U.S. Department of the Treasury, IRS Release Proposed Regulations on Sales and Exchanges of Digital Assets by Brokers

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Treasury to solicit public input, feedback on the proposed regulations

WASHINGTON – As part of the Biden-Harris Administration's implementation of the bipartisan Infrastructure Investment and Jobs Act (IIJA), the U.S. Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) today released proposed regulations on the sale and exchange of digital assets by brokers, in an effort to crack down on tax cheats while helping law-abiding taxpayers know how much they owe on the sale or exchange of digital assets. This is part of a broader effort at Treasury to close the tax gap, address the tax evasion risks posed by digital assets, and help ensure that everyone plays by the same set of rules.

The proposed regulations, which are open for public comment and feedback until October 30, would require brokers of digital assets to report certain sales and exchanges. The proposed regulations would clarify and adjust the rules regarding the tax reporting of information by brokers, so that brokers for digital assets are subject to the same information reporting rules as brokers for securities and other financial instruments.

Under current law, taxpayers owe tax on gains and may be entitled to deduct losses on digital assets when sold, but for many taxpayers it is difficult and costly to calculate their gains. These proposed rules require brokers to provide a new Form 1099-DA to help taxpayers determine if they owe taxes, and would help taxpayers avoid having to make complicated calculations or pay digital asset tax preparation services in order to file their tax returns. These regulations align tax reporting on digital assets with tax reporting on other assets, and, as a result, avoid preferential treatment between different types of assets.

Under the proposed rules, the first year that brokers would be required to report any information on sales and exchanges of digital assets is in 2026, for sales and exchanges in 2025.

At the time of passage, the nonpartisan Joint Committee on Taxation (JCT) noted that that using reliable and objective third-party income verification reduces tax evasion and leads to more accurate reports of income on tax returns. The JCT estimated that the IIJA provisions would raise almost $28 billion over 10 years.

The Treasury Department and the IRS welcome comments and feedback on the proposed regulations from affected taxpayers, industries, and other interested parties. Written comments will be accepted until October 30, 2023. And a public hearing has been scheduled for November 7, 2023, with a second public hearing date for November 8, 2023, if the number of requests to speak at the first hearing exceed the number that can be accommodated in one day. Treasury and the IRS will carefully consider all public comments before issuing final regulations.

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