

CHAPTER VII

Taxation



Taxation

The nature of Bitcoin is such that once version 0.1 was released, the core design was set in stone for the rest of its lifetime. Because of that, I wanted to design it to support every possible transaction type I could think of The design supports a tremendous variety of possible transaction types that I designed years ago. Escrow transactions, bonded contracts, third party arbitration, multi-party signature, etc. If Bitcoin catches on in a big way, these are things we'll want to explore in the future, but they all had to be designed at the beginning to make sure they would be possible later.

BitcoinTalk Forum Post Re: “Transaction and Scripts”

Satoshi Nakamoto, June 2010⁴⁴⁰

The advent and growth of digital assets has raised numerous questions about the application of federal income tax laws. The “tremendous variety of possible transaction types” Satoshi Nakamoto identified for digital assets—some of which have no analog in traditional assets—can make applying current provisions to digital asset transactions challenging. As such, providing guidance or enacting legislation that addresses the special characteristics of these digital assets and transactions will help taxpayers understand their federal tax obligations, and in turn promote the growth and use of digital assets in the United States.

Addressing aspects of federal tax law contrary to the goals of the Executive Order has been a priority since the first days of the Trump Administration. H.J. Res. 25, a joint resolution sponsored by Senator Ted Cruz and Representative Mike Carey, was signed into law by President Trump in April 2025.⁴⁴¹ This resolution overturned a Biden Administration effort to define certain DeFi developers as “brokers” for tax purposes, even though neither those developers nor their software ever held custody of their users’ digital assets.⁴⁴² The Working Group applauds this action as an example of the pro-innovation approach to tax law the Federal government should embrace.

As background, federal tax law consists of the Internal Revenue Code (Code),⁴⁴³ regulations implementing the Code, related statutes, tax treaties, and an extensive body of case law and associated common law doctrines that provide a foundation for statutory law and remain essential to interpreting it. The IRS also publishes Revenue Rulings and Notices providing its interpretation of the law to particular facts, which are not binding for taxpayers but generally relied upon.⁴⁴⁴

Crucial questions of federal tax law with respect to income derived from digital assets include evaluating timing, source, and character (i.e., capital income or ordinary income) and the appropriate application of statutory provisions. The guidance issued to date by Treasury and the IRS is described below.

440 satoshi, Comment to Re: *Transactions and Scripts: DUP HASH160 . . . EQUALVERIFY CHECKSIG*, BitcoinTalk (June 17, 2010 at 6:46 PM), <https://bitcointalk.org/index.php?topic=195.msg1611#msg1611>.

441 Pub. L. No. 119–5, 139 Stat. 48 (2025).

442 Press Release, Sen. Cruz Applauds Signing of Cryptocurrency Resolution into Law (Apr. 11, 2025), <https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-applauds-signing-of-cryptocurrency-resolution-into-law>; see Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sale, 89 Fed. Reg. 106928 (Dec. 30, 2024) (no longer of force or effect).

443 Unless otherwise specified, all “Section” or “§” references in this tax chapter are to sections of the Code or the regulations issued thereunder.

444 A Revenue Ruling is an official interpretation by the Internal Revenue Service (IRS) of the Code, related statutes, tax treaties and regulations on how the law is applied to a specific set of facts and is published in the Internal Revenue Bulletin. A Notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Code or other provisions of the law and is also published in the Internal Revenue Bulletin. Treas. Reg. § 601.601(d)(2)(i)(a) (2024); *Understanding IRS Guidance: A Brief Primer*, IRS, <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer> (last visited July 13, 2025).

Current Tax Guidance on Digital Assets

Treasury and the IRS have issued regulations and related guidance addressing how digital assets are taxed (“substantive guidance”) and relating to reporting on digital asset transactions by brokers and other intermediaries (“third-party information reporting”).

Notice 2014-21 provides core guidance for digital asset transactions.⁴⁴⁵ It provides that digital assets are treated as property, as opposed to currency, for federal income tax purposes, and that general federal income tax principles apply to digital asset transactions.⁴⁴⁶ The Notice also provides FAQs addressing several specific issues as well. Other substantive guidance consists in part of published sub-regulatory guidance addressing hard forks,⁴⁴⁷ staking,⁴⁴⁸ and non-fungible tokens (NFTs).⁴⁴⁹

Treasury has proposed regulations relating to the corporate alternative minimum tax (CAMT) that do not reference digital assets but would affect how they are taxed. CAMT was signed into law by the Biden Administration as part of the Inflation Reduction Act of 2022.⁴⁵⁰ A prior version of the CAMT was repealed, by President Trump, by the Tax Cuts and Jobs Act of 2017.⁴⁵¹ The impetus—at the time—to implement CAMT was to address differences between book income and taxable income, and CAMT sought to do so by creating a minimum tax on book income.⁴⁵² This policy is problematic for a multitude of reasons; most acutely, it attempts to combine two separate policy matters (financial accounting treatment versus tax treatment). Moreover, implementing a minimum tax on book income has the potential net effect of burdening investment. In fact, the Treasury Inspector General for Tax Administration, during the Biden Administration, found that “CAMT is a complex tax law” and that “IRS employees ... have spent approximately 21,237 hours on the first six CAMT notice publication projects.”⁴⁵³ Further, given the complexities of the law, the “IRS waived failure to pay estimated tax penalties with respect to CAMT obligations in Tax Year 2023.”⁴⁵⁴ Needless to say, although CAMT does not specifically target the digital asset sector, it creates a potential punitive effect on the sector’s growth, much like it could have an adverse impact on other sectors like oil and gas extraction. CAMT therefore contradicts the policy goals of Executive Order No. 14219, which directs agencies to identify and remove certain regulations and other guidance that among other things, impede private enterprise and entrepreneurship.⁴⁵⁵

Treasury and the IRS have published final regulations with respect to third-party information reporting implementing legislation that requires centralized brokers and other persons who take possession of customer

445 2014-16 I.R.B. 938 (Apr. 14, 2014). The Infrastructure and Investment Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) amended the Code to define a digital asset, for purposes of information reporting by brokers, as any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. Notice 2014-21 referred to “convertible virtual currency.” The term “digital asset” includes property that Treasury and the IRS have previously referred to as convertible virtual currency.

446 IRS, Notice 2014-21, *supra* note 445. Note that Notice 2023-34, 2023-19 I.R.B. 837 (May 8, 2023) modifies Notice 2014-21 but does not change its conclusions.

447 IRS, Revenue Ruling 2019-24, 2019-44 I.R.B. 1004 (Oct. 28, 2019).

448 IRS, Revenue Ruling 2023-14, 2023-33 I.R.B. 484 (Aug. 14, 2023).

449 IRS, Notice 2023-27, 2023-15 I.R.B. 634 (Apr. 10, 2023).

450 Pub. L. No. 117-169, 136 Stat. 1818 (2022).

451 Pub. L. No. 115-97, 131 Stat. 2054 (2017).

452 Book income refers to the amount of income corporations report on their financial statements based on applicable financial accounting standards, with material differences as compared to taxable income. This includes different treatment of losses, timing differences for when or whether income is recognized, and different treatment of costs and expenses (e.g., capitalization or deduction).

453 Treasury Inspector General for Tax Administration, Review of the Corporate Alternative Minimum Tax Implementation Identified Weaknesses in the Pre-Rulemaking Process (Sept. 9, 2024), <https://www.tigta.gov/sites/default/files/reports/2024-09/2024308036fr.pdf>.

454 *Id.* at 4. The IRS has subsequently waived failure to pay estimated tax penalties with respect to CAMT obligations for tax years 2024 and 2025. See IRS, Notice 2024-33, 2024-18 I.R.B. 959 (Apr. 29, 2024); IRS, Notice 2024-47, 2024-27 I.R.B. 1 (July 1, 2024); IRS, Notice 2024-66, 2024-40 I.R.B. 682 (Sept. 30, 2024); IRS, Notice 2025-27, 2025-26 I.R.B. 1611 (June 23, 2025).

455 Exec. Order No. 14219, Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative, 90 Fed. Reg. 10583 (Feb. 19, 2025).

digital assets to report information to the IRS and customers on the customers' sales of digital assets.⁴⁵⁶ In addition to the broker reporting rules, the regulations provide substantive guidance for taxpayers to determine their basis, gain, and loss from digital asset sales. Treasury and the IRS have also published sub-regulatory guidance providing transition relief with respect to the information reporting regulations.⁴⁵⁷ The IRS has issued a form and instructions on which brokers must report the information to the IRS and taxpayers.

Most recently, Treasury and the IRS have provided transition relief to U.S. digital asset exchanges and others implementing the digital asset broker regulations⁴⁵⁸ and have withdrawn regulations that would have required certain DeFi participants to provide broker reporting in line with the passage of H.J. Res. 25.⁴⁵⁹

The section below covers the Working Group's priority items for the publication of guidance, along with priority legislative recommendations. The following sections discuss substantive tax issues, taxpayer reporting issues, and third-party information reporting.⁴⁶⁰

Substantive Tax Issues

Priority Guidance

CAMT

CAMT imposes a minimum tax generally equal to the excess, if any, of 15% of "adjusted financial statement income" (AFSI) less regular tax paid.⁴⁶¹ The calculation of AFSI generally starts with a corporation's net income as reported on its financial statement, subject to certain adjustments. CAMT applies generally to corporations with average AFSI over a three-year period of more than \$1 billion and provides statutory adjustments to AFSI for financial statement income and losses resulting from stock and partnership investments. Regulations proposed in 2024 provide for additional adjustments for transactions where there are mismatches in financial statement or taxable income that distort true economic income (e.g., a hedging transaction in which only one side of the transaction is marked to market).⁴⁶²

Stakeholders have requested that Treasury and the IRS issue guidance to the effect that AFSI does not include financial accounting unrealized gains and losses on cryptocurrency, or on investments generally.

Priority Guidance

Treasury and the IRS should publish guidance addressing the determination of AFSI with respect to financial accounting unrealized gains and losses on investment assets other than stock and partnership interests. Toward this end, the IRS issued Notice 2025-27⁴⁶³ stating that Treasury and the IRS anticipate interim guidance under CAMT to address how unrealized gains and losses on certain investment assets reported for financial statement purposes are considered for purposes of determining AFSI.⁴⁶⁴

456 Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 89 Fed. Reg. 56480 (July 9, 2024). A second regulation that was adopted in December 2024 addresses certain decentralized finance participants but no longer has force or effect. See *supra* notes 441, 442.

457 IRS, Notice 2024-56, 2024-29 I.R.B. 64 (July 15, 2024); IRS, Notice 2024-57, 2024-29 I.R.B. 67 (July 15, 2024); IRS, Rev. Proc. 2024-28, 2024-31 I.R.B. 326 (July 29, 2024); IRS, Notice 2025-7, 2025-5 I.R.B. 524 (Jan. 27, 2025).

458 IRS, Notice 2025-33, 2025-27 I.R.B. 4 (June 30, 2025).

459 Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales, 90 Fed. Reg. 30825 (July 11, 2025) (effectuating a change to the Code of Federal Regulations to reflect that 89 Fed. Reg. 106928 (Dec. 30, 2024) no longer has force or effect); see *supra* notes 441, 442.

460 Descriptions of market practices and the use of terminology used by digital asset participants in the following sections of this chapter are not intended as characterizations of those transactions for federal income tax purposes.

461 Section 10101 of Pub. L. No. 117-169, 136 Stat. 1818, 1818-1828 (2022) imposes the CAMT for taxable years beginning after December 31, 2022.

462 Corporate Alternative Minimum Tax Applicable After 2022, 89 Fed. Reg. 75062 (Sept. 13, 2024).

463 2025-26 I.R.B. 1611 (June 23, 2025).

464 IRS, Notice 2025-27, *supra* note 454.

Staking – Grantor Trust Classification

U.S. investment funds holding digital assets that qualify as exchange-traded products (ETPs) (pursuant to securities laws) are often organized as trusts. Typically, such funds take the position that they are classified for U.S. federal income tax purposes as investment trusts treated as grantor trusts. An investment trust is a type of legal-form trust that satisfies strict restrictions on its permitted activities and is consequently eligible to provide simplified tax reporting to its investors. A legal-form trust is classified as an investment trust rather than a business entity only if it is not engaged in a profit-making business. In addition, there may not be a power to vary the investments of the trust, and the trust may have only one class of ownership interests with a very limited exception.⁴⁶⁵ Investors in an investment trust that is a grantor trust are treated as if they were the direct owners of their pro rata interests in trust assets for federal income tax purposes. They receive tax reporting from the trust or their brokers on IRS Forms 1099 (e.g., an IRS Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, reporting gross proceeds and basis if the trust sells an asset). A legal-form trust that is intended to be structured as an investment trust treated as a grantor trust, but fails to satisfy the requirements for investment trust status, typically is classified as a partnership for federal income tax purposes. In this case, investors would receive tax reporting on Schedule K-1 of IRS Form 1065, *U.S. Return of Partnership Income*.

Stakeholders have requested guidance addressing whether a trust holding digital assets that stakes those assets and receives staking rewards can qualify as an investment trust treated as a grantor trust.⁴⁶⁶

Priority Guidance

Treasury and the IRS should publish guidance addressing whether a trust that otherwise qualifies as an investment trust treated as a grantor trust fails to qualify as such if the trust stakes digital assets owned by the trust.

Wrapping

Wrapping is a technique used to convert a digital asset native to one blockchain (“original digital asset”) into a digital asset native to a different blockchain (“wrapped digital asset”). Wrapping may also be used to convert a digital asset that cannot be used in certain smart contracts into a wrapped digital asset that can be used in those smart contracts. The wrapped digital asset is backed one-for-one by the original digital asset, which is immobilized by a custodian or through smart contracts. The original digital asset may not be used in any transactions while it is wrapped. The wrapped digital asset can be unwrapped or be converted back to the original digital asset, at any time.

Wrapping is commonly used to transact with the value of the original digital asset on a different blockchain. An example is wrapped bitcoin, which can be used in DeFi operations, while bitcoin itself generally cannot. Stakeholders have asked for guidance addressing whether wrapping and unwrapping transactions are taxable transactions.

Priority Guidance

Treasury and the IRS should publish guidance addressing whether wrapping and unwrapping transactions are taxable transactions.

IRS FAQs

As described in the Current Tax Guidance on Digital Assets section above, the IRS issued FAQs on several issues involving digital assets starting in 2014. New FAQs have been added from time to time, but the FAQs have not been comprehensively revised to consider published guidance and regulations relating to digital assets.

⁴⁶⁵ See Treas. Reg. § 301.7701-4 (tax classification of trusts).

⁴⁶⁶ Stakeholders also have requested guidance on other issues relating to staking. See Chapter VII, Substantive Tax Issues: Priority Guidance – Other Issues. For a description of staking, see *Chapter II, Mining and Staking*.

Priority Guidance

Treasury and the IRS should update the IRS FAQs on digital assets. These updates will provide industry and taxpayers with regulatory certainty by reflecting guidance that was published after the issuance of the FAQs.

Other Issues

Stakeholders have requested guidance on several issues beyond those described above. The Working Group believes many of these issues might warrant future guidance in line with the goals of the Executive Order.

- **Mining and Staking.** Stakeholders have asked:
 - for clarification, modification, or reversal of IRS guidance on the timing of income from staking and mining rewards;⁴⁶⁷
 - whether staking activity constitutes a trade or business for federal income tax purposes and related questions including:
 - whether staking gives rise to income effectively connected with the conduct of a trade or business in the United States;
 - whether staking gives rise to unrelated business taxable income under Section 512;
 - whether staking gives rise to income from commercial activity for purposes of Section 892; and
 - whether income from staking is treated as fixed, determinable, annual or periodic income to foreign taxpayers;
 - the source of income from staking rewards;
 - whether the receipt of airdrops and hard forks invalidates investment trust status; and
 - whether staking benefits from the securities or commodities “trading safe harbors” of Section 864.
- **Valuation.** Guidance on how to value digital assets that are traded on multiple exchanges or thinly traded, for purposes of determining amount realized and basis.
- **NFTs.** Guidance on non-fungible tokens, including whether they are treated as collectibles for purposes of Sections 408(m) and 1(h)(5).
- **Losses on digital assets.** Guidance relating to losses on digital assets, including the standards and acceptable proof for worthlessness and abandonment and when losses may be deducted if they are held by a taxpayer that becomes bankrupt. Guidance relating to thefts of digital assets.
- **Charitable deductions.** Legislation removing the requirement for a qualified appraisal for charitable donations of digital assets worth more than \$5,000.

In addition, many substantive issues that could be addressed either through future guidance or legislation include:

- Whether tokenization of an asset gives rise to a new asset for federal income tax purposes, and if so under what circumstances.
- The application of the investment company rules of Sections 351 and 721 to digital assets.
- Distributions of digital assets in partnership liquidations (the “marketable securities” rules).
- The application of the hot asset rules to sales of partnerships holding digital assets.

⁴⁶⁷ For further discussion of these issues, see Chapter VII, Taxpayer Reporting: Priority Guidance – *De Minimis Digital Asset Receipts* and Chapter VII, Taxpayer Reporting: Legislative Proposals for Other Issues – *Timing of Income from Mining and Staking*.

- Expanding the classes of assets that may be held by regulated investment companies to include digital assets.
- The treatment of digital assets for purposes of the subpart F, GILTI, and PFIC rules.
- The tax treatment of blockchain splits and blockchain mergers.
- The rules applicable to digital assets with respect to retirement accounts.
- The tax consequences of repatriation by an offshore foundation

Regarding offshore foundations, the Working Group encourages non-profit organizations supporting the development of blockchain technologies to domicile in the United States. Toward this end, the Working Group will engage with Treasury and the IRS to study ways to incentivize their repatriation and domestication.

Priority Legislative Recommendations

Characterization as Securities or Commodities

As described in the Current Tax Guidance on Digital Assets Section above, IRS Notices characterize virtual currency for federal income tax purposes as *property*, not currency. However, IRS guidance does not address whether a digital asset is considered a security or commodity for federal income tax purposes. The Code and case law define the term “security” in different ways for different tax purposes, and those definitions are not the same as the securities law meaning of the term “security.” Code provisions also do not define the term “commodity” or define it in a circular manner, and do not cross-reference the commodities law meaning of the term. The characterization of an asset as a security or commodity for federal income tax purposes affects the application of multiple provisions of the Code. For example, Code provisions applicable to commodities include Section 475(e) and (f) (elections for dealers or traders in commodities to mark commodities to market), Section 864(b)(2)(B) (trading in commodities safe harbor), and Section 7704(d)(1)(G) (passive income exception applicable to commodities partnership).

Congress is considering legislation that would dictate when a digital asset is subject to regulation by the SEC or the CFTC, such as the Digital Asset Market Clarity Act of 2025 (CLARITY).⁴⁶⁸ This legislation does not address the tax classification of digital assets. Adding digital assets, or in some cases actively traded fungible assets (the type of digital assets most similar to securities and commodities), as a new category of asset subject to Code provisions would permit legislation to consider characteristics of digital assets that are different from those of traditional securities or commodities. An alternative approach could be for a digital asset, or one or more types of digital assets, to be defined as a security or a commodity by reference to securities and commodities laws. Because the tax rules for securities and commodities differ in significant respects, it would be important that an asset have a single tax classification throughout its existence.

Recommendation

Legislation should be enacted that treats digital assets as a new class of assets subject to modified versions of tax rules applicable to securities or commodities for federal income tax purposes. Code provisions that should be expanded to apply to actively traded fungible digital assets include Sections 475 (mark-to-market election), 864(b) (trading safe harbors), 1058 (securities loans), and 7704 (publicly traded partnership rules).⁴⁶⁹ In addition, Sections 1091 (wash sale rules) and 1259 (constructive sales) also should apply to digital assets. Alternatively, legislation could instead clarify when a digital asset commodity or other digital asset is treated as a security or a commodity for federal income tax purposes.

⁴⁶⁸ H.R. 3633, 119th Cong. (2025).

⁴⁶⁹ A 2023 report by the Joint Committee on Taxation discusses the current state of the law and possible legislation with respect to most of these provisions. Joint Committee on Taxation (JCT), *Selected Issues Regarding the Taxation of Digital Assets* (June 2023), https://www.finance.senate.gov/imo/media/doc/jct_report_on_digital_assets.pdf.

Stablecoins

As described in Chapter V, a stablecoin is a digital asset that intends to maintain a stable value relative to a reference asset, usually a currency. Most stablecoins are pegged to the U.S. dollar.⁴⁷⁰ Stablecoins are widely used in digital asset transactions in a manner similar to a cash-equivalent, like shares in a money market fund. For example, a taxpayer may sell bitcoin for a stablecoin and later use the stablecoin to buy another digital asset. The Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS), which was signed into law on July 18, 2025, regulates the issuance of payment stablecoins in the United States.⁴⁷¹

The tax characterization of stablecoins themselves under current law is uncertain. Characterization as debt, for example, is not certain—stablecoins typically do not have an unqualified obligation to pay a fixed amount, but they are held out as redeemable for cash. Under GENIUS, U.S.-licensed issuers of payment stablecoins are obligated to convert, redeem, or repurchase such stablecoins for a fixed amount of monetary value.⁴⁷² The payment stablecoins must also be collateralized with high quality liquid assets.⁴⁷³

The determination of a financial instrument's status as debt for federal income tax purposes is made under factors established by case law. A common requirement is for the instrument to have an unconditional promise to pay on demand, or on a specified date, a sum certain in money.⁴⁷⁴ The instrument must also be evaluated based on other criteria established by case law, typically including whether the instrument pays interest, whether the issuer is adequately capitalized, whether the instrument is issued to a related party, and the seniority of the payment obligation. Payment stablecoins would satisfy the unconditional promise requirement and several of the other typical characteristics of debt. They also would have the economic characteristics of highly rated collateralized debt.

The expected use of payment stablecoins as financial assets that function in a manner similar to cash-equivalents raises the question of whether they could be considered as either money or currency for federal income tax purposes. Those terms are not defined by statute or case law, but Section 985(b)(1)(B) defines functional currency for certain purposes as the currency of the economic environment in which a significant part of a business unit's activities is conducted and which is used by such unit in keeping its books and records. The functional currency of a U.S. individual is always the dollar. Relatedly, a recent IRS Notice described “real” currency as (i) the coin and paper money of the United States or of any other country that is (ii) designated as legal tender, (iii) circulates, and (iv) customarily used and accepted as a medium of exchange in the country of issuance.⁴⁷⁵ At present, stablecoins do not appear to satisfy these requirements. Stablecoins also are not issued by or guaranteed by any government.

Treatment of payment stablecoins as money or currency for federal income tax purposes does not seem likely under current law. Moreover, even if payment stablecoins were treated as currency, they could be nonfunctional currency for federal income tax purposes, in which case gain or loss on stablecoins would continue to need to be reported on tax returns. Treating payment stablecoins as money (and functional currency) would affect the application of many provisions of the Code in ways that may not be desirable. For example, the Code does not contemplate the possibility of gain or loss on money,⁴⁷⁶ so no rules exist to deal with the possibility of gains or losses on payment stablecoins treated as money. In addition, treatment

⁴⁷⁰ *Supra* note 333.

⁴⁷¹ See *supra* note 97 (defining “payment stablecoin”).

⁴⁷² S. 1582, 119th Cong. (2025) § 2(22)(A)(ii)(I) (enacted).

⁴⁷³ See S. 1582, 119th Cong. (2025) § 4(a)(i)(A) (enacted).

⁴⁷⁴ See 26 U.S.C. § 385(b)(1).

⁴⁷⁵ IRS, Notice 2014-21, *supra* note 445.

⁴⁷⁶ The Code has rules for gains or losses on functional currency transactions that are part of the ordinary business operations of a qualified business unit such as a branch, but those rules generally would not apply to the use of stablecoins by U.S. persons in the United States.

of payment stablecoins as money, as opposed to property, may affect basis and recognition of gain or loss to corporations, partnerships, and their owners in the context of distributions and contributions of payment stablecoins.⁴⁷⁷

If payment stablecoins were treated as debt for federal income tax purposes, they would be subject to multiple provisions of the Code that apply to debt. They may also be subject to provisions applicable to securities as defined for federal income tax purposes (which is independent of the securities law definition of that term), depending on which tax definition of security is applicable. Treatment of a payment stablecoin as a security is a separate and additional inquiry from characterization as debt.

Among the Code provisions that could apply to payment stablecoins treated as debt are (i) the wash sale loss disallowance rules of Section 1091, and (ii) the anti-bearer bond rules applicable to registration-required obligations that are not in registered form.⁴⁷⁸ As discussed in Chapter V, while stablecoins today are primarily used to facilitate trading in other digital assets, they could be more widely adopted as forms of payment in the future. Stablecoins can diverge from their pegs and can therefore give rise to loss on disposition when used to make payments. This would implicate the wash sale rules.

To the extent that stablecoins are used as forms of payment, applying the wash sale rules would be difficult to administer and yield very little tax unless the taxpayer were transacting in large amounts. There may also be limited utility in applying the wash sale rules to dispositions of small amounts of stablecoins in trading activities.⁴⁷⁹ Application of the anti-bearer bond rules would make stablecoins impractical for several reasons, including that U.S. issuers would be subject to an excise tax. That said, stablecoins function somewhat like bearer bonds since they are readily tradable and held in a way that does not identify the owner.

Recommendation

Legislation should be enacted that would characterize payment stablecoins for federal income tax purposes, as such matters are not addressed by GENIUS. Characterization as debt seems most appropriate given the ways in which payment stablecoins are structured and the potential for gain or loss on disposition. If payment stablecoins are treated as debt, the legislation should also consider the applicability of existing federal income tax rules that could impede the widespread use of payment stablecoins as financial assets that function in a similar manner to cash-equivalents. In particular, legislation should address the wash sale and anti-bearer bond rules. To address the wash sale rules, possible options include:

- Providing that the wash sale rules do not apply to payment stablecoins;
- Providing that the wash sale rules do not apply to de minimis losses from payment stablecoins, possibly up to an aggregate threshold;⁴⁸⁰ or
- Providing that gains and losses on payment stablecoins are not considered for federal income tax purposes.

⁴⁷⁷ As discussed in Third-Party Information Reporting: Other Issues – *Digital Assets Received in a Trade or Business*, below, the treatment of digital assets as cash for purposes of Section 6050I has raised a number of concerns by taxpayers.

⁴⁷⁸ The anti-bearer bond rules are in Sections 149(a), 163(f), 165(j), 312(m), 871(h), 881(c), 1287, and 4701.

⁴⁷⁹ The digital asset reporting rules that apply to U.S. digital asset exchanges and other brokers do not require brokers to report dispositions of stablecoins to buy other digital assets, and do not require reporting of dispositions of stablecoins for cash unless aggregate dispositions of stablecoins during a calendar year exceed \$10,000. These rules apply only for broker reporting purposes, not for purposes of taxpayer determinations of gain or loss on stablecoin transactions.

⁴⁸⁰ Stakeholders have urged that either Congress or the IRS adopt a broader de minimis rule. See *infra* note 488 for a discussion of possible legislation on this topic.

If no such legislation is enacted, Treasury and the IRS should consider issuing guidance that would clarify the tax classification of payment stablecoins, and address the potential application of the wash sale⁴⁸¹ and anti-bearer bond rules.⁴⁸²

Wash Sales

Because wash sale rules apply to securities, they would not apply to digital assets that are not securities. Taxpayers with loss positions in digital assets are engaging in transactions that would be subject to the wash sale rules if the digital assets were subject to Section 1091. For example, a taxpayer may sell a digital asset at a loss on one day and repurchase the same digital asset the next day, claiming the loss for tax purposes while being in a substantially similar position economically.

Recommendation

The wash sale rules should be amended to add digital assets to the list of assets subject to the wash sale rules.⁴⁸³ If legislation of this kind is enacted, the broker reporting regulations should be amended to reflect these changes to the wash sale rules. As previously discussed, the wash sale rules should not apply to payment stablecoins.

Crypto Lending

Pursuant to Section 1058, loans of securities ordinarily are treated as an exchange of the security for an obligation to return the security on which no gain or loss is recognized. This is contingent upon the transfer of the security being pursuant to an agreement that meets certain requirements. Gain or loss is not recognized on the return of that security in exchange for rights under the agreement. The agreement must (i) provide for the return to the transferor of securities identical to the securities transferred; (ii) require that payments be made to the transferor of amounts equal to all interest, dividends and distributions on the security during the term of the securities loan; (iii) not reduce the risk of loss or opportunity for gain of the transferor in the transferred securities; and (iv) meet such other requirements as the Secretary of the Treasury may prescribe. These rules are intended to ensure that the taxpayer making the loan of securities remains in an economic and tax position similar to the position it would have been in absent the loan.

In a transaction commonly referred to as a crypto loan, a taxpayer (the original digital asset owner) transfers a digital asset to a third party transferee either directly or indirectly (such as through a centralized platform, or through the use of an automatically executing smart contract), subject to an obligation (or the provisions of the automatically executing smart contract) for the transferee to deliver the same type of digital asset back to the original digital asset owner in the future. At a later date, the transferee delivers the same type of digital asset to the original digital asset owner. The transferee may also deliver or credit additional digital assets or other consideration to the original digital asset owner as compensation for the use of the digital asset during the transaction.⁴⁸⁴

⁴⁸¹ IRS, Rev. Proc. 2014-45, 2014-34 I.R.B. 388 (Aug. 18, 2014) and IRS, Rev. Proc. 2023-35, 2023-42 I.R.B. 1079 (Oct. 16, 2023) provide that the IRS will not treat a redemption of shares in a money market fund as part of a wash sale. Revenue Procedure 2014-45 states that a money market fund is often used as an account into which, or from which, cash is automatically deposited or withdrawn, under a sweep arrangement. The Revenue Procedures relieve tax administration burdens attributable to changes in SEC rules that made it more likely that money market fund shares would be redeemed at a loss. If no legislation addressing the tax treatment of payment stablecoins is enacted, Treasury and the IRS could consider issuing similar guidance with respect to payment stablecoins under a similar tax administration rationale.

⁴⁸² If legislation is not enacted, Treasury and the IRS could consider whether it is possible to issue guidance concluding that payment stablecoins are not registration-required. Obligations are registration-required unless one of three exceptions applies. Section 163(f)(2).

⁴⁸³ Proposed wash sale legislation expanding the scope of the wash sale rules to cover digital assets has previously been considered, and was scored as raising \$26 billion over 10 years, although that version of the legislation also included non-digital asset provisions. Office of Management and Budget, Budget of the U.S. Government: Fiscal Year 2025 163 (Mar. 11 2024), https://www.whitehouse.gov/wp-content/uploads/2024/03/budget_fy2025.pdf.

⁴⁸⁴ See Chapter II, Market Activities: Lending, Borrowing, and Collateral (discussing cryptocurrency lending).

Taxpayers may engage in crypto borrowing and lending transactions for reasons similar to those for securities lending, or in transactions that may be conceptually similar to borrowing cash on a collateralized basis. That said, crypto lending transactions may differ in a number of regards from securities loans. For example, the loan may be effected purely through smart contracts, with automatically executing software replacing a traditional legal agreement. Further, amounts received (typically, airdrops) on the loaned asset are not necessarily passed back to the lender.

Section 1058 does not apply to loans of digital assets, unless the asset constitutes a security for federal income tax purposes. Stakeholders have requested guidance to the effect that crypto loans are treated as transactions in which no gain or loss is recognized under circumstances similar to those provided by Section 1058.

Loans of digital assets that satisfy requirements similar to the Section 1058 conditions described above should be accorded similar treatment. While the Working Group understands that some market participants take the position that loans of digital assets that meet similar conditions are non-taxable, no authority directly addresses those transactions. As such, there is uncertainty for taxpayers on this crucial question.⁴⁸⁵ Moreover, crypto lending transactions may not be carried out in a way that fully complies with the requirements of Section 1058, as described above, and the enactment of Section 1058 may have limited the extent to which prior non-statutory law applies to loans of securities or other assets.

Recommendation

Legislation should be enacted to amend Section 1058 to provide that it applies to loans of actively traded fungible digital assets, provided that the loan has terms similar to those currently required for loans of securities. The Secretary of the Treasury should be granted authority to determine when a digital asset is actively traded, and to address differences between the standard terms of securities loans and crypto loans.

Mark-to-Market Rules

Traders in securities, and dealers and traders in commodities, may elect to mark their securities or commodities to market for federal income tax purposes. No guidance addresses the extent to which these rules apply to digital assets.

Recommendation

See the *Characterization as Securities or Commodities* discussion above, which recommends amending Section 475 to include actively traded fungible digital assets.

Trading in Securities or Commodities Safe Harbors

Non-U.S. traders in securities or commodities may trade through an independent U.S. agent, or trade for their own account with U.S.-based personnel, without being treated as engaged in the conduct of a trade or business in the United States. This precludes them from the obligation to file U.S. income tax returns due to those trading activities, provided that certain conditions are met. These safe harbors do not apply to digital assets unless they qualify for federal income tax purposes as securities or commodities and those conditions are met. While the Working Group acknowledges that some market participants take the position that certain digital assets are treated as commodities for federal income tax purposes, no authority directly addresses whether trading in those assets satisfies the commodities trading safe harbor.⁴⁸⁶

Recommendation

See the *Characterization as Securities or Commodities* discussion above, which recommends amending Section 864(b)(2) to include actively traded fungible digital assets.

⁴⁸⁵ See generally JCT, *supra* note 469.

⁴⁸⁶ *Id.*

Taxpayer Reporting

Priority Guidance

De Minimis Digital Asset Receipts

It is common for taxpayers holding digital assets to receive or have the opportunity to receive new digital assets that may have minimal or speculative value. For example, taxpayers who delegate their rights to stake to others who validate transactions may receive frequent small rewards. A taxpayer may also receive unsolicited airdrops of, or claims to, a newly created digital asset as a marketing promotion by the creators of the new digital asset. These assets may be illiquid and therefore hard to value. In practice, it appears that they frequently lose value shortly after the drop. When a hard fork of a digital asset takes place, the new digital asset's value is often uncertain for a period of time and may rapidly decline.

Under applicable law and current IRS guidance,⁴⁸⁷ taxpayers must include the fair market value of these assets in income when they have dominion and control over the asset. Digital asset exchanges have different practices as to when they make a new asset available to customers. As such, a customer of multiple exchanges may acquire dominion and control over a new asset at different times as a result of the exchanges' varied practices.

These fact patterns give rise to administrative burdens to taxpayers to track and record each event. At times, these burdens may exceed the value of the transactions. These burdens arise from one or more of: (i) high volume but low value assets, (ii) valuations that change rapidly, typically with a loss of value, and (iii) questions about the precise moment a taxpayer has dominion and control over a new asset given differences in how digital asset exchanges operate. Moreover, in the fact patterns described above, taxpayers often have a limited ability to influence when a new asset or the right to obtain a new asset appears.

Priority Guidance

Treasury and the IRS should issue administrative guidance that addresses de minimis receipts of digital assets.⁴⁸⁸ The guidance could apply to airdrops, staking, hard forks, and mining rewards for taxpayers who do not operate a node or carry out digital asset mining.

Legislative Proposals for Other Issues

Timing of Income from Mining and Staking

The receipt of cash or property for services generally is taxable as ordinary income at the time of receipt. For property received for services, the taxpayer generally includes the fair market value of the property on the date received in gross income. The basis of property in the hands of the taxpayer is the amount included in gross income.

⁴⁸⁷ When a taxpayer successfully "mines" virtual currency, the fair market value of the virtual currency as of the date of receipt is includible in gross income. IRS, Notice 2014-21, *supra* note 445. The IRS has stated that if a cash method taxpayer stakes cryptocurrency native to a proof-of-stake blockchain and receives additional units of cryptocurrency as rewards when validation occurs, the fair market value of the validation rewards is included in the taxpayer's gross income in the taxable year in which the taxpayer gains dominion and control over the validation rewards. IRS, Revenue Ruling 2023-14, *supra* note 448.

⁴⁸⁸ Stakeholders have urged that taxpayers should not be required to include in income de minimis gains from digital assets, or digital assets used for personal transactions, by analogy to the rules for personal foreign currency transactions by individuals under Section 988(e). Some bills previously introduced in Congress have provided for a de minimis inclusion rule. Because digital assets are used for investment or speculation as well as payment, the rationale for the current exclusion under Section 988(e) is not equally applicable to digital assets. There are better arguments to exclude de minimis gains or losses for digital assets used primarily for payments (see the stablecoins discussion above). However, any de minimis rule for including gains and losses from digital assets in income would pose complications that are not relevant in the most common fact patterns where individuals dispose of foreign currency. Unless an individual lives outside the United States, the likely fact pattern for disposing of foreign currency is when a taxpayer is on vacation for a limited period of time, in which case it is easy to determine that the transaction is a personal one and it is likely often to be the case that gain from the disposition is under the statutory threshold as a practical matter. By contrast, digital assets are also used in investment or trading transactions and the same type of digital asset may be used by the same taxpayer for both investment and payment purposes. If a legislative de minimis rule were modeled on Section 988(e), questions would include: how taxpayers would distinguish personal from investment/ trading transactions and what records would be considered adequate in that regard; whether an aggregation rule should apply so that taxpayers cannot split a large transaction into multiple small ones; whether there would be any constraints on taxpayers' ability to treat gain transactions as non-taxable personal transactions but loss transactions as investment or business transactions; and how brokers should report transactions if they do not know whether the transaction is personal or not. This list is not exclusive and would change if a legislative de minimis rule were drafted in a way that differs from Section 988(e).

In contrast, income with respect to certain self-created property such as manufactured goods, farmed crops, and certain self-created intellectual property generally is not realized until the property is sold or otherwise disposed of. Treasury and the IRS have issued guidance stating that when a taxpayer successfully “mines” virtual currency, the fair market value of the virtual currency as of the date of receipt is includible in gross income.⁴⁸⁹ In addition, Treasury and the IRS have issued guidance holding that if a cash method taxpayer stakes cryptocurrency native to a proof-of-stake blockchain and receives additional units of cryptocurrency as rewards when validation occurs, the fair market value of the validation rewards is included in the taxpayer’s gross income in the taxable year in which the taxpayer gains dominion and control over the validation rewards.⁴⁹⁰ Stakeholders have asked for clarification, modification, or reversal of this IRS guidance on the timing of income from mining and staking rewards.

Possible Guidance

In light of these stakeholder requests and given the significant growth and maturation of digital assets and surrounding infrastructure since the issuance of guidance in 2014, Treasury and the IRS should review previously issued guidance related to the timing of income from staking and mining and consider whether to clarify, modify, or reverse that guidance, taking into account any recent intervening developments since the issuance of such guidance.

Possible Legislation

Several bills have been introduced in Congress to change the timing of income from mining and staking rewards and several other bills have been proposed. For example, H.R. 8149 (2024) proposed to defer the inclusion of validation rewards until the year of the sale or other disposition of the rewards. By contrast, other bills, such as the Responsible Financial Innovation Act, S. 2281 (2023) proposed only to defer the inclusion of de minimis amounts of income relating to mining or staking until the year of the sale or other disposition of the digital assets.

If Congress decides to pass legislation regarding the timing of the inclusion of income relating to mining or staking, Congress should consider whether similar rules should apply to rewards from other digital asset validation methods, what the character of income upon disposition should be and if ordinary, what rules should apply to determine the order of dispositions of ordinary versus capital units, and potential differences between the fair market value of rewards at the time of receipt compared with the fair market value of rewards at the time of sale or other disposition.

Section 6038D Digital Asset Reporting

Section 6038D requires an individual that holds an interest in one or more specified foreign financial assets with an aggregate value of at least \$50,000 during a taxable year to attach a statement with required information to the individual’s tax return. A specified foreign financial asset means a financial account maintained by a foreign financial institution and certain specified foreign assets not held in a financial account maintained by such a financial institution. Penalties apply to taxpayers who fail to provide the required information, and the time for IRS assessment of tax and the statute of limitations for assessment are extended beyond the deadlines that otherwise apply. These rules allow the IRS to cross-check the information that it receives from U.S. taxpayers against the information that it receives from foreign financial institutions about U.S. customer accounts pursuant to the Foreign Account Tax Compliance Act (FATCA) of the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147, 124 Stat. 71 (2010). Section 6038D does not explicitly refer to digital asset accounts.

489 IRS, Notice 2014-21, *supra* note 445; see also *Statement on Certain Proof-of-Work Mining Activities*, SEC Division of Corporation Finance (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>.

490 IRS, Revenue Ruling 2023-14 (July 31, 2023), <https://www.irs.gov/pub/irs-drop/rr-23-14.pdf>; see also *Statement on Certain Protocol Staking Activities*, SEC Division of Corporation Finance (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>.

U.S. taxpayers can transact with offshore digital asset exchanges and wallet providers without leaving the United States. The global nature of the digital asset market offers opportunities for U.S. taxpayers to conceal assets and taxable income by using offshore digital asset exchanges and wallet providers. As a result, taxpayers who wish to hide their assets from the IRS in an offshore account may have an incentive to hold digital assets rather than traditional financial assets, which could distort financial markets and undermine the effectiveness of the reporting required by Section 6038D.

As described in the section below titled “Crypto-Asset Reporting Framework Implementation,” pursuant to a recently adopted international tax reporting standard, many foreign countries are in the process of adopting rules that will require that crypto-asset service providers report certain transactions by foreign customers to the tax administration or agency of the service provider’s jurisdiction, which would then exchange appropriate information with other similar jurisdictions. This could include the United States.

Possible Legislation

Legislation could be enacted that would require taxpayers to report foreign digital asset accounts. A foreign digital asset account would be a custodial account that holds digital assets that is maintained by a foreign digital asset exchange or other foreign digital asset service provider. If the United States implements the Crypto-Asset Reporting Framework (CARF), taxpayers could be required to report accounts with foreign crypto-asset service providers that are required to report information on U.S. customers to a non-U.S. tax authority. This would allow the IRS to cross-check the information that it receives from U.S. taxpayers with the information it would receive from foreign digital asset exchanges about U.S. customer accounts. Providing the Secretary with authority to coordinate this provision with other rules could mitigate duplication or minimize burden with respect to other types of reporting rules.

Section 6038D and FBAR Reporting

The information required to be reported under Section 6038D on IRS Form 8938, Statement of Specified Foreign Financial Assets, is similar to information that many taxpayers are required to report under 31 U.S.C. § 5314 and the regulations published thereunder on a form known as a Report of Foreign Bank and Financial Accounts, or an FBAR, resulting in some duplicative reporting. The Form 8938 is filed with the IRS. The FBAR is filed with the Treasury Financial Crimes Enforcement Network (FinCEN). If reporting under Section 6038D and on the FBAR are expanded to require reporting of digital asset holdings, more taxpayers would be subject to these duplicative reporting obligations.

Possible Legislation

Legislation could be enacted that would streamline the reporting required under Section 6038D and on the FBAR. Legislation could permit a taxpayer that is subject to both reporting obligations to submit a single form that would be available both to the IRS and to FinCEN. This could be accomplished by amending 31 U.S.C. § 5314 and 26 U.S.C. § 6038D so that the reporting requirements under both titles match, similar to how 31 U.S.C. § 5331 and 26 U.S.C. § 6050I both require reporting on certain large cash payments on FinCEN/IRS Form 8300. If the form is submitted as an attachment to a federal income tax return, for tax administration reasons this option should be available only to taxpayers that use a calendar taxable year and file tax returns electronically. Consideration could be given to conforming the information required to be reported and the different reporting thresholds and penalties that currently apply with respect to Section 6038D reporting and FBARs, and, if necessary, to further amending the Code to allow the IRS to provide the reported information to FinCEN. To the extent that single-filing legislation is enacted, resources should be provided to the IRS sufficient to carry out the reprogramming of its systems necessary to implement the legislation.

Third-Party Information Reporting

Priority Guidance

Electronic Furnishing of Digital Asset Payee Statements (Form 1099-DA)

Third parties that report information to the IRS are also generally required to provide or furnish a copy of that information to the relevant taxpayer. These documents are referred to as payee statements. The default rule for furnishing payee statements to taxpayers is in paper format. Payee statements can be furnished to taxpayers in electronic format only with taxpayer consent, which must be provided by the taxpayer in the manner required by the IRS. Current rules provide that the taxpayer must have affirmatively consented to receive the copy in electronic format.⁴⁹¹ The consent requirement is intended to ensure that taxpayers have the capacity and willingness to receive payee statement electronically.

Unlike traditional financial institutions, digital asset exchanges communicate with their customers exclusively electronically. Customers have therefore demonstrated that they are able to obtain the information they need from digital asset exchanges electronically. Requiring digital asset exchanges to send customers a copy of IRS Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, in paper form unless a customer affirmatively consents to electronic delivery imposes unnecessary and burdensome costs on brokers serving the digital asset space.

Priority Guidance

Treasury and the IRS should propose regulations that provide brokers that facilitate sales or exchanges of digital assets through electronic means with a less burdensome method of obtaining consent from their customers to furnish Form 1099-DA payee statements in an electronic format.

Crypto-Asset Reporting Framework Implementation

When a U.S. taxpayer sells securities, its U.S. broker provides reporting about the sale on IRS Form 1099-B. The reporting goes to the IRS with a copy to the selling taxpayer. Historically, taxpayers wishing to avoid IRS scrutiny did so by holding their cash and securities investments with offshore banks that actively solicited U.S. customers and had no obligations to report information to the IRS. To address this problem, the IRS has received information since 2015 from certain foreign jurisdictions on financial accounts that U.S. taxpayers maintain at foreign financial institutions. In exchange, the IRS provides information to many of those foreign jurisdictions on financial accounts held by residents of those jurisdictions at U.S. financial institutions, provided the recipient jurisdiction satisfies certain data confidentiality and security conditions.

As with securities, jurisdictional arbitrage presents a key tax evasion risk for digital assets. The ease of cross-border transfer and access to offshore exchanges enables U.S. taxpayers seeking to evade their tax obligations an offramp to do so. As the ecosystem matures in the United States, leaving these pathways untouched would create a structural disadvantage for brokers and exchanges domiciled in the United States.

Other countries have similar concerns about the potential for their taxpayers to carry out digital asset transactions in a way that avoids domestic tax scrutiny by moving their assets offshore. The Crypto-Asset Reporting Framework (CARF) is an international tax transparency standard that seeks to improve tax

⁴⁹¹ Section 401 of the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (2002) provides that any person required to furnish a payee statement under certain information reporting provisions of the Code (including Section 6045) may electronically furnish such statement to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under Section 6051 of the Code or in such other manner as provided by the Secretary. The rules that currently apply to furnishing payee statements electronically under Section 6045 are based on the Section 6051 regulations, which apply to furnishing employee statements on Forms W-2. See IRS, Pub. No. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns (July 22, 2024), <https://www.irs.gov/pub/irs-pdf/p1179.pdf>.

compliance for transactions involving digital assets by requiring that digital asset service providers report certain transactions to the tax administration or agency of the provider's jurisdiction, which would then exchange appropriate information with other jurisdictions participating in CARF. As of May 2025, more than 65 jurisdictions have committed to implementing CARF. U.S. implementation of CARF pursuant to Section 6045 would allow the IRS to obtain information on digital asset transactions of U.S. taxpayers in foreign jurisdictions by collecting and exchanging information on U.S. transactions of residents of those jurisdictions.

U.S. regulations implementing CARF would discourage U.S. taxpayers from moving their digital assets to offshore digital asset exchanges. Implementing CARF would promote the growth and use of digital assets in the United States and alleviate concerns that the lack of a reporting program could disadvantage the United States or U.S. digital asset exchanges.

However, U.S. digital asset exchanges are currently implementing regulations under Section 6045 that will require those exchanges to start reporting information on 2025 sales and exchanges of digital assets by U.S. customers in 2026, with additional stages of reporting and backup withholding coming into effect after 2025. In order to minimize burdens on U.S. digital asset exchanges, any new reporting obligations on U.S. digital asset exchanges should take into account both the timing of the rollout of reporting and withholding obligations under the existing regulations and also coordination with the operative rules of the existing regulations, for example the identification of entities subject to reporting, the types of assets and transactions required to be reported, and the procedures for customer due diligence that must be carried out.

Priority Guidance

Treasury and the IRS should consider proposing regulations to implement CARF that take stakeholder concerns into account and minimize burdens on brokers to the extent consistent with CARF rules. The proposed regulations should not impose any new reporting requirements on DeFi transactions and should be used as a forum to gather further feedback, including a reasonable timetable for implementation.

Other Issues

Basis Reporting on Transferred Digital Assets

Digital asset exchanges that are brokers for federal tax information reporting purposes are required to report information to the IRS and to taxpayers on the gross proceeds from sales of digital assets, for transactions on or after January 1, 2025, and the basis of certain digital assets sold, for transactions on or after January 1, 2026.⁴⁹² The combination of gross proceeds and basis information is necessary for taxpayers and the IRS to determine the taxpayers' gain or loss from the digital asset sale. Without basis information, broker reporting to customers would provide an incomplete picture, because it would identify transactions carried out by customers and gross proceeds received but not gain or loss. Reporting of that kind is likely to be confusing to customers, who would not receive the full information they need to properly report transactions on their income tax returns. Because the IRS would not receive basis information, this could result in IRS audits of tax-compliant taxpayers who correctly took basis into account on their tax returns. Accurate basis reporting is thus essential to preventing and identifying tax evasion and tax avoidance and prioritizing enforcement resources.

Under the final regulations, digital asset exchanges are required to report basis only if they have reliable basis information—namely where the taxpayer acquired, held and sold the digital asset at that exchange. However, taxpayers frequently transfer digital assets in and out of accounts at exchanges, so it is common for a taxpayer to acquire an asset with one exchange but then sell or exchange it through a second exchange. In recognition

⁴⁹² At the request of industry, brokers are provided with an additional year to develop basis tracking systems, which are more difficult to build than the gross proceeds reporting systems.

of this common practice, the 2021 Infrastructure Investment and Jobs Act (IIJA) amended Section 6045A to require reporting of basis information when digital assets are transferred to digital asset exchanges that are brokers. These requirements are already in place when securities are transferred to or from securities brokers. When a taxpayer buys a security at one broker and later transfers the security to a second broker, the first broker must provide basis and other information to the second broker, but not to the IRS, on a transfer statement. As a result, if the taxpayer later sells the security through the second broker, the second broker can report to the taxpayer and the IRS both the gross proceeds of the sale and the basis of the security sold.

Transfers between centralized digital asset exchanges are similar in kind to the transfers of securities described above. The IIJA amendment to Section 6045A provides for transfer statements when digital assets are transferred to a digital asset exchange that is a broker. Implementing this legislation would improve the quality of the tax information taxpayers will receive from digital asset exchanges when they sell digital assets, by providing reliable basis information to those exchanges with respect to digital assets transferred to one digital asset exchange from another digital asset exchange.

Possible Regulations

Treasury and the IRS should consider proposing regulations requiring basis information to be reported when digital assets are transferred between centralized digital asset exchanges.

Digital Assets Received in a Trade or Business

If a trade or business receives more than \$10,000 of cash in a transaction for, among other things, goods or services, the business generally must report that information to the IRS and to FinCEN. These coordinating rules are intended to detect and prevent tax evasion and financial crimes. Existing rules permit taxpayers to use the same form to report information to either the IRS or FinCEN, instead of to both agencies, which reduces the burden on filers.

The IIJA expanded the scope of reporting to the IRS by requiring reporting if a taxpayer uses digital assets to make payment. The implicit premise of this expansion is that using digital assets to pay for real-world goods and services normally purchased with money has the same effect as converting the digital assets to cash (which is required to be reported to the IRS) and using the cash to pay for the goods and services (which is also required to be reported to the IRS). The IIJA did not expand FinCEN's corresponding rule requiring the filing of reports that are highly useful to law enforcement.⁴⁹³ This discrepancy causes disparate treatment of the use of digital assets to pay for goods and services.

Stakeholders have raised privacy and other concerns about the IIJA amendment. One concern is that reporting by, for example, certain service providers may reveal personal information to the IRS that it otherwise would not have. Another concern expressed by stakeholders is that the amendment could apply not only to the use of digital assets for traditional goods and services, but also to crypto-native transactions such as the swapping of one digital asset for another. A third concern that stakeholders have raised is that the amendment could provide a disincentive for taxpayers to use digital assets in the ordinary course of commerce, considering the current statutory dollar threshold.

Possible Regulations

Treasury and the IRS should consider proposing regulations implementing reporting of digital assets paid to a trade or business in a manner that takes the stakeholder concerns described above into account.

⁴⁹³ Additional information on FinCEN's reporting rules under the BSA are included in Chapter VI.

Possible Legislation

Consideration should be given to legislation to conform the information required to be reported to FinCEN, for BSA purposes, and the IRS, for federal income tax purposes. The legislation could also reexamine the reporting dollar thresholds and the breadth of uses of digital assets to which this provision would apply. Additional proposals related to the Form 8300 are included in Chapter VI.

Legislative Proposal for Other Issue

Implementation of CARF

A well-known technique used to avoid tax reporting by a financial institution or broker is to invest through a shell company. CARF provides that digital asset exchanges should identify and report on the controlling person of certain passive entities. The IRS does not have authority to require digital asset exchanges to report on controlling persons of many shell companies and therefore cannot provide that information to other countries.

A number of major trading partners of the United States are unwilling to provide information on U.S. persons who control shell companies carrying out digital asset transactions on foreign exchanges if those trading partners do not receive similar information from the IRS. Enactment of legislation that would permit the IRS to require U.S. digital asset exchanges to report information on foreign controlling persons of shell companies would ensure that the IRS could obtain similar information on U.S. taxpayers that control shell companies.

Possible Legislation

Legislation could require digital asset brokers to report information on foreign controlling persons of certain passive entities.