

IRS Extends Transitional Relief for Digital Asset Broker Reporting and Backup Withholding

By Tom Geraghty, Megan L. Jones and Alexander Madias

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On June 12, 2025, the Internal Revenue Service (IRS) released Notice 2025-33 which extends for an additional calendar year the transitional relief initially provided in Notice 2024-56 to brokers required to report digital asset transactions under the Internal Revenue Code (IRC). The notice is applicable for digital asset sales done on or after January 1, 2025.

Background

On July 9, 2024, the Treasury Department and the IRS finalized regulations implementing the digital asset transaction reporting regime under Section 6045 of the IRC, but only with respect to custodial digital asset trading platforms. The regulations generally require brokers to file information returns on IRS Form 1099-DA and furnish payee statements reporting gross proceeds for sales of digital assets effected on or after January 1, 2025 along with, in certain circumstances, adjusted basis on sales of digital assets effected for customers for sales of digital assets effected on or after January 1, 2026.

At that time, the IRS and the Treasury Department acknowledged that brokers would need additional time to develop procedures to comply with the new reporting requirements of the regulations and therefore issued Notice 2024-56 to provide transitional relief from penalties relating to information reporting and backup withholding tax liability for digital asset transactions occurring in 2025.

Notice 2025-33 Further Extends Relief

Acknowledging that digital asset brokers need additional time to develop systems and procedures to comply with the regulations, the IRS released Notice 2025-33, further extending and modifying the initial relief granted in Notice 2024-56 as follows:

- Notice 2025-33 provides that backup withholding tax obligations are not required for any digital asset sale effectuated by a broker during either the 2025 or the 2026 calendar year (Notice 2024-56 had paused a broker's backup withholding tax obligations only with respect to digital asset sales effectuated by such broker during the 2025 calendar year).
- Notice 2025-33 also provides that brokers are not subject to backup withholding tax obligations for digital asset sales effectuated during the 2027 calendar year in the event a broker has not obtained a certified tax identification number (TIN) from a payee provided that (i) the payee opened an account with the broker and provided a TIN to the broker prior to January 1, 2026 and (ii) before effectuating a digital asset sale with such payee, the broker submits the payee's name and TIN combination to the IRS's TIN Matching Program and the broker receives a response that the name and TIN combination furnished by the payee matches the name and TIN combination for that payee in the IRS records.

- Under the regulations, a broker is generally not required to report a digital asset sale with respect to a customer who qualifies as an exempt foreign person (i.e., generally a customer that has provided a valid IRS Form W-8BEN to their broker). For sales of digital assets occurring before January 1, 2027, the regulations permit a broker to treat a customer as an exempt foreign person if (i) the customer established an account with the broker prior to January 1, 2026, (ii) the customer has not previously been classified as a U.S. person and (iii) the broker has a non-U.S. address of residence for the customer. Notice 2025-33 extends the time that a broker may treat such a customer as an exempt foreign person to all of calendar year 2027. Thus, for digital asset sales effectuated before January 1, 2028, a broker will not be subject to penalties for failure to file information returns or furnish payee statements under the regulations, and will not have any backup withholding tax obligations, when such sales are effectuated for a customer deemed to be an exempt foreign person under Notice 2025-33.
- Notice 2025-33 provides that, except for the sale of non-fungible tokens, the backup withholding tax obligations for a digital asset sale effectuated during the 2027 calendar year are limited to 24 percent of the amount the broker receives upon the liquidation of the customer's received digital assets, notwithstanding that this may be less than 24 percent of a customer's received digital assets at the time of the transaction giving rise to the backup withholding obligation. The notice further provides that no penalties will be imposed with respect to any decrease in the value of such digital assets between the time of the transaction giving rise to the backup withholding obligation and the time the broker liquidates such digital assets.

What Has Not Changed

Nothing in either Notice 2025-33 or Notice 2024-56 changes the basic obligations of digital asset brokers noted above (i.e., being required to file information returns on IRS Form 1099-DA and furnish payee statements reporting gross proceeds for sales of digital assets effected on or after January 1, 2025 and, in certain circumstances, adjusted basis on sales of digital assets effected for customers for sales of digital assets effected on or after January 1, 2026).

If you have any questions about this article, please contact **Tom Geraghty** at tgeraghty@vedderprice.com, **Megan L. Jones** at mljones@vedderprice.com, **Alexander Madias** at amadias@vedderprice.com or any other Vedder Price attorney with whom you have worked.

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