Dealing with the Section 6045 Proposed Regulations on Broker Reporting + OECD Reporting Guidelines

Blockchain Tax Conference

February 9, 2024

Shehan Chandrasekera, Head of Tax Strategy, CoinTracker

Colby Mangels, Tax Policy Advisor, OECD – Global Forum on the Exchange of Information for Tax Purposes

Sean McElroy, Associate, Fenwick

Erika Nijenhuis, Senior Counsel, Office of Tax Policy, U.S. Treasury

Lawrence Zlatkin, Vice President, Tax, Coinbase

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Tax Reporting Issues

- The Code already provides that taxable income (including gains and losses on exchanged crypto) must be reported to the government on your tax return as income.
- Various reporting regimes exist and can be applicable in crypto context:
  - 1099-MISC reporting
  - Section 6045 (Form 1099-

3

What is Section 6045?

Section 6045 creates a broker reporting obligation for digital assets.

- Brokers will be required to collect taxpayer information and report information to the IRS and to taxpayers on certain trades that are effected by brokers on a to-be drafted Form 1099-DA.

IRS and the Treasury Department issued proposed regulations in August 2023 under section 6045. Just under 45,000 comments were received by IRS in November. Final regulations have not been issued.

Overview of Section 6045

Defines "broker" as "any person who (for consideration) is responsible for and regularly provides any service effectuating transfers of digital assets on behalf of another person."

Defines "digital assets" broadly as "any digital representation of value which is

Overview of Section 6045–Proposed Regs

- Generally effective for transactions or sales/exchanges effected after 1/1/2025.
- The proposed regulations state that a person can effect the transaction (and thus be a broker) if suc person "knows or is in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale."
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6

Industry Perspective on Broker Reporting

- Proposed Regs would create enormous compliance costs and compliance burdens for centralized exchanges.
- Centralized exchanges (and other taxpayers) requested a longer transitional period to enable taxpayers to prepare for and to adapt to being reporting entities for the industry.
- Many industry participants requested clarity on the scope of the rules and the application of the broker rules to other members of the blockchain industry.

7

Practitioner/Taxpayer Perspective on §6045

- Practitioners/Taxpayer impact: 1099-DAs with data gaps caused by transfers.
- Transfer are very common in the crypto space compared to stocks/TradFi.
  - o Blockchain technology enables seamless asset transfers with just a click of a button without any friction.
  - o No single exchange can offer access to all cryptocurrency trading pairs in existence at a given time.
  - o Privacy and security reasons.

8

Practitioner/Taxpayer Perspective on §6045

- Example
  - o Shehan transfers 1 ETH from an unhosted wallet to Coinbase and sells 0.8 ETH for $2,000. Shel will get a 1099-DA with missing cost basis.
  - o Shehan then transfers 0.2 ETH from Coinbase to Gemini and sells it for $500. Shehan will again a 1099-DA with missing cost basis. (§6045A/transfer statements will not fix the gaps)
- Key point: Frequent transfers will generate an unprecedented amount of non-covered tax lots in the system compared to traditional securities.
- Opportunity
  - o Aggregation software maintain non-covered lots. There's an opportunity for brokers to leverage this data in information reporting and in Tax centers.
  - o The IRS has an opportunity to leverage this data with user consent.

9

Comparing and Contrasting CARF and Broker Reporting

- CARF has four key components:
  - (1) What assets are covered under CARF
  - (2) What service providers are covered under CARF
  - (3) What level of diligence does CARF require
  - (4) What reporting does CARF require
- Thoughts on U.S. implementation of CARF rules
- Comparing the CARF Framework to the 6045 Framework
    - CARF is a governmental reporting regime (rather than a taxpayer reporting tool)

Applying Broker Reporting Rules to NFTs

11

Open Questions for Broker Reporting

- Scope of the regulations
  - Who should constitute a broker? Are the regulations too broad?
  - Application of the regulations to stablecoins
  - Application of regulations to tokenized securities (where existing reporting rules already apply)
  - Application of the regulations to DeFi
- How are transactions actually occurring – and are these types of transactions properly accounted for in the broker reporting rules?