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Deloitte Tax LLP | July 2, 2024

Release of final digital asset broker reporting regulations

Global Information Reporting

Overview

On June 28, 2024, the Treasury Department and the IRS released final regulations ("regulations") for digital asset broker reporting as well as two related Notices—Notice 2024-56 and Notice 2024-57—and a related Revenue Procedure—Rev. Proc. 2024-28. This regulation package finalizes the proposed regulations published on August 29, 2023. The IRS and Treasury received over 44,000 written comments on the proposed regulations. In response to these comments, the regulation publication includes an extensive "Summary of Comments and Explanation of Revisions" section, several highlights of which are outlined further below.

Guidance breadth

Included guidance: The regulations, formally titled "Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions," cover several Internal Revenue Code sections, primarily focusing on broker reporting rules under section 6045 but also including sections 1001, 1012, 3406, 6045A, 6045B, 6050W, 6721, and 6722. Notice 2024-56 addresses penalty and backup withholding relief to facilitate a phase-in of the new compliance requirements. Notice 2024-57 provides a temporary exception from reporting of certain digital asset transactions. Rev. Proc. 2024-28 provides guidance for taxpayers in allocating cost basis for digital assets held in wallets or digital asset broker accounts.

Pending guidance: Consistent with the proposed regulations, regulations for section 6050I—amended under the 2021 Infrastructure Investment and Jobs Act to include digital assets as "cash" for trade or business reporting purposes—are not included in this publication. Similarly, separate regulations are anticipated for US implementation of the Organisation for Economic Co-operation and Development (OECD) Crypto-Asset Reporting Framework (CARF). Proposed regulations for transfer statement furnishing and reporting of

transfers under section 6045A are also still awaiting publication. In addition to these pending proposed regulations, final regulations are anticipated for reporting by non-custodial digital asset brokers ("middleman rules"), the rules for which are not finalized by this regulation package in order that Treasury and the IRS have more time "to study this area and, after full consideration of all comments received . . . to expeditiously issue separate final regulations."

Relevant dates and phase-in

Reporting: Under the final rules, brokers are required to report the gross proceeds from sales of digital assets on or after January 1, 2025. Adjusted basis reporting for covered securities is proposed to phase in for sales on or after January 1, 2026. Although both reporting dates are unchanged from the proposed rules, the date a digital asset is considered a covered security—a security for which cost basis tracking and reporting is required—is shifted from January 1, 2023, to January 1, 2026.

The regulations also address reporting of tokenized real estate. For real estate reporting persons, reporting is deferred one year, with final rules requiring 2027 Form 1099-S reporting of closings occurring on or after January 1, 2026.

Penalty relief: During the phase-in of these rules, Notice 2024-56 provides brokers with relief from penalties for sales effected in 2025 if a broker made a good faith effort to comply with the reporting requirements. Good faith effort relief may be claimed before the IRS contacts the broker regarding an examination of the broker but must be claimed within one year after the original due date for filing information returns and furnishing payee statements.

Backup withholding: Relief also is granted for backup withholding purposes under Notice 2024-56. Backup withholding will not be required on any digital asset sales effected during 2025 to provide time for brokers to collect certified Tax Identification Numbers (TINs) and prepare to comply with backup withholding and deposit requirements. For sales in 2026, brokers are permitted to rely on TINs that are not certified if the TINs were provided for accounts opened prior to 2026 ("preexisting accounts") and the IRS TIN Matching Program indicates a match in the name and TIN combination. For preexisting accounts of customers not classified as US persons, brokers are permitted to treat the customers as exempt foreign persons for sales in 2026 without additional documentation provided the residence address on file is outside of the US.

In addition, for sales prior to 2027, no backup withholding underpayment penalty will be imposed where a broker withheld 24% of a customer's proceeds in digital assets but the value of the withheld digital assets decreased between the time of the withholding and the time of digital asset liquidation to fiat for deposit with the IRS, provided the broker immediately liquidates after receiving the sale proceeds. Backup withholding also is indefinitely suspended on specified non-fungible tokens (NFTs), digital asset for real property sales effected by real estate reporting persons, and sales effected by processors of digital asset payments (PDAPs) in their payment processing capacity until further guidance is issued. Finally, until one year after the Form W-9 is revised to include an exempt recipient status for exempt digital asset brokers, separate written statements can be relied upon to exempt digital asset brokers from reporting or backup withholding.

Amount realized and cost basis: The final regulations under sections 1001 and 1012 apply to all acquisitions and dispositions of digital assets on or after January 1, 2025. Under Rev. Proc. 2024-28, taxpayers in certain circumstances are permitted to make reasonable allocations of cost basis among digital asset

units held prior to January 1, 2025, and may be required to establish their allocations prior to January 1, 2025.

Digital asset and broker rules

Reportable digital assets: The scope of digital assets included in the reporting requirements is similar to that of the proposed regulations. Digital asset is still defined as any digital representation of value that is recorded on a cryptographically secured distributed ledger (or similar technology). This term broadly includes cryptocurrencies, stablecoins, NFTs, and tokenized securities and other assets. Fiat currency in digital form—e.g., funds in a bank or payment processor account accessed through the internet—as well as Central Bank Digital Currencies (CBDCs) remain excluded from treatment as digital assets for reporting purposes.

Comments requested exclusion of certain digital asset types from reporting on Form 1099-DA, including stablecoins, NFTs, "closed loop" digital assets, and tokenized securities and other dual classification assets. While most of these comments are not fully adopted, the final rules provide alternative reporting methods for qualifying stablecoin transactions and certain NFTs, allowing for an annual $10,000 de minimis threshold for qualifying stablecoins, a $600 threshold for certain NFTs, and the option to report on an aggregated annual basis rather than on a transactional basis for these assets.

Although still qualifying as digital assets, transactions involving digital assets in closed loop environments are excepted sales not subject to reporting. The regulatory language excepting such sales includes loyalty program credits or rewards, video game tokens, inventory tokens, and tokens offered by a seller of goods or services that has limited redemption rights and no ability to exchange for cash or other proceeds within the seller's network.

Tokenized securities and other dual classification assets, including those that otherwise might be reported on Form 1099-B, are generally in scope for Form 1099-DA reporting under the final regulations. Sales and transfers of such assets are treated only as digital asset transactions for transfer statement and information reliance purposes, exempting these assets from transfer statement requirements pending further guidance. This treatment also disallows brokers to consider any other information, including from a customer or third party, with respect to covered securities that are digital assets, other than acquisition information from a customer, for cost basis reporting purposes. Certain tax-relevant security information on dual classification assets remains reportable on Forms 1099-DA (e.g., wash sale adjustments).

In certain cases, however, dual classification assets are excluded from Form 1099-DA reporting. The final rules exclude from reporting any dual classification asset that qualifies as a digital asset solely because it is cleared or settled on a limited-access regulated network. In such case, the dual classification asset should be treated as a traditional security and reported as such. The rules clarify that this exception would not include a cryptocurrency clearing or settling on a limited-access regulated network that qualifies as a digital asset for other reasons. For example, certain digital assets qualify as commodities because the trading of regulated futures contracts in that digital asset has been approved by the US Commodity Futures Trading Commission. In such case, a broker would still report sales of that cryptocurrency on Form 1099-DA because it is not *solely* a digital asset due to the use of a limited-access regulated network.

Section 1256 contracts also remain reportable under existing Form 1099-B rules, even in tokenized form, and the final rules also exclude tokenized interests in money market funds. Tokenized real estate also remains reportable as real estate under existing Form 1099-S rules and not on Form 1099-DA.

The regulations include guidance on widely held fixed investment trust (WHFIT) reporting, stating the following regarding WHFITs holding digital assets:

> *Coordination with the reporting rules for widely held fixed investment trusts under §1.671-5.*
> Information required to be reported under section 6045(a) for a sale of a security or a digital asset in a widely held fixed investment trust (WHFIT) (as defined under §1.671-5) and the sale of an interest in a WHFIT must be reported as provided by this section unless the information is also required to be reported under §1.671-5. To the extent that this section requires additional information under section 6045(g), those requirements are deemed to be met through compliance with the rules in §1.671-5.

Temporary digital asset exclusions: Certain digital asset transactions are temporarily excluded from information reporting under Notice 2024-57, and no penalties will be assessed for failure to file information returns or furnish payee statements for the following transactions:

- Wrapping and unwrapping transactions
- Liquidity provider transactions
- Staking transactions
- Lending of digital assets
- Short sales of digital assets
- Notional principal contract transactions

This relief is temporary and is intended to give the IRS more time to study these transactions and determine the appropriate reporting treatment.

Digital asset brokers: The final regulations modify the proposed definition of digital asset broker, distinguishing "custodial digital asset brokers" and "non-custodial digital asset brokers." The regulations state that custodial brokers include custodial trading platforms, hosted wallet providers, and digital asset kiosks, and noncustodial brokers include decentralized exchanges and unhosted wallet providers (termed "digital asset middleman" under the proposed rules). As noted above, these parties all qualify as brokers according to Treasury and the IRS, but these regulations only outline the rules for *custodial* brokers, indicating further final regulations will be issued for non-custodial brokers. Nonetheless, the facilitative services term is retained in part in the final rules, designating persons acting as counterparties in sale transactions as brokers. The definition includes persons accepting digital assets as payment for property that is within the scope of section 6045 if the person also sells such property (e.g., securities dealer accepting digital assets as payment); real estate reporting persons accepting digital assets in payment for real estate; brokers accepting digital assets as payment for broker services; PDAPs accepting digital assets as payment for services; and digital asset kiosk acceptance of digital assets in return for cash, stored-value cards, or different digital assets. The regulations reserve on the knowledge element of the proposed facilitative service definition while the government further considers the non-custodial middleman rules more broadly.

Digital asset payment processors, now termed processors of digital asset payments (PDAPs) in the final regulations, remain in scope, but the regulations narrow the reporting requirements to allow for further consideration by Treasury and the IRS. Under the final regulations, PDAPs are only required to report digital asset payments by a buyer of goods/services if the PDAP already has the obligation to verify the buyer's identity to comply with anti-money laundering (AML) requirements or otherwise has an agreement or

arrangement with the buyer that allows the PDAP to collect and verify the buyer's identity. The current PDAP reporting rules are further narrowed to require reporting only on transactions in which PDAPs take possession of the digital asset payment and have sufficient knowledge about the transaction.

Consistent with the proposed rules, issuers of digital assets that regularly offer to redeem their digital assets remain in scope as brokers under the final rules. Persons who are solely engaged in the business of validating distributed-ledger transactions and persons who are solely engaged in the business of selling hardware or licensing software remain out of scope.

Exempt recipient and multiple broker rules: The regulations expand the list of exempt recipients, adding US digital asset brokers (i.e. persons qualifying as digital asset brokers under these final regulations that operate in the US) as persons exempt from Form 1099 reporting and backup withholding. Note that such US brokers that are digital asset brokers solely because they are registered investment advisers but would not otherwise be treated as exempt recipients are not exempt. A new Form W-9 is anticipated to add the exemption code, and, until the release of the new Form W-9, Notice 2024-56 permits brokers to rely upon a written statement that is signed by another broker under penalties of perjury that they qualify as an exempt US digital asset broker.

The multiple-broker rule, which exempts brokers effecting sale on behalf of other brokers and dealers from reporting such sales, is also expanded under these regulations to address digital asset sales. The final rules require the broker crediting the gross proceeds to the customer to report on Form 1099-DA since they are the person in the best position to backup withhold, if such withholding is required. The other broker(s) not obligated to report must still obtain proper documentation—a Form W-9 with relevant exemption code or written statement (until the Form W-9 is updated)—from the reporting broker.

Cost basis management: The regulatory definition of brokers required to track and report cost basis has been updated, requiring brokers providing "custodial services for digital assets" to report cost basis information for sales of digital assets acquired on or after January 1, 2026. The government further clarified that, where a broker engages a third-party wallet provider to perform hosted wallet services on the broker's behalf, that broker still is treated as providing hosted wallet services for the purpose of cost basis reporting.

The proposed regulations included rules for allocation of transaction costs for cost basis and gain recognition purposes, allocating i) disposition costs for dispositions, reducing the proceed amount for tax purposes; ii) acquisition costs for acquisitions, increasing the cost basis amount in the acquired asset; but iii) splitting the transaction costs between acquisition and disposition amounts for exchanges of digital assets. The final rules remove the split digital asset transaction cost rule, allocating the full amount of transaction costs to the disposition provided it is an exchange of digital assets that differ materially in kind or extent.

Non-US brokers and indicia: In consideration of the pending release of US proposed regulations implementing CARF, Treasury and the IRS acknowledge that imposing Form 1099-DA reporting requirements on non-US digital asset brokers may be premature. For brokers in CARF-participating jurisdictions, broker reporting likely would create redundant requirements where such brokers generally will report similar information on US customers through local CARF filings. As such, the regulations reserve on the non-US digital asset broker reporting rules that were included in the proposed regulations, including reserving on the Controlled Foreign Corporation (CFC) and money service business (MSB) non-US digital asset broker reporting requirements.

With this suspension of non-US broker reporting requirements, the final regulations decline to expand the US indicia factors included in the proposed regulations, limiting indicia to those generally applicable to US securities brokers. To the extent non-US broker rules are released in future guidance, the government notes that it will further consider expansion of the US indicia factors.

Form and content

There are several changes to the required information for reporting on Form 1099-DA, the most critical of which are the removal of the requirements to report i) sale time, ii) the transaction ID in connection with the sale, and iii) the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale, if any. The updates to the Form 1099-DA have not yet been republished in draft. Under the final rules, the form must include the following information:

- the name, address, and taxpayer identification number of the customer;
- the name and number of units of the digital asset sold;
- the sale date;
- the gross proceeds amount (after reduction for the allocable digital asset transaction costs);
- whether the sale was for cash stored-value cards, or in exchange for services or other property;
- CUSIP and other information related to tokenized securities;
- transferred-in date and number of units (if applicable);
- an indication of whether customer-related information was supplied for cost-basis tracking purposes;
- any other information required by the form in the manner and number of copies required by the form or instructions.

For sales of covered securities on or after January 1, 2026, the broker also must report the adjusted basis, the date of purchase, and whether any gain or loss is long-term or short-term. Additionally, a broker must report any relevant information for tokenized securities and options.

In response to public comments, a de minimis threshold is available to PDAPs, allowing a PDAP not to report if the gross proceeds (excluding transactions costs) received by the customer do not exceed $600 annually. As noted above, there are additional thresholds for certain digital asset transaction types.

Other items

The Treasury Decision includes numerous other responses to public comments on the proposed regulations not highlighted in this summary, including additional details on sales subject to reporting, valuation methods and transaction cost allocation, ordering rules, and basis reporting rules. The government also responds to the constitutional challenges asserted by commentators and addresses the privacy and security concerns raised in numerous comment letters. If you have questions, please consult with the listed contacts below.

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