October 28, 2022

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: Comments on Virtual Currency Reporting under Internal Revenue Code Section 6045 and Section 6050I, and the Form 8300 and Instructions

Dear Commissioner Rettig and Mr. Paul:

The American Institute of CPAs (AICPA) is submitting comments on reporting virtual currency transactions under Internal Revenue Code[1] (IRC) section 6045, section 6050I, and the Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business,* and instructions. We identified specific areas that relate to the taxation and reporting of virtual currency transactions that warrant guidance.[2]

Our recommendations address the following areas:

A. IRC Section 6045 Guidance
B. IRC Section 6050I Guidance

A. Section 6045 Guidance

Overview

Section 6045, as modified by the Infrastructure Investment and Jobs Act (P.L. 117-58), provides a broad definition for "broker" (see below). However, in the virtual currency area, there are other service providers that enable transfers of digital assets, including: exchange platforms, liquidity pools, lending platforms, mining and staking operations, wallet providers, and some investment funds holding virtual currency.

[1] Unless otherwise indicated, references to a "section" are to a section of the Internal Revenue Code of 1986, as amended (the "Code")

[2] The AICPA has previously provided comments on virtual currency taxation matters. See: (1) "Comments on Notice 2014-21: Virtual Currency Guidance," June 10, 2016; (2) "Updated Comments on Notice 2014-21: Virtual Currency Guidance," May 30, 2018; (3) "Comments on Revenue Ruling 2019-24, the New Question on Schedule 1 (Form 1040), and the Internal Revenue Service's Frequently Asked Questions on Virtual Currency Transactions," February 28, 2020; and (4) "Comments on Virtual Currency Question on the Form 1040 and Instructions" August 29, 2022. These comments are in addition to our prior comments.

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Current section 6045(c)(1) defines "broker" as:

- for returns required to be filed and statements required to be furnished on or before 12/31/2023:

(A) *a dealer,*
(B) *a barter exchange, and*
(C) *any other person who (for a consideration) regularly acts as a middleman with respect to property or services.*

- for returns required to be filed and statements required to be furnished after 12/31/2023, a new (D) is added as follows:

(D) *any person who (for consideration) is responsible for regularly providing any services effectuating transfers of digital assets on behalf of another person.*

Current section 6045(g)(3) defines "covered security" subject to cost basis reporting as:

(A) In general. The term "covered security" means any specified security acquired on or after the applicable date if such security –
(i) was acquired through a transaction in the account in which such security is held, or
(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

(B) Specified Security. The term "specified security" means –
(i) *any share of stock in a corporation,*
(ii) *any note, bond, debenture, or other evidence of indebtedness,*
(iii) *any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, and*
(iv) *any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.*

(C) Applicable date. The term "applicable date" means –
(i) *January 1, 2011, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),*
(ii) *January 1, 2012, in the case of any stock for which an average basis method is permissible under section 1012, and*
(iii) *January 1, 2013, or such later date determined by the Secretary in the case of any other specified security.*

- for returns required to be filed and statements required to be furnished after 12/31/2023:

(1) section 6045(g)(3)(B)(iv) is renumbered to be (v) and a new (iv) is added as follows:

(iv) any digital asset,

(2) section 6045(g)(3)(C) clause (iii) is renumbered (iv) and a new clause (iii) is added as follows:

(iii) January 1, 2023, in the case of any specified security which is a digital asset,

For returns required to be filed and statements required to be furnished after December 31, 2023, a new definition of digital asset is added to section 6045(g)(3)(D) as follows:

> *(D) DIGITAL ASSET.—Except as otherwise provided by the Secretary, the term 'digital asset' means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.*

For returns required to be filed and statements required to be furnished after December 31, 2023, a new section 6045A(d) is added as follows:

> *(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).*

Recommendations

1. Define digital assets and include examples that involve virtual currencies with varying features (such as allowing smart contracts, and the consensus protocol used), and various types of "tokens," including stable coins and non-fungible tokens (NFTs).

   A. In addition, provide guidance on the classification of forward contracts and other derivatives where the underlying asset is a digital asset.

2. Clarify the definition for virtual currency.

   A. IRS guidance has used several terms such as: "representation of value," "medium of exchange," "unit of account," and "store of value." Binding guidance on the definition of digital asset and virtual currency[3] will help taxpayers, practitioners and brokers understand compliance obligations.

[3] The AICPA has previously provided comments requesting clarification of the definition for virtual currency in "Comments on Virtual Currency Question on the Form 1040 and Instructions" submitted August 29, 2022.

3. Define broker with examples.

   A. Section 6045 has a broad definition of broker. In the digital asset arena, there are other service providers who may not consider themselves a "broker" or have access to the information needed to comply with section 6045 reporting requirements.
      i. Provide examples or lists of who would, and would not, be considered a broker under section 6045. Address the status of the following when creating these examples, or lists:
         a. a virtual currency miner
         b. a staker
         c. a lender of virtual currency
         d. a provider of a digital wallet
         e. an NFT creator
         f. an NFT marketer.
4. Describe what information is required to be provided by brokers.

   A. What type of information reporting is required for brokers of digital assets to provide and when? Guidance should include details on how to determine basis. For example:
      i. How does a broker know the basis if the owner transferred it to the exchange?
      ii. What should the information provider do when they are unable to determine basis?

5. Provide guidance on when section 6045A is triggered (such as any transfer that is not part of a sale or exchange executed by such broker).

   A. Clarify:
      i. The meaning of an account maintained by a broker,
      ii. When a broker is charged with knowing or having reason to know that an address is not associated with a broker,
      iii. When the transfer is to an account maintained by a person who is not a broker.

   B. Provide examples of an "address" in the aforementioned item.

   C. Provide guidance on what a broker should do if they are unable to obtain identifying information from the transferee broker.

6. Delay the effective date of guidance.

   A. Given that it takes time for brokers of digital assets to collect information to comply with section 6045, especially regarding basis, we recommend that digital assets not be subject to reporting any earlier than two calendar years after the regulations are final.

Analysis

We need clear guidance for information reporting purposes, including examples of who is a "broker" in any transactions involving digital assets including virtual currency. Taxpayers are also

engaging in other activities, such as staking, lending, and yield farming. Guidance is needed on how these transactions are defined under the section 6045 reporting requirements. In addition, current section 6045 guidance requires brokers to report details of a sales transaction, including taxpayer information, cost basis, sales proceeds and gain or loss resulted from the transaction.

The complexity in digital asset transactions involves virtual currency swapping. For example, it involves selling one virtual currency to buy a different virtual currency, or using virtual currency to purchase goods or services. In these examples, clarity is needed regarding whether section 6045 applies, and if yes, how.

As is clear from these examples, digital asset transactions is a complex area and requires IRS immediate attention as taxpayers need time to create and implement tools to aid in proper compliance. Changes to business operations, software integration, testing and notification to vendors and customers take significant lead time.

B. Section 6050I Guidance

Overview

The Infrastructure Investment and Jobs Act added the section 6050I reporting requirement to file Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*, when digital assets are used in business transactions. Form 8300 is already required for cash transactions greater than $10,000, but new issues exist when this reporting is expanded to include digital assets as defined under section 6045(g)(3)(D).

Normally, a seller who receives cash greater than $10,000 would obtain the name, address, and tax ID number from the buyer and report that information on Form 8300. Cash transactions, by nature, typically take place in person where the seller can readily obtain the necessary information from the buyer. In contrast, digital asset transactions, by their nature, typically take place virtually between two parties and do not always take place in person. There are several types of transactions unique to digital assets where the information required for Form 8300 is inherently unavailable.

Recommendations

1. Provide guidance on when the form is required and how to file the form, including when the recipient of a digital asset does not know the sender and cannot obtain the required reportable information.

    A. Also, provide guidance on when various digital activities constitute a trade or business versus an investment activity.

    B. This guidance should also address the following situations that could involve receipt of over $10,000 worth of digital assets:

i. When airdrops, typically known as promotional or network bootstrapping events, are sent by a project to a group of users with some common attribute.
ii. Use of "tip jar" addresses that are publicly posted by content providers or influencers and the recipient has no knowledge of the senders or whether any one sender made a series of contributions or payments to the address in question.
iii. When an individual owning Token A, a particular virtual currency, gets airdropped Token B of significant value from an unrelated, unknown third party simply by holding Token A.
iv. When an individual is subject to a hard fork resulting in a chain split whereby the taxpayer gains dominion and control over a completely new token

2. Provide guidance on whether Form 8300 is required and to how to file the form when the "sender" may not be a "natural person" possessing a name, address, or tax identification number. Specifically, address the following situations:

   A. Bitcoin (or other virtual currency) miners supply computing power to secure the Bitcoin Network and earn mining rewards as a result of which are considered ordinary business income.

   B. Staking on Proof of Stake (PoS) networks is similar to the same issues described for Bitcoin miners.

   C. Validators earn staking rewards from a blockchain network that is not a natural person.

   D. Delegators who earn rewards from staking their tokens with a validator.

3. Provide guidance on whether Form 8300 is required and to how to file the form for taxpayers involved in decentralized finance (DeFi) transactions.

   A. There are taxpayers that may use a decentralized exchange (DEX) to remove liquidity from liquidity pools.

   B. Specifically, address when a taxpayer uses a DEX to trade tokens.

Guidance covering these issues and addressing these recommendations must also be clearly covered in the instructions to Form 8300 to best assist taxpayers required to file this form.

Analysis

Section 6050I and Form 8300 required by this code section are designed for in person cash transactions, such as where a customer purchases a car from a dealer for $50,000 cash. There will be challenges of applying this reporting requirement to transactions regarding digital assets for various reasons including the following:

1. Many digital asset transactions are decentralized without any clear indication of who, if anyone, is a reporting party under section 6050I. A transaction might also be automated per smart contracts without a clear reporting mechanism.
2. For many digital asset transactions, the recipient of the digital asset might not be clear as to whether they have a trade or business or an investment activity.
3. Recipients of digital assets valued at over $10,000 often will not have the details to properly prepare Form 8300 (and will need to know if an incomplete form is acceptable and must still be filed).
4. Some digital asset transactions may overlap with other information reporting rules, such as for Form 1099-MISC or Form 1065 and clarification is needed as to whether Form 8300 is required in that context.

Taxpayers need clarification on whether certain transactions, such as earning mining rewards, staking rewards, airdrops, chain-split coins and DeFi transactions among others, are required and are intended to be reported on Form 8300.

Digital assets may be received as unsolicited property where there has been no exchange of goods or services for consideration in a trade or business. For example, some airdrops are not an arm's-length transaction, and the sender has no expectations to receive any consideration in return. The airdrop recipient may not know who the airdropping party is and/or how to contact them and is now a party to a one-sided transaction of value. The airdropping party also may not know who their respective airdrop recipients are and uses public addresses as the mechanism to complete an airdrop.

A decentralized network, such as Bitcoin, does not have a corporate office, a CEO, employees, an address, or an EIN number among other things. The Bitcoin Network is not an individual nor a corporation nor any other legal entity foreign or domestic. Bitcoin mining rewards can be earned daily and can be considered a series of related transactions when they add up to greater than $10,000 (and a single mining award can exceed $10,000 of value).

Covering the breadth of unique DeFi transactions is beyond the scope of this section; however, a user recipient could engage in several types of transactions using DeFi protocols and have no knowledge of the user recipient's respective counterparty or have any way to obtain the information.

These examples are not exhaustive so there are other virtual currency transactions that have similar reporting challenges.

Taxpayers are unable to comply with section 6050I and submit a complete and accurate Form 8300 where the counterparty is unknown and in cases where the "sender" is not a natural person. The short 15-day reporting window and potential felony criminal liability are serious and warrant clarifications on unique digital assets transactions before the required date of compliance.

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Annette Nellen, Chair, AICPA Virtual Currency Task Force, at (408) 924-3508 or Annette.Nellen@sjsu.edu; Melanie Lauridsen, AICPA Director – Tax Practice & Ethics, at (202) 434 –9235 or Melanie.Lauridsen@aicpa-cima.com; Robert Amarante, AICPA Senior Manager – Tax Policy & Advocacy, at (919) 402-4582 or Robert.Amarante@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,

Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Mr. Christopher Wrobel, Special Counsel to the Associate Chief Counsel, Income Tax & Accounting, Internal Revenue Service
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