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Digital Asset Reporting is Here

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Starting January 1, 2024, if you receive more than \$10,000 in digital assets in one transaction (or a series of related transactions), you must now report those transactions to the Internal Revenue Service ("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 Investment and Jobs ("Infrastructure Act") that was passed in 2021 has expanded the types of transactions which must be reported under IRC §6050I. "Cash" is now defined to include cash and "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 payors 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).

Effective January 1, 2024, 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 Treasury Inspector General for Tax Administration in a recent report² 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.

Therefore, it is possible that the IRS could delay enforcement pending outreach and educational campaigns for the public. However, 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.

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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 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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