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Updated: Effective Date for Digital Asset Reporting is Here—Although Regulations Have Not Been Promulgated

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Please note this an update to a Client Alert that was issued on January 4, 2024.

If you receive more than \$10,000 in digital assets in one transaction (or a series of related transactions), the Infrastructure Investment and Jobs (“Infrastructure Act”) that was passed in 2021, made January 1, 2024 the effective date for reporting transactions to the IRS and the Financial Crimes Enforcement Network (“FinCEN”). The report must be filed within 15 days after receiving the digital assets.

Historically, Internal Revenue Code (“IRC”) § 6050I required any person who is engaged in a trade or business and who received more than \$10,000 in cash in one transaction (or a series of related transactions) to report that transaction on the Form 8300, Report of Cash Payments Over \$10,000 in a Trade or Business. The primary purpose of filing the Form 8300 was to combat money laundering and tax evasion.

The Infrastructure Act expanded the types of transactions which must be reported IRC §6050I. “Cash” is now defined to include cash “any digital asset” as defined in IRC § 6045(g)(3)(D). In turn, IRC § 6045(g)(3)(D) provides:

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 [of the Treasury].

According to the IRS, transactions requiring Form 8300 include, but are not limited to:

- Escrow arrangement contributions
- Pre-existing debt payments
- Negotiable instrument purchases
- Reimbursement of expenses
- Making or repaying a loan
- Sale of goods or services

- Sale of real property
- Sale of intangible property
- Rental of real or personal property
- Exchange of cash for other cash
- Custodial trust contributions

In order to properly file the Form 8300, the recipient must obtain the payor's name, address, tax identification number,¹ date of birth and the nature of the payor's occupation. Additionally, the recipient must verify the name and address of the payor by examining a document normally accepted as a means of identification when cashing checks (for example, a driver's license passport, alien registration card, or other official document).

Businesses must electronically file Forms 8300 if they are required to file certain other information returns electronically (e.g., Forms 1099 (series), Forms W-2, etc.). Businesses must electronically file Forms 8300 if they are required to file at least 10 information returns of any type other than Form 8300 during the 2024 calendar year and thereafter.

For example, if a business is required to file five Forms W-2 and five Forms 1099-INT, then it is required to file its information returns electronically, including any Forms 8300.

Required Written Statement to be Provided to Transferors

When a business is required to file a Form 8300, the law requires the business to provide a written statement to each person(s) named on Form 8300 to notify them the business has filed the form. This requirement to provide a written statement does not apply with respect to a Form 8300 filed voluntarily, including a Form 8300 to report a suspicious transaction involving less than \$10,000.

The statement must include the following information:

- The name and address of the cash recipient's business,
- Name and telephone number of a contact person for the business,
- The total amount of reportable cash received in a 12-month period, and
- A statement the cash recipient is reporting the information to the IRS.

The IRC and Treasury Regulations only specify the information the business is required to include on a statement, not the format of the statement. A business may use its invoice for the statement of notification, as long as the invoice includes all required information.

Penalties

Failure to file the Form 8300 within 15 days can result in both civil and criminal penalties. The current civil penalty for a willful failure to file Form 8300 is the highest of:

- \$500, multiplied by the number of failures,

- \$25,000, or
- The amount of cash received in the transaction (capped at \$100,000 per failure).

Additionally, the willful failure to file a Form 8300 is considered a felony. The person must have had knowledge of the requirements and knowingly acted to avoid them to be prosecuted.

Potential Reporting Delay?

To date, the IRS has not made any announcements regarding a delay in the effective date for reporting digital asset transactions on the Form 8300.

However, the U.S. Department of Justice in a brief filed with the Sixth Circuit Court of Appeals² has argued that the effective date for reporting digital assets will not go into effect until promulgation of implementing regulations:

Like other provisions of the Internal Revenue Code that have similar language, Section 6050I's reporting requirements are not self-executing and will become effective following the promulgation of implementing regulations. *See 15 West 17th Street LLC v. Commissioner*, 147 T.C. 557, 585 (2016) ("Petitioner has cited, and our own research has discovered, no case in which a court has held to be self-executing a Code provision containing a discretionary delegation that refers to regulations that the Secretary 'may prescribe.'").

The existing regulations promulgated under Section 6050I implement the pre-amendment version of the statute and use the preamendment definition of ("cash,") namely coins, currency, and cashier's checks. See Treas. Reg. § 1.6050I-1(c)(1). Those regulations do not include digital assets or cryptocurrency, either in the definition of "cash" or elsewhere. See Treas. Reg. § 1.6050I-1.

Additionally, the Treasury Inspector General for Tax Administration in a recent report³ noted:

As previously noted, the forms, instructions and publications are still subject to revision and final approval with the issuance of the final regulations. Once finalized, the IRS is planning to develop outreach and educational campaigns to familiarize taxpayers with the requirements included in I.R.C. § 6045 and § 6050I.

So, it is possible that the IRS could delay enforcement pending outreach and educational campaigns for the public. But, if delay doesn't occur, the risk of non-reporting could result in substantial penalties for businesses that receive digital assets in excess of \$10,000.

One further note: the Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, which was last revised in December 2023, contains no reference to digital assets, including how to value such assets. If the IRS wants businesses to report the receipt of digital assets, one would expect the IRS to inform the public on the details of how to report such an obligation, especially since the Form 8300 is submitted by an authorized official under the penalties of perjury.

UPDATE: January 16, 2024: The IRS published Announcement 2024-4 which provides:

The Treasury Department and the IRS intend to implement section 80603(b)(3) of the Infrastructure Act by publishing regulations specifically addressing the application of section 6050I to digital assets and by providing forms and instructions for reporting that address the inclusion of digital assets. Accordingly, until the Treasury Department and

the IRS publish regulations under section 6050I to implement section 80603(b)(3) of the Infrastructure Act, persons engaged in a trade or business who, in the course of that trade or business, receive digital assets or digital assets and other cash in one transaction (or two or more related transactions) will not be required to include those digital assets when determining whether cash received has a value in excess of the \$10,000 reporting threshold for purposes of determining if reporting is required under section 6050I with respect to those transactions.

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If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Los Angeles lawyers:

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- 1 If you have requested but are not able to get a TIN for one or more of the parties to a transaction within 15 days following the transaction, file the report and explain why the TIN is not included in the comments section.
 - 2 Appellee Brief, Dkt. No. 21, *Carman v. Yellen*, Case No. 23-5662 (6th Cir.), pp. 32-33. In *Carman*, the government is arguing that the Petitioner's Fourth Amendment claims are not ripe because IRC § 6050I is not effective. Query whether the IRS would make the same argument if a taxpayer had not reported the receipt of digital assets in excess of \$10,000 as of January 1, 2024.
 - 3 The Internal Revenue Service Is Developing a Digital Asset Monitoring and Compliance Strategy, December 18, 2023, Report Number: 2024-IE-005.

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