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Digital Asset Reporting Safe Harbor Available Until End of Year

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For digital asset owners who have not maintained clear records but must comply with forthcoming filing requirements from the IRS, a temporarily available global allocation safe harbor option will simplify matters until specific unit allocation requirements kick in, explains Rustin Diehl of Allegis Law.

Given the rough-and-tumble, anti-institutional “wild west” modern tradition of digital assets, many owners may find the IRS’s imminent requirements for basis and transaction reporting difficult to comply with, particularly insofar as they have not maintained clear records. Over the years, they may have acquired assets person to person, in personal “unhosted” wallets over the blockchain, or moved assets between their digital asset wallets and between crypto exchanges, without keeping track of cost purchase tax basis coin by coin or token by token.

But a safe harbor is available through the end of this year. In [Rev. Proc. 2024-28](#) (July 29, 2024), the IRS provided that taxpayers may opt under I.R.C. [§1012\(c\)\(1\)](#) for “global” allocation of unused basis among digital assets, reporting transactions in aggregate. For transactions in 2025 and beyond, specific unit allocation will be required.

Form 1099-DA

The IRS will now require digital asset owners to file newly minted [Form 1099-DA, Digital Asset Proceeds From Broker Transactions](#), which follows a format similar to the 1099-B reporting of proceeds from broker and barter exchange transactions. The 1099-DA has boxes for inputting information concerning the parties (TINs and other identifiers), the asset (CUSIP number), and the transaction (sections 1a–1i). Basis and income tax, as well as withholding and other loss allowances, are reported in sections 2–6. From there, the form begins to grapple with

issues specific to institutionalizing the reporting of digital assets, the once-favorite child of crypto-anarchists. Form 1099-DA will reduce the compliance burden for digital asset owners, according to IRS Commissioner Danny Werfel.

“This new form will provide more clarity for taxpayers and give them another tool to help them accurately report their digital assets transactions,” Werfel [commented](#). “Digital assets greatly increase the complexity of our tax system, and the IRS continues to work to make improvements in this area as part of our larger efforts to transform the agency.”

The form’s tax reporting compliance rationale, Werfel [said](#), is to “make sure digital assets are not used to hide taxable income, including in high-income categories, while providing taxpayers who play by the rules more information to accurately report their income.”

Form 1099-DA represents an attempt to effectuate a uniform means of reporting information required by the broader digital asset rulemaking, regulatory, and sub-regulatory compliance program by Congress and the IRS. The early lack of record keeping with respect to digital asset transactions makes it difficult for brokerages to report transactions on Form 1099-DA and poses challenges for owners to report capital gains on schedule C of the 1040 personal tax returns as required by the IRS.

Because basis is often unknown by the exchanges, many of them will submit 1099-DAs to the IRS with no reported basis (option B on the 1099), rather than reporting basis as “covered securities” under option A of the 1099. This shifts the problem and burden of basis tracking and reporting to the owner of digital assets.

Background on the Rules for Digital Asset Basis Reporting

Prior to any rulemaking or regulation, and well before the 1099-DA was published, the IRS in 2019 explained how existing tax principles apply to cryptocurrency (digital assets) held as capital assets in a set of [FAQs](#). In FAQs 39–40, the IRS provided that:

“You may choose which units of virtual currency are deemed to be sold, exchanged, or otherwise disposed of if you can specifically identify which unit or units of virtual

currency are involved in the transaction and substantiate your basis in those units ... either by documenting the specific unit’s unique digital identifier ... or by records showing the transaction information for all units of a specific virtual currency ... held within a single account, wallet, or address ... (1) the date and time each unit was acquired, (2) your basis and the fair market value of each unit at the time it was acquired, (3) the date and time each unit was sold, exchanged, or otherwise disposed of, and (4) the fair market value of each unit when it was sold, exchanged, or disposed of, and the amount of money or the value of property received for each unit.”

Congress went on to enact initial digital asset legislative infrastructure provisions under I.R.C. [§6045](#) in late 2021, pursuant to the Infrastructure Investment and Jobs Act. The definition of “broker” was amended to add “any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.”

On Aug. 29, 2023, Treasury and the IRS published proposed regulations — primarily under [§1001](#), [§1012](#), and [§6045](#) — clarifying in part the statutory requirements for determining and identifying the cost basis of digital assets on an account-by-account basis, and providing guidance on allocation of unused basis to specifically identified units of digital assets. Additional regulations with respect to [§6045](#) provide definitions of digital assets (Reg. [§1.6045-1\(a\)\(19\)](#)) and reporting or exemptions for dual-classification digital assets (such as tokenized securities) (Reg. [§1.6045-1\(c\)\(8\)](#)). Treasury and the IRS received abundant comments with respect to digital asset basis tracking that were not fully resolved when the regulations were finalized in June 2024.

To provide additional guidance alongside the new rules and regulations for digital asset transaction reporting, along with the newly adopted Form 1099-DA, the IRS also issued [Notice 2024-56](#) and [Notice 2024-57](#), providing transitional relief and penalty relief for digital asset brokers to collect personal information on traders and report other information on transactions as required under [§3403](#), [§3406](#), [§6721](#), [§6722](#), [§6651](#), [§6656](#), and [§6045](#).

And in Rev. Proc. 2024-28, the IRS provided guidance concerning the default allocation of unused cost basis, as well as the [§1012\(c\)\(1\)](#) safe harbor.

Global Allocation: A Temporarily Available Safe Harbor

The safe harbor permits owners of digital assets to cure bad basis records using a “global allocation” safe harbor

method before the end of 2024. After 2024, a taxpayer must report digital asset transactions based on “specific unit allocation,” “by reference to characteristics that distinguish those units from other units of unused basis, to either a pool of remaining digital asset units within each wallet or account or, if the taxpayer is able to identify each remaining digital asset within each wallet or account, to the specific units of remaining digital assets within each wallet or account.”

The global allocation reporting option may solve the challenging tracking problem posed by the alternative specific unit allocation that becomes mandatory if no global allocation is made before 2025. The global allocation method of basis allocation permits a digital asset owner to simplify basis reporting and use an average cost basis on future sales, rather than the effective FIFO (first in first out) basis under the specific unit allocation method for reporting digital asset transactions. Put differently, the global allocation safe harbor relief is much simpler for many digital asset owners than trying to comb back through old records (which may not exist) to figure out the basis token by token and coin by coin — an incredibly difficult (if not impossible) task for many owners.

The global allocation safe harbor comes with the following conditions:

1. It applies only to digital assets acquired by or transferred to a taxpayer before Jan. 1, 2025.
2. The digital assets cannot be subject to tax controversy or consideration before any U.S. court, the IRS Independent Officer of Appeals, or IRS examination prior to Jan. 1, 2025.
3. The safe harbor does not apply to hobby assets such as certain non-fungible tokens or meme coins; assets must be capital assets in the hands of the taxpayer (see [§1221](#)).
4. The basis must be allocated to the same type of coins. The digital asset unit from which the unused basis is derived and the remaining digital asset unit must be of the same type (e.g., Bitcoin).
5. The safe harbor requires date-stamped substantiating records that show the total remaining digital assets in each wallet and account as well as the original cost and acquisition dates of the assets.
6. Once the global allocation is made, it is irrevocable.

Documentation to File With Form 1099-DA

To claim the global allocation safe harbor, digital asset owners need to:

1. Gather their date-stamped transaction histories from all wallets and accounts, showing all of their past transactions with dates, token types, and costs;

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2. Prepare a global allocation worksheet listing the tokens by type and the average cost basis by token type.

3. Average the unused basis of the remaining digital assets by token type and recompile the list.

4. Digitally sign and time-stamp (perhaps via a notary) the worksheet, which should provide language indicating that the global allocation is pursuant to Rev. Proc. 2024-28, and will be treated as irrevocable by the taxpayer for purposes of §1012.

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