



TaxNewsFlash

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Proposed regulations: Information reporting, determination of amount realized and basis, and backup withholding for digital asset transactions

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-122793-19) regarding information reporting under sections 6045 and 6050W, the determination of amount realized under section 1001 and basis under section 1012, and backup withholding under section 3406, for certain digital asset sales and exchanges.

The [proposed regulations](#) [PDF 852 KB] (282 pages) would require:

- Brokers (including digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallets) to file information returns, and furnish payee statements, on dispositions of digital assets effected for customers in certain sale or exchange transactions
- Require real estate reporting persons (who are treated as brokers with respect to reportable real estate transactions) to:
 - Include on filed information returns and furnished payee statements the fair market value of digital asset consideration received by real estate sellers in reportable real estate transactions
 - File information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate in these transactions

Regarding applicability dates, the proposed regulations provide:

- The proposed regulations regarding computation of gain or loss under section 1001 and the basis of digital assets under section 1012 are proposed to apply to tax years for all sales and acquisitions of digital assets on or after January 1 of the calendar year after the date the proposed regulations are finalized. However, taxpayers may rely on the proposed regulations under sections 1001 and 1012 for dispositions in tax years ending on or after the date the proposed regulations are published in the Federal Register (scheduled to be August, 29, 2023) provided the taxpayer consistently follows the proposed regulations in their entirety and in a consistent manner for all tax years through the applicability date of the final regulations.
- Proposed Treas. Reg. § 1.6045-1 would require brokers to report the gross proceeds from the sale of digital assets if the sale is effected on or after January 1, 2025. Proposed Treas. Reg. § 1.6045-1(d)(2)(i)(C) would require brokers to report the adjusted basis and the character of any gain or loss

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with respect to a sale if the sale or exchange is effected on or after January 1, 2026. For assets that are commodities pursuant to the Commodity Futures Trading Commission's certification procedures described in 17 CFR 40.2, the proposed regulations are proposed to apply to sales of such commodities on or after January 1, 2025, without regard to the date such certification procedures were undertaken.

- The changes made by the proposed Treas. Reg. § 1.6045-4 regulations, applicable to reporting on real estate transactions, are proposed to apply to real estate transactions with dates of closing occurring on or after January 1, 2025.
- The changes applicable to transfer statements (proposed Treas. Reg. § 1.6045A-1) and organizational actions (proposed Treas. Reg. § 1.6045B-1), applicable to specified securities described in proposed Treas. Reg. § 1.6045-1(a)(14)(i) through (iv) that are also digital assets as defined in proposed Treas. Reg. § 1.6045-1(a)(19), are proposed to apply on or following the date the proposed regulations are finalized.
- The proposed regulations applicable to payments made in settlement of payment card and third party network transactions (proposed Treas. Reg. § 1.6050W-1) are proposed to apply to payments made using digital assets on or after January 1, 2025.
- The proposed regulations applicable to the penalties for failing to file or furnish an information return (proposed Treas. Reg. §§ 1.6721-1 and 1.6722-1) are proposed to apply to information returns required to be filed with respect to sales effected on or after January 1, 2025.
- Finally, the regulations applicable to backup withholding (proposed Treas. Reg. §§ 31.3406(b)(3)-2, 31.3406(g)-1(e), and 31.3406(g)-2(e)) are proposed to apply to sales of digital assets on or after January 1, 2025.

Comments on the proposed regulations, as well as requests to speak and outlines of topics to be discussed at the public hearing (scheduled for November 7, 2023 at 10 a.m. ET), are due by the date that is 60 days after the proposed regulations are published in the Federal Register, which is scheduled to be August 29, 2023. If no outlines are received by that date, the public hearing will be cancelled. If the number of requests to speak at the hearing exceed the number that can be accommodated in one day, a second public hearing will be held on November 8, 2023. Due to strong public interest, the due date to receive comments was extended to November 13, 2023. However, the public hearing was not extended. Read [TaxNewsFlash](#)

Read a related IRS release—[IR-2023-153](#) (August 25, 2023)

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