



Infrastructure Bill: Digital Asset Reporting

Global Information Reporting

Infrastructure bill includes requirements for information reporting of digital assets

Overview

The House passed the bipartisan infrastructure bill on Friday, November 5th, ratifying the Senate amendment passed on August 10th. Section 80603 of [H.R. 3684](#) (see pp. 2419-2423) includes language amending sections of the Internal Revenue Code to explicitly include digital assets for Form 1099 reporting and transfer statement purposes and to include digital assets in the definition of “cash” for transaction reporting purposes.

The bill, expected to be signed by the President into law imminently, includes the following changes:

- **Redefined “Broker”:** An expanded definition of broker to include any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.”
- **Defines “Digital Assets”:** “[A]ny digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.”
- **Redefined “Specified Security”:** An inclusion of digital assets as specified securities, potentially requiring cost basis reporting.
- **Transfer statement obligations:** Requirements for transfer statements to be furnished between “brokers” when digital assets are transferred.
- **Expanded reporting on transfers:** Reporting obligations on transfers of digital assets that otherwise fall outside the scope of reporting and updating information reporting penalties to include this reporting.
- **Businesses accepting payment in crypto:** Reporting obligations for businesses accepting more than USD 10,000 in digital assets as payment.
- **Effective date:** Requirement to report on Form 1099 all transactions occurring in tax year 2023 and for transaction reporting on statements to be furnished after December 31, 2023.
- **Rule of construction:** Clarification that the amendments are not intended to create any inference regarding the current scope of section 6045, including whether any person qualifies as a broker or whether a digital asset is property meeting the definition of specified security.

Subject to implementing regulatory guidance, this legislation allows the Treasury and IRS to specify new tax information reporting compliance obligations for a wide range of parties involved with digital assets, potentially including:

- Centralized digital asset financial service providers (“CeFi”) and their users;
- Decentralized finance networks (“DeFi”) and their participants;
- Non-fungible token (“NFT”) platforms and their participants;
- Digital marketplace platforms and their participants;
- Businesses that accept digital assets as payment;
- Blockchain gaming platforms and their participants, and
- Metaverse operators and their participants.

Discussion

Form 1099 reporting: The bill redefines the term “broker” under section 6045 to include “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.” Subject to likely regulatory clarification, this modification makes it possible for the Treasury to create a Form 1099-B or similar reporting obligation for any person meeting the new definition.

The bill also modifies the definition of “specified security” to include digital assets, defined as “any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.”

By including digital assets as specified securities, a digital asset could qualify as a “covered security” if it i) were acquired through a transaction in the account in which the digital asset was held or ii) were transferred from an account in which the digital asset qualified as a covered security according to the transfer statement. On Form 1099-B, reporting of a covered security must include the adjusted basis and whether any gain or loss is short-term or long-term.

Transfer statement and additional reporting: The bill further amends section 6045A, adding the following subsection (d):

RETURN REQUIREMENT FOR CERTAIN TRANSFERS OF DIGITAL ASSETS NOT OTHERWISE SUBJECT TO REPORTING.—Any broker, with respect to any transfer (which is not part of a sale or exchange executed by such broker) during a calendar year of a covered security which is a digital asset from an account maintained by such broker to an account which is not maintained by, or an address not associated with, a person that such broker knows or has reason to know is also a broker, shall make a return for such calendar year, in such form as determined by the Secretary, showing the information otherwise required to be furnished with respect to transfers subject to subsection (a).

In addition to obligating brokers to provide transfer statements for digital assets in a manner similar to traditional securities today, this new subsection further expands the scope of reporting with respect to transfers of digital assets that might fall outside of the sections 6045 and 6045A rules. The bill also amends information reporting penalty provisions to include reporting under the new section 6045A(d).

Reporting of digital assets as “cash”: The bill amends section 6050I to include “any digital asset (as defined in section 6045(g)(3)(D))” in the definition of “cash”. This amendment obligates persons receiving greater than USD 10,000 of value in digital assets in the course of their trade or business to report these transactions. Transactions for cash under section 6050I are reported on IRS Form 8300 today.

Effective date: The bill includes an effective date for returns required to be filed or furnished after December 31, 2023. For Form 1099 reporting, this would result in reporting in early 2024 on tax year 2023 activity, and, for Form 8300 reporting, this would result in reporting as early as 15 days after January 1, 2024.

Rule of construction: Finally, the bill includes a statement that the amendments included in the bill should not be construed to create any inference regarding whether any person qualifies as a broker or whether any digital asset qualifies as property which is a specified security under the current language of section 6045.

For questions, please consult with the listed contacts below.

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