

TaxNewsFlash

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Notice 2025-7: Temporary relief for making adequate identification of units of digital assets held in broker's custody

The IRS today released [Notice 2025-7](#) providing temporary relief allowing eligible taxpayers to rely on alternative methods for making an adequate identification, within the meaning of Treas. Reg. § 1.1012-1(j)(3)(ii), of units of digital assets held in the custody of a broker that are sold, disposed of, or transferred during the period beginning on January 1, 2025, and ending on December 31, 2025.

Background

The U.S. Treasury Department and IRS published final regulations (T.D. 10000) in July 2024 regarding information reporting under sections 6045 and 6050W, the determination of amount realized under section 1001 and basis under section 1012, and backup withholding under section 3406, for certain digital asset sales and exchanges. Read [TaxNewsFlash](#)

Treas. Reg. § 1.1012-1(j) of the final regulations, which applies to all acquisitions and dispositions of digital assets on or after January 1, 2025, provides ordering rules for determining which units of the same digital asset should be treated as sold, disposed of, or transferred when a taxpayer holds multiple units of that same digital asset within the same wallet that were acquired on different dates or at different prices. For digital asset units held in the custody of a taxpayer's broker, Treas. Reg. § 1.1012-1(j)(3)(ii) generally permits a taxpayer to make an adequate identification of the units to be sold, disposed of, or transferred by specifying to the custodial broker, no later than the date and time of the sale, disposition, or transfer, the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier that the broker designates as sufficiently specific to allow it to determine the basis and holding period of those units. Treas. Reg. § 1.1012-1(j)(3)(ii) also permits taxpayers to make an adequate identification of such units by using a standing order or instruction communicated to their custodial broker. Further, if the custodial broker offers taxpayers only one method of making a specific identification, for example by the earliest date on which units of the same digital asset were acquired, the latest date on which units of the same digital asset were acquired, or the highest basis, Treas. Reg. § 1.1012-1(j)(3)(ii) treats such method as a standing order or instruction.

For units held in the custody of a broker but for which the taxpayer does not make an adequate identification of the units sold, disposed of, or transferred in accordance with Treas. Reg. § 1.1012-1(j)(3)(ii), Treas. Reg. § 1.1012-1(j)(3)(i) treats such units as sold, disposed of, or transferred in order of time from the earliest date on which units of that same digital asset held in the custody of the broker were acquired by the taxpayer ("FIFO rule"). Regardless of whether the taxpayer makes an adequate identification, in the case of digital assets

exchanged for different digital assets, Treas. Reg. § 1.1012-1(j)(3)(ii) treats any units withheld for either the broker's backup withholding obligations under section 3406, or for payment of services described in Treas. Reg. § 1.1001-7(b)(1)(ii), as coming from the units received in the exchange.

Contemporaneously with the issuance of the final regulations, the IRS issued Rev. Proc. 2024-28 providing guidance to taxpayers regarding how to transition from a universal or multi-wallet basis allocation methodology to a wallet by wallet or account by account basis allocation methodology. Specifically, subject to certain requirements, Rev. Proc. 2024-28 provides a safe harbor on which taxpayers may rely to allocate their units of unattached basis to a digital asset wallet or account that holds the same number of remaining digital asset units based on the taxpayer's records of such unattached basis and remaining units so long as the allocation is reasonable. Rev. Proc. 2024-28 permits taxpayers either to make a specific unit allocation or to make a global allocation in order to allocate units of unattached basis, subject to various conditions.

Relief granted

The Treasury Department and the IRS understand that some digital asset brokers may not have in place, by January 1, 2025, the technology needed to accept specific instructions or standing orders communicated by taxpayers. These technology limitations may leave some taxpayers unable to make adequate identifications in conformity with Treas. Reg. § 1.1012-1(j)(3)(ii). Thus, by default, any units in the custody of such brokers that are sold, disposed of, or transferred would be determined under the FIFO rule.

Notice 2025-7 thus provides temporary relief allowing taxpayers to use additional methods for making an adequate identification within the meaning of Treas. Reg. § 1.1012-1(j)(3)(ii) during the period beginning on January 1, 2025, and ending on December 31, 2025.

- The notice does not prohibit taxpayers from complying with Treas. Reg. § 1.1012-1(j)(3)(ii) as originally prescribed.
- In addition, the notice does not affect how the safe harbor described in Rev. Proc. 2024-28 applies.
- Taxpayers relying on the safe harbor described in Rev. Proc. 2024-28 may also rely on the temporary relief described in section 4.02 of Notice 2025-7 once the applicable requirements of Rev. Proc. 2024-28 have been satisfied, including, in the case of taxpayers making a global allocation, the completion of the global allocation.

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