



Tax IRW Ops Insights Quick Tips & Updates

KPMG Information Reporting & Withholding
Tax Services



IRS Hosted Hearings on Digital Asset Proposed Regulations

On November 13, 2023, the IRS hosted a telephonic hearing to discuss proposed regulation regarding digital asset transactions. Over the course of the hearings, taxpayers discussed a number of issues, ranging from the broad language in the proposed regulations to the inability for certain industry participants to provide required information due to various constraints. IRS representatives had several follow up questions, discussed below, indicating that they are actively considering a number of approaches to facilitate reporting on digital asset transactions.

Background

In August 2021, Congress enacted amendments to broker reporting rules as part of the Infrastructure Investment and Jobs Act of 2021 (Infrastructure Act).¹ In December 2022, the IRS announced that it would be issuing new regulations to address the application of sections 6045 and 6045A to digital assets and would provide transitional relief until those regulations took effect. On August 25, 2023, Treasury and the IRS issued proposed regulations² on digital asset tax information reporting requirements.³ The IRS originally provided taxpayers until November 7, 2023, to submit comment letters, and scheduled a hearing for the same day. However, due to overwhelming public interest, the IRS extended both the hearings and the deadline to submit comments to November 13.⁴ By the end of the extended deadline, taxpayers had submitted over 100,000

¹ The Infrastructure Investment and Jobs Act of 2021 can be found at <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>.

² For a detailed discussion of the proposed regulations, see *Proposed Treasury Regulations Expand Tax Information Reporting on Digital Asset Transactions* at <https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/proposed-treasury-regs-info-reporting-digital-asset-transactions-8-29-23.pdf>.

³ The full text of the proposed regulations can be found at <https://public-inspection.federalregister.gov/2023-17565.pdf>.

⁴ For further information, see the IRS webpage at <https://www.irs.gov/newsroom/digital-asset-public-hearing-rescheduled-for-nov-13>.

comment letters.⁵ Thirteen individuals requested time to speak at the hearing and were each provided a ten-minute window to voice their respective concerns.

IRS Hearings⁶

As discussed above, commentors presented numerous issues during the hearings. Notably, they voiced concerns that language in the proposed regulations is overly broad and would require far more reporting for digital assets than for traditional brokers for stock and securities. In particular, commentors argued that the rules appear to be more expansive than envisioned under the Infrastructure Act. The IRS listened to all of these comments and provided specific feedback on the issues below.

Stablecoins

During the hearings, several commentors requested that the IRS consider excluding stablecoins from the reporting requirements. Per the commentors, tax reporting where there is no gain or loss (e.g., because the coin is fully backed by fiat) would result in voluminous, but low-value, reporting. An IRS representative asked how stablecoin should be defined. One commentor noted that they had submitted a comment letter defining this treatment.⁷ Thus, it appears the IRS is willing to review a potential exclusion for stablecoins if it can find a way to differentiate them from other digital assets.

NFTs

Commentors also requested that the broker reporting regime should not be extended to nonfungible tokens (NFTs), especially where the token is not a representation of value. The IRS followed up on this request, asking if it was administratively feasible for brokers to make the determination of whether an NFT would be a representation of value (e.g., a financial investment). Commentors indicated that this differentiation would be possible.

“Control” – inconsistent frameworks

In one testimony, the commentor was concerned that the definition of “broker” was more expansive under the proposed regulations than that found under the Financial Action Task Force (FATF) guidance. In particular, the commentor was worried that the IRS definition would lead to contradictory treatment or inconsistencies, particularly as it related to decentralized exchanges. The IRS pointed out that the proposed regulations provide rules that look to control and asked the commentor to provide examples where the rules may be different from the FATF rules.

Multiple broker rule

Another concern raised by commentors was that the broad definition of “broker” in the proposed regulations would lead to duplicative reporting on the same transaction. One commentor proposed a rule that would only require one broker in a chain of multiple brokers to report. The IRS questioned who the responsible broker should be and how would the other brokers involved in the transaction know that the responsible party was doing the reporting. The commentor responded that the definition of broker could be limited to centralized exchanges that effectuate transactions. Thus, an entity providing indirect services (e.g., connecting a wallet to a centralized exchange) would be excluded because it would be able to show that the transaction was being carried out on a centralized exchange and there was an actual broker involved.

⁵ Note that the IRS has published over 44,000 of the comment letters to Regulations.gov. Those letters can be found at <https://www.regulations.gov/docket/IRS-2023-0041/comments>.

⁶ A transcript of the hearings can be found at <https://www.taxnotes.com/research/federal/other-documents/public-comments-on-regulations/transcript-available-of-irs-hearing-on-digital-reporting-regs/7hk1j?highlight=%22REG-122793-19%22+%2288+F.R.+59576-59659%22+%222023-38+IRB+829%22>. Please note that the transcript is provided by TaxNotes and may require user login information. Alternatively, the IRS instructs readers to request copies of the transcript from Emily Vanderweide at Emily.Vanderweide@taxanalysts.org.

⁷ For further information, see *Coinbase Proposed Broker Reporting Tax Regs-Comment Letter 2- Tax FINAL 11-10-2023* at <https://www.regulations.gov/comment/IRS-2023-0041-42332>.

New technology solutions

In a couple of testimonies, the commentors discussed new technology solutions that could be leveraged to assist in reporting, both on the taxpayer and the IRS side. The IRS engaged in several follow up questions relating to these proposals, including the use of data aggregators and identity tokens.

If you have questions about the above, please contact:

Cyrus Daftary

Principal

T: 212-954-6096

E: cdaftary@kpmg.com

Philip Garlett

Managing Director

T: 202-365-0812

E: pgarlett@kpmg.com

Nelson Suit

Managing Director

T: 617-988-1432

E: nsuit@kpmg.com

Lani Chou

Director

T: 617-988-1000

E: lanichou@kpmg.com

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

kpmg.com/socialmedia



The information contained herein is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

© 2023 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP378103

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.