

Treasury Department, IRS Issue Final Regulations and Transitional Guidance for Digital Asset Brokers

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On June 28, 2024, the US Department of the Treasury and IRS issued [final regulations](#) providing guidance on tax reporting requirements applicable to certain “brokers” of digital assets. These regulations finalize, in part, the proposed regulations that we discussed in [this October 2023 alert](#). Significant portions of the proposed regulations – including many of the more complex and controversial requirements for decentralized finance platforms and non-custodial wallets – are not included in the final regulations, as the Treasury Department and IRS continue to study the issues.

The final regulations, issued under Internal Revenue Code Section 6045, generally extend certain broker reporting requirements to digital asset industry participants that take custody or possession of customers’ digital assets (custodial brokers). Among the types of industry participants treated as “custodial brokers” under these regulations are operators of custodial digital asset trading platforms, certain hosted wallet providers, owners of digital asset kiosks, certain issuers of digital assets that regularly offer to redeem those digital assets and certain processors of digital asset payments (PDAPs). The final regulations will require custodial brokers to report the amount of gross proceeds from such sales or exchanges of digital assets on or after January 1, 2025, and cost basis information for sales or exchanges of digital assets occurring on or after January 1, 2026. The final regulations will require this information to be reported on IRS Form 1099-DA, which has been released in [draft form](#).

In order to avoid delay in finalizing the broker reporting regulations for custodial brokers, the final regulations do not apply to industry participants that do not take possession of digital assets that are sold or exchanged, such as operators of decentralized exchanges and unhosted wallet providers (non-custodial brokers). The preamble to the final regulations indicates that the Treasury Department and IRS expect to address the reporting requirements applicable to non-custodial brokers in separate final regulations. The final regulations also reserve on rules requiring non-US brokers to report information on US customers to the IRS, in order to coordinate with the future regulations implementing the Crypto-Asset Reporting Framework (CARF) of the Organisation for Economic Co-operation and Development (OECD).

The Treasury Department and IRS received more than 44,000 comments regarding the proposed regulations, many of which included requests to narrow the scope of digital assets subject to information reporting. The final regulations, however, generally retain a broad definition of digital asset, while including certain provisions intended to alleviate reporting redundancy and complexity in some cases. For example, the final regulations contain de minimis exemptions from reporting for sales of certain qualifying stablecoins that do not exceed an annual \$10,000 threshold, as well as sales of certain specified non-fungible tokens (NFTs) that do not exceed an annual \$600 per customer threshold. Sales of qualifying stablecoins and NFTs that exceed the applicable de minimis thresholds are eligible to be reported on an aggregate basis rather than on a transactional basis.

The final regulations also adopt a multiple-broker rule requiring the broker that credits the gross proceeds to the customer’s wallet address or account to report the transaction to the IRS when more than one broker otherwise would have a reporting obligation with respect to a sale. The final regulations do not require the time of the transaction, the transaction identification (or hash) associated with the digital asset sale or the wallet address information to be reported (as the proposed regulations would have required). However, brokers generally are required to retain the transaction identification and address information for seven years and make it available for inspection upon request by the IRS.

The Treasury Department and IRS also issued several pieces of transitional guidance along with the final regulations. These include:

Notice 2024-56

[Notice 2024-56](#) provides transition relief from reporting penalties that would otherwise apply to failures to report sales of digital assets on information returns or furnish payee statements effected in calendar year 2025 if the broker makes a good faith effort to comply with the applicable regulations. Notice 2024-56 also provides transition relief from liabilities and penalties associated with a broker's failure to comply with backup withholding requirements with respect to sales of digital assets effected by the broker in calendar year 2025 and certain other transactions involving digital assets.

Notice 2024-57

[Notice 2024-57](#) provides that certain transactions involving digital assets require further study and will not be subject to information reporting until the Treasury Department and IRS issue further guidance. These transactions include staking, wrapping and unwrapping digital assets, certain liquidity provider transactions, transactions described by digital asset market participants as lending or short sales of digital assets, and notional principal contract transactions involving digital assets. These exemptions do not apply, however, to other payments of consideration, such as airdrop transfers, in connection with otherwise exempt transactions, which payments may be subject to information reporting as rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, interest, or other fixed or determinable income. Notice 2024-57 also provides that the IRS will not assert penalties for the failure to file information returns or furnish payee statements with respect to the identified transactions.

Revenue Procedure 2024-28

[Revenue Procedure 2024-28](#) creates a safe harbor for allocating the unused tax bases of digital assets held within each wallet or account of a taxpayer as of January 1, 2025, so that the taxpayer can specifically identify digital assets that are later sold or disposed of. Revenue Procedure 2024-28 generally permits taxpayers to rely on any reasonable allocation of units of unused basis to a wallet or account that holds the same number of remaining digital asset units based on the taxpayer's records of such unused basis and remaining units, provided that the allocation is made as of January 1, 2025, and certain requirements set forth in Revenue Procedure 2024-28 are satisfied. After January 1, 2025, basis will be allocated under the final regulations.

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