

## Part III – Administrative, Procedural, Miscellaneous

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

Notice 2026-20

#### SECTION 1. PURPOSE

This notice extends the temporary relief provided in section 4.02 of Notice 2025-7, 2025-5 I.R.B. 524 (January 27, 2025), for an additional year. Specifically, 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),<sup>1</sup> 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 section 1012, the terms “specified security” and “applicable date” have the same definitions given to those terms

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<sup>1</sup> 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).

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 section 6045(g)(3) to include digital assets. Section 80603 had 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, 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 determinations 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. Adequate identification is made if, no later than the date and time of the sale, disposition, or transfer, the taxpayer specifies to the custodial broker with custody of the digital assets the particular units of the digital asset to be sold, disposed of, or transferred. The taxpayer may identify units by reference to any identifier, such as purchase date and time or purchase price, that the broker designates as sufficiently specific to identify the units sold, disposed of, or transferred. 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 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) deems any units withheld, either for 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. 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 for taxpayers to allocate their units of unattached basis in digital assets acquired before January 1, 2025, 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. For each type of digital asset, the allocation generally is required to be completed by the date of the first sale of that type of digital asset on or after January 1, 2025.

In response to concerns expressed by some custodial brokers, the IRS issued Notice 2025-7, which temporarily allows taxpayers to use additional methods for making an adequate identification within the meaning of § 1.1012-1(j)(3)(ii). Notice 2025-7 provides that, during calendar year 2025, which the notice refers to as the relief period, taxpayers can make adequate identifications of units of digital assets sold, disposed of, or transferred from the taxpayer's units held in the custody of a broker by identifying the

particular units or recording a standing order in the taxpayer's books and records, temporarily relieving taxpayers of the requirement in § 1.1012-1(j)(3)(ii) to communicate identifications to the broker. The notice also provides that if a taxpayer makes an adequate identification under the 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. Taxpayers relying on the safe harbor under Rev. Proc. 2024-28 can rely on the temporary relief in the notice only after the requirements of Rev. Proc. 2024-28 have been satisfied. The temporary relief described in Notice 2025-7 does not apply to digital asset units not held in the custody of a broker.

Certain digital asset custodial brokers have informed the Treasury Department and the IRS that they have built and implemented systems and procedures to report gross proceeds for digital asset transactions carried out in 2025 and will report those transactions to the IRS and customers in 2026, and that those brokers also have made good faith efforts to build and implement systems and procedures that will enable those brokers to accept and process specific identification or standing order instructions from customers in 2026. The Treasury Department and the IRS understand that many custodial brokers have substantially completed much of the work necessary to accept specific identifications from customers but are not currently ready to accept specific identifications (other than standing orders) from customers. Notwithstanding the temporary relief provided in Notice 2025-7, some of those custodial brokers do not have in place the technology needed to accept specific instructions communicated by taxpayers but are expected to complete building and implementing the systems

necessary to do so during 2026. Consequently, some taxpayers may be temporarily unable to make adequate identifications in conformity with § 1.1012-1(j)(3)(ii), with the result that any units in the custody of such brokers that are sold, disposed of, or transferred before the necessary systems are in place would be determined under the FIFO rule without further temporary relief. To avoid this result, this notice extends the relief period specified in Notice 2025-7 through December 31, 2026.

This notice extends the temporary relief provided by Notice 2025-7, 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 the requirements of § 1.1012-1(j)(3)(ii). In addition, this notice does not affect how the safe harbor described in Rev. Proc. 2024-28 applies and does not affect the requirement for brokers to report gross proceeds on the Form 1099-DA beginning in 2025. 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).

As with the temporary relief provided in Notice 2025-7, the temporary relief described in this notice does not apply for purposes of the § 1.6045-1 information reporting rules

for digital assets. Consequently, for 2026 transactions, the acquisition date and basis reported by a broker to a taxpayer with respect to a sale, disposition or transfer of digital assets may not match the lot identification and basis of that sale, disposition or transfer on the taxpayer's books and records. Similarly, as with the temporary relief provided in Notice 2025-7, the relief provided under this notice does not apply to digital asset units not held in the custody of a broker.

### 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, 2026.

### 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.

.05 *Adequate Identification*. If the taxpayer has made an adequate identification on its books and records of the digital asset units sold, disposed of or transferred during 2026 pursuant to sections 4.01-4.04 of this notice, for Federal income tax purposes the units sold, disposed of or transferred by the taxpayer are the ones identified in the taxpayer's books and records regardless of whether the information reported by the

broker to the taxpayer matches the taxpayer's books and records. If the taxpayer has instead specified to its 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 (including by communicating a standing order to the broker), for Federal income tax purposes the units sold, disposed of or transferred by the taxpayer are the ones specified by the taxpayer to the broker

#### 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. EFFECT ON OTHER DOCUMENTS

Notice 2025-7 is modified.

#### SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Thomas Brown of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Brown at (202) 317-4718 (not a toll-free number).