Final Digital Asset Reporting Regulations Alleviate Brokers' Obligations

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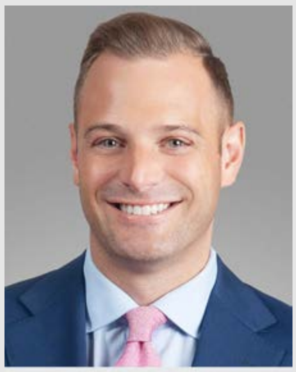

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In this article, Greenwald and Rietveld explain the final regulations for reporting under section 6045 published by Treasury and the IRS and how they affect those involved in digital asset transactions.

Under section 6045, brokers are generally required to file informational returns showing gross proceeds, tax basis, gain or loss information, and the long- or short-term capital gain treatment of this gain or loss on the sales effected through the broker by their customers.

The Infrastructure Investment and Jobs Act[1] amended section 6045 relating to information reporting by brokers. Specifically, the infrastructure act clarified the rules regarding how certain digital asset transactions should be reported by brokers, expanded the categories of assets for which basis reporting is required to include all digital assets, and defined the term "digital assets." The act's amendments apply to reports required to be filed and statements required to be furnished after December 31, 2023.

On August 29, 2023, Treasury and the IRS published proposed regulations relating to information reporting under section 6045 by brokers, including real estate reporting persons and certain third-party settlement organizations under section 6050W. Also, the proposed regulations included rules under section 1001 for determining the amount realized in a sale, exchange, or other disposition of digital assets, and under section 1012 for calculating basis of digital assets.[2]

Treasury and the IRS received over 44,000 written comments in response to the proposed regulations, and a public hearing was held on November 13, 2023. On July 9, 2024, the proposed regulations were published in their final form.[3]

[1] P.L. 117-58 (2021).

[2] REG-122793-19. We leave for another day a review of the proposed and final regulations under sections 1001 and 1012.

[3] T.D. 10000. Along with the publication of the final regulations, the IRS issued: (i) Notice 2024-56, 2024-29 IRB 64, which provides certain transitional relief from penalties for failing to report and failing to backup withhold; (ii) Notice 2024-57, 2024-29 IRB 67 (discussed below); (iii) Rev. Proc. 2024-28, 2024-31 IRB 326, which provides guidance on the allocation of basis in digital assets to wallets or accounts as of January 1, 2025; and (iv) an IRS news release (IR-2024-178) that announces and discusses the final regulations. Before the publication of the proposed and final regulations, Treasury and the IRS had provided interim guidance: (i) Notice 2014-21, 2014-16 IRB 938, supplemented by Rev. Rul. 2019-24, 2019-44 IRB 1004, modified by Notice 2023-34, 2023-19 IRB 837, and (ii) Rev. Rul. 2023-14, 2023-33 IRB 484.

Considering the comments received, the final regulations provide some significant relief, discussed in detail below.[4] Notably, they:

- make clear that transactions involving digital assets in "closed-loop environments" are not subject to reporting;
- require a processor of digital asset payments (PDAP) to report digital asset payments by a buyer only if the processor already obtains customer identification information from the buyer to comply with their Financial Crimes Enforcement Network obligations;
- delay the applicability date, notwithstanding the decision as to the appropriateness of reporting by real estate reporting persons (when real estate is acquired with digital assets), for reporting and they provide backup withholding relief for real estate reporting persons;
- adopt a multiple broker rule for digital asset brokers that requires only the broker crediting the gross proceeds to the customer's wallet address or account to report the transaction to the IRS when more than one digital asset broker would otherwise have a reporting obligation for a sale transaction;
- remove the requirement to report the time of a transaction and remove the obligation to report the transaction ID and digital asset address information;
- allow a new optional alternative reporting method for the sale of certain stablecoin sales to allow for aggregate reporting instead of transactional reporting, with a de minimis annual threshold of $10,000 below which no reporting is required;
- create a new optional alternative reporting method for sales of certain nonfungible tokens to allow for aggregate reporting instead of transactional reporting, with a de minimis annual threshold of $600 below which no reporting is required;
- provide that brokers must generally treat sales of dual classification assets only as a sale of a digital asset (as such, the broker must apply the digital asset reporting rules for the information required to be reported for such sale and file the return on Form 1099-DA);
- align the reporting of adjusted basis with the reporting of the acquisition applicable date (both now January 1, 2026); and
- reserve the rules requiring non-U.S. brokers to report information on U.S. customers to the IRS to coordinate the rules for non-U.S. brokers under section 6045 with new rules that will implement the international cryptoasset reporting framework (CARF).

Digital Assets Subject to Reporting

The proposed regulations required reporting under section 6045 for certain dispositions of digital assets that are made in exchange for cash, different digital assets, stored-value cards, broker services, or property subject to reporting under existing section 6045 regulations or any other property in a payment transaction processed by a PDAP.

The proposed regulations defined a digital asset as a digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each individual transaction involving that digital asset was actually recorded on the ledger. Importantly, this definition does not include cash in digital form. Certain types of digital assets are discussed in detail below.

Stablecoins

The proposed regulations indicated that the definition of digital assets was intended to apply to all types of digital assets, including so-called stablecoins, designed to have a stable value relative to other assets. Stablecoins, in practice, take multiple forms and can be backed by several different types of assets, including currencies, commodities, or other financial instruments (like other digital assets). That said, the final regulations use the term "stablecoin" to refer only

[4] However, the digital asset community is already gearing up for what is expected to be a strong lobbying effort during the next Congress, which will be debating myriad tax provisions given the expiration of many of the key provisions of the Tax Cuts and Jobs Act at the end of 2025. We expect the tax treatment of digital assets to remain in flux. *See, e.g.*, Erin Schilling and Samantha Handler, "Crypto Industry Asks for Guidance as Tax Cliff Talks Rev Up," Bloomberg Tax, Aug. 26, 2024.

to the subset of stablecoins that are pegged to a fiat currency.[5]

Numerous commentators called for excluding stablecoins pegged to a fiat currency from the definition of digital assets, which the final regulations did not grant. That said, Treasury and the IRS agreed with commentators that transaction-by-transaction reporting for stablecoins would result in a high volume of reports. Given the popularity of stablecoins and the number of stablecoin sales that are unlikely to reflect significant gains or losses, Treasury and the IRS determined that it was appropriate to provide an alternative reporting method for certain stablecoin transactions to alleviate unnecessary and burdensome reporting (see discussion below).

Nonfungible Tokens

The definition of digital assets in the proposed regulations also includes NFTs without regard to the nature of the underlying asset, if any, referenced by the NFT. While commentators recommended excluding the sales of NFTs from the definition, the final regulations did not adopt those comments.

Though the final regulations include NFTs in the definition of digital assets, Treasury and the IRS determined that it is appropriate to provide an alternative reporting method for certain types of NFTs to alleviate burdensome reporting (see discussion below).

Closed-Loop Assets

The preamble to the proposed regulations stated that the definition of a digital asset was not intended to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency. It also stated that the definition of digital assets was not intended to cover uses of distributed ledger technology for ordinary commercial purposes, like tracking inventory or processing orders for purchase and sale transactions, that do not create transferable assets and are therefore unlikely to give rise to sales as defined by the regulations. The final regulations clarify that transactions involving digital assets in the above-described closed-loop environments are not subject to reporting. As such, the final regulations add transactions involving these closed-loop digital assets to the list of excepted sales that are not subject to reporting.

Securities, Commodities, and Real Estate

The preamble to the proposed regulations noted that Treasury and the IRS are aware that many provisions of the code incorporate references to the terms "security" and "commodity," and that questions exist as to whether (and if so, when) a digital asset may be treated as a security or a commodity under those code sections.

Dual Classification Assets

The proposed regulations included coordination rules to provide certainty to brokers regarding whether a transaction involving securities or certain commodities is reportable as a securities or commodities sale or as a digital asset sale and to avoid duplicate reporting obligations. Specifically, for transactions involving the sale of a digital asset that also constitutes the sale of a commodity or security (dual classification assets).

Given these different basis reporting requirements and transfer statement obligations, Treasury and the IRS have determined that, except in the case of certain exceptions, it is not appropriate to treat a transaction involving dual classification assets as a sale of a security or commodity if those assets can be traded on public blockchains and custodied by customers. Accordingly, consistent with the proposed regulations, the final regulations provide that brokers must generally treat a sale of dual classification assets only as a sale of digital assets. This means the broker must apply the digital asset reporting rules for the information required to be

[5] A specific convertible currency issued by a government or a central bank (including the U.S. dollar).

reported for the sale and file the return on Form 1099-DA.[6]

Brokers Required to Report

Custodial Industry Participants

Before the enactment of the infrastructure act, section 6045 defined a broker to include a dealer, a barter exchange, and any other person who (for consideration) regularly acts as a "middleman" for property or services.

The pre-2024 section 6045 final regulations applied the "middleman" portion of this definition to treat (as a broker effecting a sale) any person that, as part of the ordinary course of a trade or business, acts as either (i) an agent for a sale, if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale, or (ii) a principal in the sale.

Certain digital asset industry participants that take possession of a customer's digital assets, like operators of custodial digital asset trading platforms and certain digital asset hosted wallet providers, as well as persons that interact as principals and counterparties to transactions with their customers (like owners of digital asset kiosks and certain issuers of digital assets who regularly offer to redeem those digital assets), would generally be considered brokers for digital asset sales. Consistent with the statute and those regulations, the final regulations apply to operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks (custodial industry participants).

Noncustodial Industry Participants

Unlike custodial industry participants, industry participants that do not take possession of a customer's digital assets (non-custodial industry participants), like operators of noncustodial digital asset trading platforms (sometimes referred to as "decentralized exchanges") and unhosted digital asset wallet providers, normally do not act as custodial agents or principals in effecting their customers' transactions. Instead, these noncustodial industry participants offer other services, like providing interface services enabling their customers to interact with trading protocols.

To resolve any uncertainty over whether these noncustodial digital asset service providers are brokers, the infrastructure act amended the definition of broker to add "any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person" (the new digital asset middleman rule).

To implement this new digital asset middleman rule, the proposed regulations provided that, subject to certain exclusions, any person that provides facilitative services that effectuate sales of digital assets by customers is a broker, provided the nature of the person's service arrangement with customers is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds.[7]

Despite Treasury and the IRS not agreeing with the commentators that asserted that noncustodial industry participants should not be treated as brokers, to have more time to study the issues surrounding noncustodial industry participants, that portion of the proposed regulations was not finalized.[8] The final regulations, however, do not reserve on the

[6] However, in response to comments, Treasury and the IRS have determined it is appropriate to include three exceptions to the rules requiring that dual classification assets be reported as digital assets. Those exceptions apply to dual classification assets that: (i) are cleared or settled on a limited-access regulated network; (ii) are section 1256 contracts; and (iii) are shares in money market funds.

[7] Prop. reg. section 1.6045-1(a)(21)(iii)(A).

[8] That said, Treasury and the IRS have conceded that persons solely engaged in providing validation services and persons that are solely engaged in the business of selling certain hardware, or licensing certain software for which the sole function is to permit persons to control private keys that are used for accessing digital assets on a distributed ledger, are not digital asset brokers. Notwithstanding the reservation on the underlying rule to provide time to study the issue, the final regulations retain the examples that conclude that persons conducting these actions do not constitute brokers. *See* final reg. section 1.6045-1(b)(2)(ix) and (x).

providers of "facilitative services" from the definition of broker.[9]

PDAPs

PDAPs enable buyers to make payments to second parties (typically merchants) using digital assets. In some cases, the buyer pays digital assets to the PDAP, then the PDAP pays those digital assets, U.S. dollars, or different digital assets to the merchant. In other cases, the PDAP may not take custody of the digital assets, but may instruct or otherwise give assistance to the buyer to transfer the digital assets directly to the merchant. The PDAP may also have a relationship with the merchant obligating the PDAP to process payments on behalf of the merchant.

The proposed regulations treated PDAPs as brokers that effect sales of digital assets for the buyer.[10] However, in the final regulations, PDAP and the definition of a sale effected by a PDAP apply only to transactions in which PDAPs take possession of the digital asset payment and transfers the same, cash, or a different digital asset to a second party.[11]

Under the final regulations, a PDAP is required to report digital asset payments by a buyer only if the processor already obtains customer identification information from the buyer to comply with their FinCEN obligations.

Issuers of Digital Assets

The proposed regulations modified the definition of broker to include persons that regularly offer to redeem digital assets created or issued by that person, for example, in an initial coin offering or redemptions by an issuer of a so-called stablecoin.[12]

The final regulations retain this rule; however, because these issuers do not provide custodial services for their customers, they are not required to report the customer's adjusted basis (see below).

Real Estate Reporting Persons

The proposed regulations provided that a real estate reporting person is a broker for digital assets used as consideration in a real estate transaction if the reporting person would generally be required to make an information return for that transaction.[13] To ensure that real estate reporting persons report on real estate buyers making payments in transactions with digital assets, the proposed regulations also included these real estate buyers in the definition of customer and included the services performed for these transactions by real estate reporting persons in the definition of facilitative services (relevant to the definition of a digital asset middleman).

That said, the final regulations reflect Treasury and the IRS's conclusion that it is not appropriate to require real estate reporting persons who do not know or would not ordinarily know that digital assets were used by the real estate buyer to make a payment to report on such payments.[14] And notwithstanding this decision, the applicability date for reporting has been delayed, and backup withholding relief has been provided for real estate reporting persons.[15]

Exempt Recipients

The proposed regulations left unchanged the exceptions to reporting provided by the pre-2024 final regulations for exempt recipients, such as certain corporations, financial institutions, tax-exempt organizations, or governments (or political subdivisions thereof). Thus, the

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[9] *See* final reg. section 1.6045-1(a)(21)(iii)(B). Facilitative services include any service provided by a real estate reporting person for a real estate transaction in which digital assets are paid by the buyer in full or partial consideration for the real estate. Also, acceptance of digital assets in return for cash, stored-value cards, or different digital assets to the extent provided by a physical electronic terminal or kiosk is a facilitative service. Finally, certain PDAPs that receive digital asset payments from one party (buyer) and pay those digital assets, cash, or different digital assets to a second party are treated as performing facilitative services and, thereby, are digital asset middlemen under the final regulations.

[10] Prop. reg. section 1.6045-1(a)(22)(i)(A).

[11] Final reg. section 1.6045-1(a)(9)(ii)(D) and (22).

[12] Prop. reg. section 1.6045-1(a)(1).

[13] Prop. reg. section 1.6045-4(a).

[14] For this purpose, a real estate reporting person has actual knowledge that digital assets were used by the real estate buyer to make a payment if the terms of the real estate contract provide for payment using digital assets. Also, a separate communication to the real estate reporting person, for example, to ensure that the value of the digital asset payment is reflected in any commissions or taxes due at closing, would constitute actual knowledge by the real estate reporting person that digital assets had been used by the real estate buyer to make a payment directly to the seller.

[15] Notice 2024-56.

proposed regulations did not create a reporting exemption for digital asset sales effected on behalf of a customer that is a digital asset broker.

However, the final regulations add digital asset brokers to the list of exempt recipients for sales of digital assets, but limits its application to only non-U.S. digital asset brokers (see below).[16]

The Multiple Broker Rule

The proposed regulations also did not extend the multiple broker rule of the pre-2024 final regulations to digital asset brokers.

Backup withholding on these transactions is an essential tool to ensure that important information for tax enforcement is reported to the IRS. Because the broker crediting the gross proceeds to the customer's wallet address or account is in the best position to backup withhold on these transactions if the customer does not provide the broker with the necessary tax documentation, the final regulations adopt a multiple broker rule for digital asset brokers that would require the broker crediting the gross proceeds to the customer's wallet address or account to report the transaction to the IRS when more than one digital asset broker would otherwise have a reporting obligation for a sale transaction. To receive relief from reporting obligations, however, the other brokers must obtain proper documentation from the broker crediting the gross proceeds to the customer's wallet address or account.

Sales Subject to Reporting

The final regulations define a "sale subject to reporting" as including disposing of a digital asset in exchange for cash, stored-value cards, or a different digital asset. The definition of sale includes disposing of a digital asset by a customer in exchange for property (including securities and real property).

While several commentators recommended that the definition of sale should not include exchanging different types of digital assets or certain other property, the final regulations did not adopt that suggestion. As explained in Notice 2014-21 and clarified in Rev. Rul. 2023-14, when a taxpayer disposes of a digital asset to make a payment in another transaction, the taxpayer has engaged in two taxable transactions: first, the disposition of the digital asset, and second, the payment associated with the payment transaction. In contrast, when a taxpayer disposes of cash to make a payment, the taxpayer has at most only one taxable transaction.[17]

Definition of Dispositions

Considering comments on the proposed regulations, Treasury and the IRS have determined that certain digital asset transactions require further study to determine how to facilitate appropriate reporting under the final regulations. Accordingly, Notice 2024-57 was issued after the final regulations and provides that until a determination is made as to how the transactions identified in the notice should be reported, brokers are not required to report on these identified transactions, and the IRS will not impose penalties for failure to file correct information returns or furnish correct payee statements for these identified transactions.[18]

Exceptions for Certain Closed-Loop Transactions

As noted above, Treasury and the IRS do not intend the information reporting rules under section 6045 to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside of that system for fiat currency. Rather than carve these assets out from the definition of a digital asset, the final regulations added closed-loop transactions to the list of excepted sales not subject to reporting.

Information to Report for Digital Asset Sales

In General

The proposed regulations required that for each digital asset sale for which a broker is

[16]Final reg. section 1.6045-1(c)(3)(i)(B)(12).

[17]See the barter exchange rules of final reg. section 1.6045-1(e).

[18]Notice 2024-57 identifies the following transactions that are exempt from reporting until further study: "wrapping" and "unwrapping" transactions; "liquidity provider transactions"; "staking transactions"; "transactions described by digital asset market participants as the lending of digital assets"; "transactions described by digital asset market participants as short sales of digital assets"; and "notional principal contract transactions."

required to file an information return, the broker must report the following:

1. the date of the sale;[19]
2. the transaction identification ("transaction ID" or "transaction hash") if the sale was affected on a distributed ledger;
3. for transactions involving sales of digital assets that were previously transferred into the customer's hosted wallet with the broker ("transferred-in digital asset"): the date and the number of units transferred in by the customer as part of that transfer-in transaction;[20]
4. the consideration received in that sale, i.e. cash, different digital assets, other property, or services; however, brokers do not need to report the specific goods or services purchased by the customer, but only the category type that the consideration falls into;
5. the name of the digital asset sold; and
6. the gross proceeds amount in U.S. dollars regardless of whether the consideration received in that sale was cash, different digital assets, other property, or services.

Subject to the exceptions noted below for certain stablecoins and certain NFTs, the proposed and final regulations require brokers to report sales of digital assets on a transactional (per-sale) basis.

Optional Reporting Rules — Qualifying Stablecoins

Treasury and the IRS have determined that it is appropriate to permit brokers to report certain stablecoin sales under an optional alternative reporting method to alleviate burdensome reporting for these transactions.

In this regard, the final regulations adopt an optional $10,000 overall annual de minimis threshold for certain qualifying stablecoin sales and permit sales over this amount to be reported on an aggregate basis rather than on a transactional basis.[21]

Because the purpose of the optional reporting method is to minimize reporting on very high volumes of transactions involving little to no gain or loss, and because the optional reporting regime will ensure at least some visibility into transactions that in the aggregate exceed the $10,000 threshold, Treasury and the IRS have determined that the definition of fiat currency-based stablecoins should be relatively broad to reduce the burden on brokers and the IRS.

The final regulations describe "qualifying stablecoins" as any digital asset that:

- is designed to track on a one-to-one basis a single convertible currency issued by a government or a central bank (including the U.S. dollar);
- uses one of two stabilization mechanisms set forth in the final regulations; and
- is generally accepted as payment by persons other than the issuer.[22]

Brokers that want to use this reporting method in place of transactional reporting are not required to submit any form or otherwise make an election to be to be eligible.

Also, brokers may report sales of qualifying stablecoins under this optional method for some or all customers, though the method chosen for a particular customer must be applied for the entire year for that customer's sales. A broker may change its reporting method from year to year.[23]

[19] Considering significant comments on this point, the final regulations removed the requirement to report the time of the transaction.

[20] Considering comments received, the final regulations remove the obligation to report the transaction ID and digital asset address information. However, Treasury and the IRS have concluded that this information will be important for IRS enforcement efforts, particularly if a taxpayer refuses to provide it during an examination. Accordingly, the final regulations provide a rule that requires brokers to collect this information for the sale of a digital asset and retain it for seven years from the due date for the related information return filing. *See* final reg. section 1.6045-1(d)(11). However, this collection and retention obligation does not apply to digital assets that are not subject to reporting because of the special reporting methods.

[21] Final reg. section 1.6045-1(d)(10)(i)(A) and (B).

[22] This acceptance requirement would be met if the digital asset is accepted by the broker as payment for other digital assets or is accepted by a second party. An example of this is acceptance by a merchant for a sale effected by a PDAP.

[23] Because the obligation to file returns under the transactional method in final reg. section 1.6045-1(d)(2)(i)(B) is discharged only when a broker files information returns under the optional reporting method under final reg. section 1.6045-1(d)(10)(i), brokers that fail to report a customer's sales under either method will be subject to penalties under section 6721 for failure to file under the transactional method.

Optional Reporting — Specified Nonfungible Tokens

Notwithstanding the conclusion that the definition of digital assets includes NFTs, considering comments received and because statistics show that a substantial portion of nonfinancial NFT transactions are small dollar transactions for which taxpayers can more easily track their own cost basis, Treasury and the IRS have concluded that the costs of transactional reporting for low-value nonfinancial NFTs outweigh the benefits to taxpayers and the IRS. Accordingly, the final regulations have added an optional alternative reporting method for sales of certain NFTs to allow for aggregate reporting instead of transactional reporting, with a de minimis annual threshold below which no reporting is required.[24]

Accordingly, like the optional reporting for stablecoins, brokers do not need to submit any form or otherwise make an election to report under this method and are not required to report under this optional method consistently from customer to customer or from year to year. However, the method chosen for a customer must be applied for the entire year for that customer's sales.

The final regulations adopt an annual $600 de minimis threshold for each customer below which brokers reporting under the optional aggregate method are not required to report gross proceeds from these NFT transactions.

The final regulations permit optional aggregate reporting for specified NFTs that look to the character of the underlying assets, if any.[25] To constitute a specified NFT, the digital asset must be indivisible (that is, the digital asset cannot be subdivided into smaller units without losing its intrinsic or functional value, and must be unique as determined by the inclusion in the digital asset itself of a unique digital identifier (other than a digital asset address) that distinguishes that digital asset from other digital assets.[26]

Reporting Rules for PDAP Sales

Treasury and the IRS determined that it is appropriate to permit some reporting relief for small PDAP sale transactions. As noted above, the final regulations adopt an optional $10,000 overall annual de minimis threshold for qualifying stablecoin sales and permit qualifying sales over that amount to be reported on an aggregate basis rather than on a transactional basis. This $10,000 annual threshold applies to PDAPs who choose to report qualifying stablecoin transactions under this optional method.

In contrast, for digital assets other than qualifying stablecoins (which are more likely to give rise to gains and losses), Treasury and the IRS have concluded that an annual de minimis threshold of $600 would be appropriate for PDAP sales not settled with qualifying stablecoins. If a customer's PDAP sales exceed $600 for the year, all of that customer's sales are reportable under the general transactional reporting rules.

Determine Gross Proceeds and Adjusted Basis

Valuation Issues

To define gross proceeds and the initial basis in a sale transaction, the proposed and final regulations generally followed the substantive tax rules under the section 1001 regulations for computing the amount realized from transactions involving the sale or other disposition of digital assets and the substantive rules under the proposed section 1001 regulations to compute the basis of digital assets received in transactions involving the purchase or other acquisition of digital assets. Also, the proposed and final regulations generally followed the substantive tax rules proposed in those same regulations for determining the fair market value of property or

[24]Brokers that do not wish to build a separate system for NFTs eligible for aggregate reporting can report all NFT transactions under the transactional system.

[25]Final reg. section 1.6045-1(d)(10)(iii). For example, an interest in a work of art, sports memorabilia, music, video, film, or fashion design, or any other property or services, other than excluded property.

[26]Taken together, these requirements exclude all fungible digital assets from the definition of specified NFTs, including the smallest units of those digital assets. In addition to satisfying the above-described criteria associated with the nonfungibility of the digital asset, to be a specified NFT, the digital asset must not directly (or indirectly) provide the holder with an interest in certain "excluded property." This is defined as any security, commodity, regulated futures contract, or forward contract.

services received or transferred by the customer in an exchange transaction involving digital assets.

Basis Reporting Rules

Digital assets are now added to the list of specified securities for which basis reporting is required; a digital asset is a covered security if it is acquired on or after the "acquisition applicable date for digital assets," which the regulations have set as January 1, 2026.[27]

Based on this authority provided by the infrastructure act, the proposed regulations provided that for each sale of a digital asset that is a covered security for which a broker is required to make a return of information, the broker must also report the adjusted basis of the digital asset sold and the date the digital asset was purchased, and whether any gain or loss for the digital asset sold is long-term or short-term.[28]

Exceptions to Reporting of Sales

Broadly, the proposed and final regulations provide two important exceptions to a broker's reporting obligation: sales effected by brokers on behalf of an exempt foreign person and sales effected by non-U.S. brokers.

Exempt Foreign Persons

Like for a securities broker affecting a sale of an asset other than a digital asset, the proposed regulations provided an exception to a broker's reporting of a sale of digital assets for a customer that is an exempt foreign person.

For a broker to treat a customer as an exempt foreign person for a sale of digital assets, the proposed and final regulations provide requirements for valid documentation of foreign status (a Form W-8), standards of knowledge for a broker's reliance on that documentation, and presumption rules in the absence of documentation that could be relied upon to determine a customer's status as a U.S. or foreign person.

Non-U.S. Digital Asset Brokers and the CARF

Several comments on the proposed regulations' rules requiring non-U.S. brokers[29] to report information on digital asset transactions recommended that the rules be revised to provide that non-U.S. brokers reporting information on U.S. customers to other jurisdictions under the CARF[30] should not be required to report information to the IRS and should not have to obtain separate U.S. certification for customers.

Accordingly, the final regulations reserve on the rules requiring non-U.S. brokers to report information on U.S. customers to the IRS to coordinate the rules for non-U.S. brokers under section 6045 with new rules that will implement the CARF.

When Broker Reporting Is Required

Generally, the final regulations are effective for transactions that take place after January 1, 2025, meaning reporting will be required beginning in 2026 (for transactions that took place in 2025). Further, despite the infrastructure act's requirement that basis reporting begin on January 1, 2023, the final regulations mandate basis reporting for digital assets acquired in 2026. ■

[27]Under final reg. section 1.6045-1(a)(15)(i)(J), the acquisition applicable date is January 1, 2026.

[28]The proposed regulations modified the definition of a covered security for which adjusted basis reporting would be required to include digital assets acquired in a customer's account on or after January 1, 2023, by a broker providing hosted wallet services.

[29]The term "non-U.S. digital broker" means either a controlled foreign corporation digital asset broker or a non-U.S. digital asset broker, which have different requirements depending on whether they conduct activities as a "money service business." This term includes any person doing business (whether regularly or not) in one or more of the following capacities: currency dealer or exchanger; check casher; issuer of traveler's checks, money orders, or stored value; seller or redeemer of traveler's checks, money orders, or stored value; money transmitter; or U.S. Postal Service.

[30]CARF is a framework for the automatic exchange of information between countries on cryptoassets that was developed by the OECD and to which the United States is a party. Under the CARF, the IRS provides information on foreign persons for whom U.S. brokers effect sales of digital assets to other countries that have implemented the CARF and receives information from those countries about transactions by U.S. persons with non-U.S. digital asset brokers. Regulations implementing the CARF will exempt non-U.S. brokers that are reporting information on U.S. customers to jurisdictions that exchange information to the IRS for an automatic exchange of information mechanism from reporting information on U.S. customers to the IRS under section 6045.