasing from my interview on Pulse Wave Trading, February 5, 2020, beginning at the 22:00 minute mark[1], ...*where you did not get a 1099, you're going to get audited because what the agents will do is summon your exchange records, and then run the coin tracker software and generate a similar report as the 1099 that you didn't receive from the exchange, and send you a deficiency notice and it will force you to either amend your tax return or get the notice corrected and tax court will not help you.* You don't want to amend your tax return, and/or file a petition in tax court, because then you will have created the tax liability from which you will not escape. Instead, you'll have to request a determination letter on the statement in the deficiency notice.

1 https://youtu.be/wiD9XCDiJRY

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Likewise, receiving a 1099-K or similar report regarding exchanges between coins, requires you to get the amounts corrected (minus those where you actually sold for taxable dollars) by making a formal request for determination letter with the Secretary of the Treasury.

The fifth concept is that there is no law requiring a taxpayer, in his own name, to invest in Bitcoin. The taxpayer can manage his property rights in the asset using a legal entity or other arrangement that does not create a tax consequence, or at least defers it. It's a matter of restructuring property rights to legally avoid any tax in the same way you can legally protect your assets against creditors. No matter what plan you're using to protect assets, the central strategy involves divesting (relinquishing) your exclusive rights to sell property. If you do not have the exclusive right to sell property, it cannot be taken from you by a creditor and if you do not have the exclusive right to receive income, it cannot be considered a gain or taxable to you. I think it's safe to conclude that this is true in any jurisdiction, anywhere in the world.

Maybe this explanation sounds a bit cryptic, so it's talk about specific methods and I'm sure you all will be able to relate to the ideas. If you're a sole proprietor running a business, you have 100% liability for everything, taxes, creditors, all contracts and any other types of liability. If you are a partner in a partnership, depending on its terms, but generally, the general partner takes on all or most of the liability and the limited partner is only liable for the value of his contribution.

If I owe a tax on income that I receive, and if my brother owes a tax on his income, it's easy to understand. Each of us is a taxpayer. But if both of us together own an undivided interest in income, together our association (my brother and I) cannot possibly owe a tax on that income, even though it would normally be taxable to either of us individually. This income would not be subject to any tax or even reporting until we claim that together (as an association of some type) we owe the tax or until each of us individually claims a portion of the income and we divide the interest between the two of us, and then report and claim the income for tax purposes.

In fact, depending on our individual situations, we may each have a different tax amount for the same income after it's divided. This is easy to understand, but the most important concept here is that when my brother and I receive income together where the interest is not divided, if someday there would be a tax liability, it won't be until we divide our interest and each claim the income individually. This is the reason why corporations can pay the tax after they spend all their money and why people pay taxes on wages before they receive them. People are being taxed on gross income and corporations are being taxed on net income. The difference is an accounting function, based upon ownership rights. Those rights are established by written agreements but also by the relationship and habits involved with managing the income and asset.

If my brother and I together form a partnership and register it with the state and obtain a tax number and then file a report at the end of a tax period, then we will have created a new taxpayer by making our partnership an income reporting, tax paying "person". This is a very common example of what people do everyday around the world.

Consider the relationship between two brothers as an unincorporated association, until that relationship is registered with the state and a tax report is filed. It's "unincorporated" because it's private. Incorporated simply means included, and of course both brothers are included, but it's a private association in which each brother is a member. This association excludes other individuals who are not brothers, only certain people can be in this association. We can also formalize this into what many people recognized as a limited liability company or limited partnership.

Everyone is a member of many types of associations, for example, because you had parents, whether or not they are still here, you are a member of a private association commonly known as a family. If you use a car, you are part of an association of people that use cars, it's more common than you think. Let's consider the example of a family with 7 members, the mom, dad, brother, sister, uncle, niece and mother-in-law. This is a private membership association (PMA) and it's not an individual taxpayer. It could be if the family members used a common name, obtained a tax number and filed a tax return as a corporation or partnership or trust, but this is not required under any circumstance, and this is not what I'm suggesting of course.

While a limited partnership (LP) or limited liability company (LLC) can have a single owner or member, in the case of an LP you would have two designations, one as general partner and one as limited partner, but it's nearly the same. The LLC or LP can be an account holder at the bank and pass-through all gains, profits or income (and losses) to the member owners. The standard accounting is to maintain a capital account for each member or partner and to close the books each tax period and pass all income through to the owner or member. But you can write the agreement so that there is an undivided interest (only one capital account) and the books are not closed until the members or owners make a decision to do so; in other words, it's not automatically scheduled and it's not required (even with only one member in the case of an LLC or one partner acting as both general partner and limited partner in the case of an LP). There is no law requiring anyone, at least that I've ever seen, to take profits ever, or on any specific date or within any specific time period. You decide how to manage the income and account for everyone's interest.

The owner of your LP or your LLC can be your entire family, or any unincorporated association. Your family, or your PMA can own anything, including an entire company. The company can be a taxpayer or not, and it can obtain a tax number and receive income and then pass its income or gains onto the owner, the PMA. Because the PMA never became a taxpayer and because it's not required to, any tax obligation would occur only when one or more of the association members was allocated his interest and then he would have to claim that in a tax return after receiving a disbursement from the association. The association itself, the PMA, would never been seen as a taxpayer.

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It's not like I alone created this idea in my head, this is the cornerstone of our entire system of taxation, and I believe it's world-wide. In the United States, under the Bank Secrecy Act which was amended by The USA Patriot Act to require financial institutions to collect identifying information from account holders, this law excludes unincorporated associations from having to provide identifying documents or tax numbers. The PMA is immune from the anti-money laundering rules that apply to individuals (what you and I believe we are). To be more specific, the "know-your-customer" (KYC) rules only apply to (legal entity) account holders and signers for the account holder, they do not apply to attorneys, organizers of the account holders or unincorporated associations. This works much like a "back-door" for the people who actually write these laws and policies, but people like us are never apprised of these benefits by tax and legal professionals (even though they must know about them). This is further illustrated in my recently published Bank Secrecy Act Compliance Memorandum.

The ideal account holder would be limited liability company owned by a PMA or a limited partnership in which the general partner is a foreign entity or a PMA and the limited partner is the local resident, individual taxpayer. It creates a situation where third party tax reports are not able to create any tax consequence and the only time a tax would be paid is if a member of the PMA claimed his share, paid himself and filed the tax report. You will discover shortly that even this can be avoided, and legally of course.

Let's review the first five concepts so far:

1. Bitcoin is defined as property.

2. If you are not paying the tax in the thing being taxed, it's not taxable.

3. Exchanges are government agencies, so buy only stable coins on the exchanges, then move those to a wallet such as a BitFi or Atomic Wallet, which are decentralized and private wallets, and then allocate your stable coin into the crypto-coins you want.

4. A report from a third party claiming you sold or disposed of your assets for dollars will eventually cause you to create a tax consequence when you may have had none.

5. The taxpayer can manage his property rights in the asset using a legal entity or other arrangement that does not create a tax consequence, or at least defers it. if both of us together own an undivided interest in income, together our association (my brother and I) cannot possibly owe a tax on that income, even though it would normally be taxable to either of us individually.

The sixth concept I wanted to cover is where the IRS requests that you say "yes" or "no" on Form 1040 relating to having purchased any crypto-coins. My general recommendation is to tell the truth, because it will still not create a tax consequence, but you may be audited and you may receive an erroneous notice of deficiency. You may want to say "no" in any case, or at least <u>say "no" if you did not get a 1099 from any exchange</u>, just to avoid an audit. Otherwise, if you bought some in your name, say "yes". <u>If you are using a company such an an LLC, say "no"</u>.

In the United States, we file an annual income tax known as a tax return on Form 1040. The latest change to the form asks if you bought any crypto-graphic currency for the previous tax period. Answering the question either way does not create any new tax consequence, however, it could create an audit if you answer "yes". What many people have been doing is moving to managing their crypto portfolios via a limited liability company so that they can always answer "no", but for the previous year, you still need to answer. The general practice is to answer "no" if you did not receive a tax report, such as Form 1099-K or something similar. If you answer "yes", there is a good chance you will be audited and the Internal Revenue Service will run the "coin tracking" software and create their own version of the 1099 that you did not receive because your transactions did not exceed the threshold of 200 exchanges or $25,000 for the year.

In that case, you can correct the situation by obtaining a determination letter from the Secretary of the Treasury. Don't expect your CPA to know how to do this, most do not and if they did know the procedure, they would not know how to write the legal memorandum, and even if they did, would be too afraid. Just be aware of these things, but there is no need to fear them.

The seventh concept I wanted to discuss is moving your personal crypto-coins into a newly formed company or trust such as an LLC or LP. It's the same as for any property or property rights, you can sell them to a third party and that is a "disposition of assets", but if you convey them from your name to a trust or company in which you retain the same beneficial interests, then <u>the conveyance is not a disposition of assets, instead, it is considered a conveyance for estate planning purposes</u>. My video about preparing the quit claim deed in the members area at www.privacyfightclub.com explains this in greater detail.

You can convey property or property rights from your name to another organization or entity and if you retain the same beneficial interests, it's not taxable. Additionally, just like there was no tax consequence when you bought the asset, investment or property, such as real estate, stock, precious metals, crypto-coins or other property, there is no tax consequence when you exchange it for another asset, such as to fund another investment.

Your accountant will insist that you have to report the transaction as a sale or disposition of an asset, and if you take that advice, he will be correct and you will likely pay a tax on the transaction; however, if you don't take that advice and you move from one property to another, for whatever reason, and do not report it as a disposition, you will also be correct and you will avoid creating a tax liability. Keep in mind that as long as you do not realize a gain, meaning, you did not receive dollars in exchange for the property, then there is no disposition of assets, it does not matter if you price the assets in dollars or discuss the assets in terms of dollars, as long as you do not receive dollars in exchange for the property, it's not taxable. Remember that the dollars are being taxed, not the property.

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Let's look at what the supreme court held in Eisner v. Macomber, 252 U.S. 189 (1920). It was a tax case before the United States Supreme Court that is notable for the following holdings:

A *pro rata* stock dividend where a shareholder received no actual cash or other property and retained the same proportionate share of ownership of the corporation as was held prior to the dividend by the shareholder was not income to the shareholder under the Sixteenth Amendment.

Ironically, a few years earlier the Supreme ruled that the Sixteenth Amendment did not give the government any more taxing authority than it already had. The case is Stanton v. Baltic Mining Co., 240 US 103, which held that "… the Sixteenth Amendment *conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged*".

The eighth concept involves a review of the pertinent statute for filing tax returns. First of all, the statute alone is not the authority and does not compel someone to act, only the statute and regulation together impose a legal duty for which their can be penalties for failure to comply. But let's just talk about the statute as it is the law. There is no statute that requires a limited liability or any other legal entity or any person to file a tax return; however, there are penalties for those who are required to file and do not file.

This is stated under Title 26 USC §7203 in which the single paragraph begins with "Any person required..." and goes on to state the penalties for willfully failing to file a tax return. Let's back up for a moment and read the first three words of the statute, "Any person required...". Remember, these were written by very smart people, where many well-educated professionals debated the language of the statute for months and months before adopting this final language which has been unchanged for about a hundred years. This language has withstood constitutional challenges of all sorts, and we still have it.

Let's consider this at face value, "Any person required...". Which person is required? Any person. Does that mean every man, woman and child on Earth? Does this include the deceased, how about the unborn, how about college students, what about the insane or invalid, or corporations, trusts and other organizations? Do parents have to file tax returns? What about grandma, even though she's never worked at a job in her entire life? We know that people file tax returns, so do corporations. But who is *any person required*? Who is required? The statutes do not tell us, but I will tell you now how this works.

The person, meaning a corporation, or you and me, the person who actually files a tax return is the person required. And if you stop filing in most cases, you will have severe penalties and consequences; however, for those persons (people and corporations) who have never filed a tax return, there is no presumption of any requirement to file, so the IRS will never, never and I mean never question it. I know this after working with thousands of cases over 26 years and talking with IRS personnel, studying the IRS operations manuals, regulations and reading more case law that I care to admit.

I do not protest the U.S. or any tax system, I just believe that we should only pay the taxes that are owed and that we are under no duty to participate in any other scheme that would create a tax liability when we have other options. I believe this for no other reason than I have morality and I believe that my decisions about using money are moral and to allow an insane person such as a government or corporation have the money instead, is irresponsible. Look at what they have done so far, wars, public policies that destroy ancient social mores, imposing a currency on the people that always loses value, etc., etc. If we have to follow the law or a statute, let's do that, but let's not volunteer for more than absolutely necessary.

The ninth concept, and this will be brief, is that it takes at least several years of debate and public notices with public hearings to adopt new laws in most countries, especially when it concerns more taxation. I have yet to see any notices in the Federal Register or otherwise, calling for public debate on any new laws for crypto-graphic assets. Instead, we all witness one IRS Bulletin that defined crypto-graphic assets as "property" and a very misleading letter ruling that talk about "air drops".

If there was a new law upon crypto-assets, we would have adopted it within the legislature, then it would have been codified into a statute, and then the agency responsible for assessing, imposing and collecting the tax would have promulgated very specific regulations, within the statutory framework, expressing how the crypto-assets would be taxed. The taxing regulations would include a section that set forth the type, kind or class of tax, and a tax table with rates of taxation and other requirements. There is no need to do that because the crypto-assets have simply been defined as property and the thing being taxed is the same as always, it's the currency being taxed, not the property.

The tenth concept involves what most people really want to talk about. They want to know how to take their profits and retain the tax deferment, that is, move their new windfall into another asset while keeping all of the new principal.

This involves using escrow to buy your next asset such as real estate with Bitcoin; for example, you can use escrow to buy anything, and we all probably have used escrow before when we bought a house or used eBay or PayPal to buy or sell something. But let's just use real estate as a very common example. I want to take my new $10,000,000 worth of Bitcoin and buy a hotel. I'll pay cash now and later I'll get my financing. We have escrow agents that can do this of course, but you want a qualified escrow agent that knows how to source dollars for the closing from Bitcoin. You deposit your Bitcoin with the escrow agent, opening an escrow contract for a specific property where the seller has already accepted your offer. The escrow agent will procure the dollars for the closing and at the closing, be sure to take title of the hotel in a new company name. You will want to register a new company for this, no matter how you are buying it.

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The eleventh concept involves structuring the disposition of the asset as a loan or simply paying cash and taking the title in the name of a trust or company. Loans are not taxable and buying something for a trust is not taxable. You'll need to sell your Bitcoin for cash and leave that cash in your LLC account so you can access the funds. If it's a car, you simply tell the dealer that you already have a loan approved and then make your deal. Once you know how much money you need to buy the car, go get the cash from your LLC account in certified funds, naming the LLC as the payor and explain to the dealer that the LLC is the lender. Simply provide its address and EIN and the dealer will prepare the title documents accordingly, so that your LLC is shown as the lender on the lien side of the title certificate. This allows you to keep the car in your name if you have any issues with insurance rates and registration tax for not keeping it in your name.

Another simple way is to buy the car and simply inform the dealer how you want the car titled and make up the name of a trust at the dealership. Be sure to write it down so when you get home or back to the office, you can create the trust documents on your computer just to keep good records.

If you pay off personal debt, such as credit cards, those accounts are not subject to audit, so the money you pay would not be visible to the IRS even during an audit. But generally, when you use the LLC money to pay personal debts that can be discovered, such as mortgages, it will be considered income unless you structure or record a new loan to replace the first.

Paying off a mortgage is quite simple, but let me first suggest that you should not be so quick to pay off personal debt with your returns, instead, use your returns to acquire assets nd use the income from those assets to off-set the payments required for personal debts, without paying them off in one lump sum. It will make much more sense why you'd want to do this as you learn more. It has to do with internal rate of return and time value of money and your "personal" net worth. In any case, once you get your pay-off statement from the bank, remit the funds from your LLC within the time limit and that will satisfy the mortgage. You will want to prepare a new mortgage instrument with a new note and record the mortgage or trust deed (not the note) in the same county recorder's office as the original mortgage was recorded. Do this within a short time, such as 30 days, so then it will be considered a re-finance and not just the payment of a personal debt. Make your regular loan payments back into the LLC so you will be able to show it was a real loan if ever the question is asked. There are a myriad of ways for doing this, so please ask me for help as you need it.

The twelfth concept is a more formal, effective and profitable way to use loans when taking profits. You have to work with an insurance agent who does this and of course we have the agent that will. You take cash out of your Bitcoin, so you'll need an LLC or LP account for this, and then fund a whole life insurance policy. There are certain requirements in this process, especially for your first contract and after the brief waiting period, you'll be able to borrow the money out of your policy, still earning interest on the whole amount, and use it to buy the asset you want.

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You can also use it to fund your living expenses, tax free. The catch is that if you want to avoid having to make regular loan payments to repay the loan, you simply pay the interest on the loan in one lump sum and the rest of the money is after-tax money that you are free to spend however you want. In over two-hundred years, no contract has defaulted and the money is never invested in the stock market or the banking system, so the systemic risk of which most of us are aware does not affect these insurance contracts.

Let's review the last seven concepts:

6. On your tax return, say "no" if you did not get a 1099 from any exchange,

7. If you are using a company such an an LLC, say "no".

8. There is no statute that requires a limited liability or any other legal entity or any person to file a tax return

9. The taxing regulations would include a section that set forth the type, kind or class of tax, and a tax table with rates of taxation and other requirements.

10. using escrow to buy your next asset such as real estate with Bitcoin

11. Structuring the disposition of the asset as a loan or simply paying cash and taking the title in the name of a trust or company is nothing new.

12. You take cash out of your Bitcoin, then fund a whole life insurance policy, then borrow the money out of your policy, still earning interest on the whole amount, and use it to buy the asset you want.

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