

Treasury and IRS Release Proposed Regulations Regarding Reporting Requirements for Digital Asset and Cryptocurrency Transactions

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On August 25, 2023, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) released proposed regulations regarding information reporting, determination of amount realized and basis, and backup withholding for certain sales and exchanges of digital assets. These regulations are intended to implement changes in law enacted by the Infrastructure Investment and Jobs Act of 2021 (Infrastructure Act). The IRS requested comments on the scope of the proposed regulations, which must be submitted within 60 days from the date on which the proposed regulations are published in the Federal Register. A brief overview of the proposed regulations is given below.

Expanded Scope of Information Reporting Requirements

The proposed regulations extend existing reporting requirements under Section 6045¹ to include sales of digital assets, i.e., digital representations of value that are recorded on cryptographically secured distributed ledger or similar technology. Digital assets could include transactions recorded by brokers on their own centralized internal ledgers. A sale of digital assets includes dispositions of a digital asset for cash, stored-value cards (including gift cards), or a different digital asset. A disposition also includes certain transactions in which digital assets are used as consideration for services provided by a broker.

Persons who provide facilitative services that effectuate sales of digital asset by customers and who are in a position to know the identity of the customer and nature of the transaction resulting in gross proceeds are treated as brokers for purposes of the reporting requirements under Section 6045. For example, someone who maintains sufficient control over the facilitative services provided so as to be able to change the service terms and to request the customer to provide certain details prior to the sale would be considered a broker.

The expanded scope of reporting also includes brokers' digital asset wallet providers and digital asset payment processors, as well as entities that regularly redeem digital assets created or issued by such persons, e.g., through an initial coin offering. The intended effect is that the operators of digital platforms are required to collect and report customer sales information without regard to the manner in which they operate or effect such transactions.

Determination of Gross Proceeds

Section 6045 requires the broker to report gross proceeds. The proposed regulations provide that gross proceeds are determined by the amount of cash received or the fair market value of the property or services received in an exchange transaction, less the digital asset transaction costs allocable to the digital asset sale. The proposed regulations further provide specific rules for

calculating fair market value of the property or services received. The requirement to report gross proceeds applies to sales of digital assets effected on or after January 1, 2025.

Reporting of Adjusted Basis

Under the proposed regulations, a broker that provides custodial services for digital assets is required to provide adjusted basis information for sales of digital assets effected on or after January 1, 2026, if the digital asset was acquired and continuously held by such broker in the customer's account since January 1, 2023. Additionally, any broker that effects sales of financial contracts (e.g., forward contracts or options) on digital assets that are not themselves digital assets is required to provide adjusted basis information for sales of these assets if they were granted, entered into, or acquired on or after January 1, 2023.

Determination of Gain and Loss on Sales of Digital Assets

The proposed regulations provide rules for determining the amount realized on disposition of digital assets for cash, services, or materially different property under Section 1001. These rules provide that the amount realized will equal the sum of i) cash received, ii) the fair market value of any property received (or with respect to certain debt, the issue price of such debt), and iii) the fair market value of any services received, less any allocable digital asset transaction costs. Further, the proposed regulations provide rules for determining cost basis of digital assets under Section 1012, as well as rules for identifying units or blocks of digital assets sold or exchanged. The regulations provide that these rules apply to sales and acquisitions of digital assets in the calendar year immediately following the date on which the final regulations are adopted but further provide that the taxpayers can rely on the proposed regulations for dispositions made in a taxable year ending on or after August 29, 2023, and before the date the final regulations are published, provided the taxpayers follow the proposed regulations in their entirety and in a consistent manner.

Backup Withholding

Finally, the proposed regulations extend the backup withholding provisions under Section 3406 for sales of digital assets on or after January 1, 2025.

If you have any questions about any tax issues involved in the proposed regulations or relating to digital assets, please contact [Greg Broome](#) or any member of the [tax](#) practice at Wilson Sonsini.

Anjali Krishnan and Myra Sutanto Shen contributed to the preparation of this alert.

[1] All Section references are to the Internal Revenue Code of 1986, as amended, as of August 28, 2023.