

Digital Assets: From Crypto to Compliance



Final Treasury Regulations Expand Tax Information Reporting on Digital Asset Transactions While Additional Notices and Revenue Procedure Provide Transitional Relief and Guidance

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On June 28, 2024, the U.S. Treasury and IRS issued final regulations on digital asset tax information reporting requirements, which are scheduled to be published in the Federal Register on July 9, 2024. The final regulations implement the statutory amendments to broker reporting rules enacted as part of the Infrastructure Investment and Jobs Act of 2021 (“Infrastructure Act”). The 2024 final regulations adopt the 2023 proposed regulations with certain modifications in response to comments and public hearing testimony.

The regulations focus on reporting of digital assets by custodial brokers that take possession of the digital assets being sold by their customers. These brokers include operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, digital asset kiosks, and certain processors of digital asset payments (PDAPs). Custodial brokers will be required to report certain sale and exchange transactions that take place beginning in calendar year 2025 on *Form 1099-DA, Digital Asset Proceeds from Broker Transactions*. Basis reporting will be required by certain brokers for transactions occurring on or after January 1, 2026.

Of particular note, the final regulations reserve and do not finalize rules on the treatment of decentralized exchanges and certain unhosted digital asset wallet providers as brokers. Treasury and IRS intend to provide rules for these brokers in a distinct set of final regulations.

In addition to the final regulations, the IRS contemporaneously issued the following guidance and transitional relief:

Notice 2024-56

Provides general transitional relief from penalties for brokers who fail to report sales of digital assets on information returns or payee statements. This applies to information required to be filed or furnished in 2026 for sales of digital assets effected in calendar year 2025 (on Form 1099-DA) and is available only if the broker makes a good faith effort to file the appropriate information return and furnish the associated payee statement accurately.

Recognizing that brokers need time to implement the backup withholding requirements, this notice also provides transitional relief from the requirement to impose backup withholding in various circumstances. To name a few: 1) there is a delay in ALL backup withholding requirements for reportable sales effected during calendar year 2025; 2) specific to the sales of specified NFTs, Treasury and the IRS acknowledge that, specified NFTs generally cannot be divided into smaller units without losing the core value or function of the asset. Because of this, and until further guidance is issued, backup withholding is not required on any digital asset effected by a broker where the reportable proceeds is a specified NFT; and 3) in the case of a sale of a digital asset for another digital assets (excepting #2, above), Treasury and the IRS acknowledge the situation where the digital asset received may drop in value prior to the broker being able to sell 24% to cover the backup withholding amount. To address this, the Notice provides relief from the backup withholding requirement such that the withholding required is limited to the amount the broker receives in liquidation of the 24% of the digital asset received, notwithstanding that the amount may be very different than the value on the date of the transaction. This relief is caveated in that it only applies when the liquidation is undertaken by the broker "immediately" after the reportable transaction. To that end, the broker is considered to have immediately liquidated the digital asset if "systematically liquidates" the asset as part of its process to perform the underlying sale.

Last, the notice discusses the rules for when a broker may treat another broker as a U.S. digital asset broker prior to the publication of a revised Form W-9, Request for Taxpayer Identification Number and Certification, which will serve as a certification of U.S. digital asset broker status.

Notice 2024-57

This notice is effective for identified transactions occurring on or after January 1, 2025, and delays information reporting for certain transactions until Treasury and IRS issue further guidance. Brokers will not have to file information returns or furnish payee statements on digital asset sales and exchanges for the following six types of transactions:

1. Wrapping and unwrapping transactions
2. Liquidity provider transactions
3. Staking transactions
4. Transactions described by digital asset market participants as lending of digital assets (type 1 transactions)
5. Transactions described by digital asset market participants as short sales of digital assets (type 2 transactions)
6. Notional principal contract transactions

The IRS will not impose penalties for failure to file correct information returns or failure to furnish correct payee statements with respect to those identified transactions.

Revenue Procedure 2024-28

Provides guidance and a safe harbor for taxpayers under IRC s. 1012(c)(1). Taxpayers may rely on this safe harbor to allocate unused basis of digital assets to digital assets held within each wallet or account of the taxpayer as of January 1, 2025.

Next Steps

KPMG is in the process of preparing additional Information Reporting Practice Alerts that detail each of these new sets of guidance and the 2024 final regulations.

References

The proposed regulations can be found as unpublished until July 9, 2024, in the Federal Register, [here](#) and as a .PDF [here](#).

Notice 2024-56 can be found [here](#).

Notice 2024-57 can be found [here](#).

Revenue Procedure 2024-28 can be found [here](#).

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