

Part III – Administrative, Procedural, Miscellaneous

TEMPORARY RELIEF UNDER SECTION 1.1012-1(j)(3)(ii)

Notice 2025-7

SECTION 1. PURPOSE

This notice allows eligible taxpayers to use certain alternative methods for making an adequate identification, within the meaning of § 1.1012-1(j)(3)(ii),¹ with respect to units of a digital asset held in the custody of a broker that are sold, disposed of, or transferred during the relief period specified in this notice.

SECTION 2. BACKGROUND

Section 1012(c)(1) provides that in the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under that section must be applied on an account-by-account basis. Section 1012(c)(3) provides that, for purposes of that section, the terms “specified security” and “applicable date” have the meaning given those terms in section 6045(g)(3). Section 80603 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1339 (2021), expanded the definition of a specified security in

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code (Code) or the Income Tax Regulations (26 CFR part 1).

section 6045(g)(3) to include digital assets with an applicable date of January 1, 2023. Section 6045(g)(3)(D) generally defines a digital asset, for purposes of information reporting by brokers, as any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

On August 29, 2023, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the Federal Register (88 FR 59576) proposed regulations (2023 proposed regulations) under sections 6045, 1001, and 1012, and other sections of the Code. The 2023 proposed regulations, in part, would have clarified the statutory requirements for determining and identifying the cost basis of digital assets. Consistent with section 1012(c), the proposed regulations would have required basis determination on an account-by-account basis.

On July 9, 2024, the Treasury Department and the IRS published in the Federal Register (89 FR 56480) T.D. 10000 (final regulations). Section 1.1012-1(j) of the final regulations provides ordering rules for determining which units of the same digital asset should be treated as sold, disposed of, or transferred when a taxpayer holds multiple units of that same digital asset within the same wallet that were acquired on different dates or at different prices. Paragraph (j) generally applies separate rules depending on whether or not the units are held by the taxpayer in the custody of a broker.

For digital asset units held in the custody of a taxpayer's broker, § 1.1012-1(j)(3)(ii) generally permits a taxpayer to make an adequate identification of the units to be sold, disposed of, or transferred by specifying to the custodial broker, no later than the date and time of the sale, disposition, or transfer, the particular units of the digital asset to be

sold, disposed of, or transferred by reference to any identifier that the broker designates as sufficiently specific to allow it to determine the basis and holding period of those units. Section 1.1012-1(j)(3)(ii) also permits taxpayers to make an adequate identification of such units by using a standing order or instruction communicated to their custodial broker. Further, if the custodial broker offers taxpayers only one method of making a specific identification, for example by the earliest date on which units of the same digital asset were acquired, the latest date on which units of the same digital asset were acquired, or the highest basis, § 1.1012-1(j)(3)(ii) treats such method as a standing order or instruction.

For units held in the custody of a broker but for which the taxpayer does not make an adequate identification of the units sold, disposed of, or transferred in accordance with § 1.1012-1(j)(3)(ii), § 1.1012-1(j)(3)(i) treats such units as sold, disposed of, or transferred in order of time from the earliest date on which units of that same digital asset held in the custody of the broker were acquired by the taxpayer (“FIFO rule”). Regardless of whether the taxpayer makes an adequate identification, in the case of digital assets exchanged for different digital assets, § 1.1012-1(j)(3)(iii) treats any units withheld for either the broker’s backup withholding obligations under section 3406, or for payment of services described in § 1.1001-7(b)(1)(ii) (digital asset transaction costs), as coming from the units received in the exchange.

Separate ordering rules, found in § 1.1012-1(j)(1) and (2), prescribe how units not held in the custody of a broker are identified as the units sold, disposed of, or transferred. The temporary relief described in this notice does not apply to digital asset units not held in the custody of a broker.

Section 1.1012-1(j)(6) provides that § 1.1012-1(j) applies to all acquisitions and dispositions of digital assets on or after January 1, 2025.

Contemporaneously with the issuance of § 1.1012-1(j), the IRS issued Rev. Proc. 2024-28, 2024-31 I.R.B. 326 (July 29, 2024), which provides guidance to taxpayers regarding how to transition from a universal or multi-wallet basis allocation methodology to a wallet by wallet or account by account basis allocation methodology. Specifically, subject to certain requirements, Rev. Proc. 2024-28 provides a safe harbor on which taxpayers may rely to allocate their units of unattached basis to a digital asset wallet or account that holds the same number of remaining digital asset units based on the taxpayer's records of such unattached basis and remaining units so long as the allocation is reasonable. Rev. Proc. 2024-28 permits taxpayers either to make a specific unit allocation or to make a global allocation in order to allocate units of unattached basis, subject to various conditions.

The Treasury Department and the IRS understand that some digital asset brokers may not have in place, by January 1, 2025, the technology needed to accept specific instructions or standing orders communicated by taxpayers. These technology limitations may leave some taxpayers unable to make adequate identifications in conformity with § 1.1012-1(j)(3)(ii). Thus, by default, any units in the custody of such brokers that are sold, disposed of, or transferred would be determined under the FIFO rule.

This notice provides temporary relief allowing taxpayers to use additional methods for making an adequate identification within the meaning of § 1.1012-1(j)(3)(ii) during the relief period, as defined in section 3.03 of this notice. This notice does not

prohibit taxpayers from complying with § 1.1012-1(j)(3)(ii) as originally prescribed. In addition, this notice does not affect how the safe harbor described in Rev. Proc. 2024-28 applies. Taxpayers relying on the safe harbor described in Rev. Proc. 2024-28 may also rely on the temporary relief described in section 4.02 of this notice once the applicable requirements of Rev. Proc. 2024-28 have been satisfied, including, in the case of taxpayers making a global allocation, the completion of the global allocation.

A method of specifically identifying the units of a digital asset sold, disposed of, or transferred (for example, by the earliest acquired, the latest acquired, or the highest basis) is not a method of accounting to which section 446 or section 481 apply. See § 1.1012-1(j)(4). Finally, the temporary relief described in this notice does not apply for purposes of the § 1.6045-1 rules for digital assets. See T.D. 10000.

SECTION 3. DEFINITIONS

Except as otherwise provided, the following definitions apply solely for purposes of this notice:

.01 *Digital Asset*. The term “digital asset” has the meaning provided in § 1.1012-1(j).

.02 *Broker*. The term “broker” has the meaning provided in § 1.1012-1(j).

.03 *Relief Period*. The term “relief period” means the period beginning on January 1, 2025, and ending on December 31, 2025.

SECTION 4. TEMPORARY RELIEF

.01 *Scope*. The temporary relief described in section 4.02 of this notice is available only with respect to units of a digital asset held in the custody of a broker that are sold, disposed of, or transferred during the relief period.

.02 *Temporary Relief under § 1.1012-1(j)(3)(ii)*. A taxpayer may make an adequate identification during the relief period of a taxpayer's units of a digital asset to be sold, disposed of, or transferred from the taxpayer's units held in the custody of a broker by:

- (1) Identifying, no later than the date and time of the sale, disposition, or transfer, on the taxpayer's books and records, the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase price for the unit, that is sufficient to identify the basis and holding period of the units sold, disposed of, or transferred; or
- (2) Recording a standing order on the taxpayer's books and records, provided that the recorded standing order includes sufficient information to identify any digital asset units sold, disposed of, or transferred and is entered into the taxpayer's books and records before the units covered by the order are sold, disposed of, or transferred.

.03 *Nonapplication of § 1.1012-1(j)(3)(ii)*. If a taxpayer makes an adequate identification under subsection 4.02 of this notice, the rule in § 1.1012-1(j)(3)(ii), which treats taxpayers whose broker offers only one method of making a specific identification as having made a standing order or instruction, does not apply during the relief period.

.04 *Safe harbor under Rev. Proc. 2024-28*. Taxpayers relying on the safe harbor under Rev. Proc. 2024-28 may rely on the temporary relief described in section 4.02 of this notice only after the applicable requirements of Rev. Proc. 2024-28 have been satisfied.

SECTION 5. RELIANCE

Taxpayers may rely on the temporary relief described in section 4.02 of this notice only for the duration of the relief period, as defined in section 3.03 of this notice. Accordingly, taxpayers may not rely on the temporary relief described in section 4.02 of this notice to identify units held in the custody of the broker as the units sold, disposed of, or transferred in the case of sales, dispositions and transfers made after the relief period ends.

SECTION 6. EFFECTIVE DATE

This notice is effective December 31, 2024.

SECTION 7. DRAFTING INFORMATION

The principal authors of this notice are Kyle Walker and Alexa T. Dubert of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Kyle Walker or Alexa Dubert at (202) 317-4718 (not a toll-free number).