

## United States: White House publishes plan for the taxation of cryptocurrencies and other digital assets

Tax News and Developments September 2025

### In brief

Earlier this summer, the US Administration's Working Group on Digital Asset Markets ("**Working Group**") published a report, entitled **Strengthening American Leadership in Digital Financial Technology** ("**Report**"). The Report contains recommendations for revising existing legislation and IRS guidance regarding trusts engaged in cryptocurrency staking, Code provisions that may deny recognition of gains or losses by active securities traders, and reporting requirements for participants in digital asset transactions and for the exchanges that facilitate such activities.

### In more detail

Since the creation of Bitcoin in 2008, there has been a dramatic surge in the adoption of cryptocurrencies and other digital assets in the United States with recent surveys indicating that more than 20% of Americans now possess some form of cryptocurrency.<sup>i</sup> In the first quarter of 2025 alone, venture capital investment in cryptocurrency and blockchain-related startups totaled \$4.8 billion.<sup>ii</sup> The emergence of cryptocurrency exchanged-traded products and the growing ease of access to digital asset purchases through mainstream financial platforms underscore the likelihood of increased federal regulation and oversight in this domain. Treasury and the IRS have issued relatively limited additional guidance, however, since the issuance of Notice 2014-21,<sup>iii</sup> which set forth the foundational guidance on the taxation of virtual currency. This regulatory gap has resulted in a complex and often inconsistent tax environment for comparable assets and transactions.

Three days after his second inauguration, President Trump issued Executive Order 14178, declaring his intention to establish the United States as the global leader in digital asset technology innovation by promoting its advancement through a comprehensive regulatory scheme. On July 30, 2025, President Trump's Working Group published its corresponding Report, which contains recommendations for revising existing legislation and IRS guidance on key tax matters, including:

- trusts engaged in cryptocurrency staking
- Code provisions that may deny recognition of gains or losses by active securities traders
- reporting requirements for participants in digital asset transactions and for the exchanges that facilitate such activities.

This article provides a summary of those recommendations.

### Contents

In more detail .....	1
Corporate Alternative Minimum Tax .....	2
Grantor trust classification and staking .....	2
Wrapping .....	2
Characterization as securities or commodities .....	2
Application of certain Code sections .....	3
Wash Sale Rules .....	3
Securities Lending Rules .....	3
Mark-to-Market Rules .....	3
Effectively Connected Income .....	3
Stablecoins .....	3
Timing and value of income from digital asset receipts .....	4
Section 6038D .....	4
CARF .....	5
Recently enacted and pending legislation ..	5
Conclusion .....	5

---

## Corporate Alternative Minimum Tax

The Working Group's first recommendation addresses the Corporate Alternative Minimum Tax (**CAMT**) and its application to unrealized gains and losses on digital assets. CAMT addresses the differences between book income and taxable income by creating a minimum tax on book income.<sup>iv</sup> CAMT imposes a minimum tax generally equal to the excess, if any, of 15% of adjusted financial statement income (**AFSI**) less regular tax paid.<sup>v</sup> The Working Group acknowledges that CAMT does not specifically target the digital financial technology sector, but it claims that CAMT could inhibit growth in the sector and conflicts with the US Administration's policy goals of removing regulations and other guidance impeding private enterprise and entrepreneurship. It recommends that Treasury and the IRS publish guidance addressing how unrealized gains and losses on investment assets, other than stock and partnership interests, reported for financial statement purposes are taken into account for determining AFSI.

---

## Grantor trust classification and staking

Digital asset investment funds have begun to invest in cryptocurrencies and other digital assets through investment trusts. A taxpayer holding an interest in an investment trust is subject to simpler reporting requirements than a taxpayer holding an interest in an investment partnership. An investor in an investment trust is treated as the direct owner of its pro rata interest in the trust assets and reports tax information pertinent to the trust on a Form 1099 rather than a Schedule K-1, the required reporting form for a partnership interest. An investment trust is subject to strict requirements, however, regarding the types of activities it can undertake to create revenue. The investment trust cannot be engaged in a profit-making business and cannot vary the investments of the trust among other requirements.<sup>vi</sup>

One issue funds have encountered is whether "staking" constitutes a profit-making business. Some cryptocurrencies utilize staking to validate transactions that have been proposed on the blockchain to ensure the transactions comply with the blockchain's protocol. To participate in staking, a "staker" must hold a certain amount of the cryptocurrency<sup>vii</sup> and stake the cryptocurrency, *i.e.*, transfer the cryptocurrency to a separate wallet controlled by the blockchain. Each time the staker authenticates a transaction and adds it to the blockchain, the staker receives a reward in the form of new cryptocurrency. The Working Group requests that Treasury and the IRS publish guidance addressing whether an investment trust that stakes its digital assets is treated as a trust for federal income tax purposes. If investors are allowed to stake and hold cryptocurrency in an investment trust that retains its status as a grantor trust, investors will have minimized their reporting obligations for cryptocurrency investments and income earned through staking.

The Working Group lists further issues related to staking that it hopes Treasury and the IRS address in the future. These issues include whether staking activity constitutes a trade or business for federal income tax purposes, the source of income from staking rewards, and the valuation for digital assets that are traded on multiple exchanges or thinly traded for purposes of determining amount realized and basis. The Working Group also requests guidance on the application of certain Code sections such as the investment company rules of sections 351 and 721, the marketable securities rules,<sup>viii</sup> the hot asset rules,<sup>ix</sup> and several others.

---

## Wrapping

The Working Group also raised concerns about the tax implications of wrapping digital assets, specifically whether such transactions constitute taxable events. Wrapping refers to the process of converting a digital asset native to one blockchain into a tokenized representation on another blockchain. The wrapped asset maintains a one-to-one backing by the original asset, which is held in reserve by a custodian or via smart contracts that prevent its transfer or use until it is unwrapped or reconverted. This mechanism facilitates the transfer and use of a digital asset's value on blockchains where it would otherwise be unsupported, for example, Wrapped Bitcoin enables participation in Decentralized Finance (DeFi) protocols that Bitcoin itself cannot access. The Report refrains from taking a substantive position on the issue and instead requests further regulatory guidance from Treasury and the IRS.

---

## Characterization as securities or commodities

One of the most intense debates surrounding the digital asset sector is the characterization of digital assets for federal income tax purposes—whether they are to be treated as securities or commodities. The characterization affects the

application of numerous Code sections including section 475 (mark-to-market rules), section 864 (safe harbor rules for trading in commodities), and section 7704 (passive income exception applicable to commodities partnerships). The problem Treasury and the IRS have encountered is that digital assets likely require a hybrid approach for accurate taxation. The Report suggests Congress enact new legislation that treats digital assets as a new class of assets subject to modified versions of the Code sections applicable to securities and commodities. Alternatively, Treasury and the IRS could issue guidance that clarifies when digital assets are treated as securities or as commodities for federal income tax purposes.

---

## Application of certain Code sections

### Wash Sale Rules

Digital assets that are not securities are not subject to the section 1091 wash sale rules. Section 1091(a) prohibits a taxpayer from recognizing a loss for tax purposes if the taxpayer sells a security at a loss and buys the same or a substantially identical security within 30 days before or after the sale. If the wash sale rules do not apply, investors could sell cryptocurrency on one day at a loss and repurchase the same cryptocurrency the next day while claiming the loss for tax purposes without substantially altering the taxpayer's economic position. The Working Group suggests Congress enact legislation subjecting digital assets to the wash sale rules.

### Securities Lending Rules

Section 1058 of the Code allows taxpayers to lend securities to third parties without triggering recognition of gain or loss, provided that the borrower is obligated to return identical securities to the lender. However, the Report provides that the scope of section 1058 does not currently extend to loans involving digital assets that are not securities—despite the increasing prevalence of such transactions (and positions taken by some taxpayers that loans of digital assets meeting required conditions are non-taxable), where a taxpayer transfers digital assets to a third party under an agreement that the same digital assets will be returned at a later date. Frequently, these arrangements also provide that the transferee will deliver or credit additional digital assets, or other forms of compensation, to the lender for the use of the assets during the loan term. The Working Group therefore recommends that Congress amend section 1058 to encompass loans of actively traded fungible digital assets, provided the loan terms mirror those required for securities lending under the current statute.

### Mark-to-Market Rules

Under the mark-to-market regime, traders in securities and commodities may elect to treat their holdings as though they were sold at fair market value on the final day of the tax year. This election enables traders to realize gains or losses for tax purposes without actually disposing of the underlying asset, with such amounts characterized as ordinary rather than capital. Section 475 permits traders to mark securities or commodities to market for federal income tax reporting, yet there remains a lack of guidance regarding the application of these provisions to digital assets. The Working Group recommends that Congress revise section 475 to encompass actively traded fungible digital assets.

### Effectively Connected Income

Under current law, non-US residents who are not otherwise subject to US tax must generally file a US tax return when engaged in a US trade or business, but the Code excepts certain traders in securities and commodities from this requirement. Section 864(b)(2) provides that non-US traders dealing in securities or commodities may transact through an independent US agent or conduct trading activities in the United States without triggering the requirement to file a US income tax return, so long as specified conditions are met. This safe harbor is not presently available for transactions involving digital assets except in instances where such assets are classified as securities or commodities. The Working Group proposes that Congress amend section 864(b)(2) to extend the safe harbor to encompass actively traded fungible digital assets.

---

## Stablecoins

The Report also identifies the need for statutory or regulatory clarification regarding the taxation of stablecoins. Stablecoins are digital assets designed to maintain a consistent value in relation to a reference asset, most commonly the US dollar. Investors frequently utilize stablecoins as functional equivalents to cash, particularly as intermediaries for

acquiring other digital assets. There is ongoing debate among practitioners about the appropriate tax characterization of stablecoins. While some advocate for classification as debt, others contend they are more accurately described as money or currency. Although stablecoins exhibit characteristics similar to debt instruments (e.g., providing an unconditional promise to pay on demand and possessing qualities akin to highly rated collateralized debt), they generally lack the unqualified obligation to pay a fixed amount—the hallmark of debt instruments.<sup>x</sup> Should payment stablecoins be classified as debt, they would become subject to several Code provisions applicable to debt, including section 1091's wash sale loss disallowance rules and the anti-bearer bond requirements<sup>xi</sup> for registration-required obligations not issued in registered form.

The Working Group recommends that Congress enact legislation classifying stablecoins as debt and asserts that such classification best reflects their structure and the risk of gain or loss upon disposition. However, classifying stablecoins as debt may hinder their broader adoption as financial assets fulfilling a role similar to cash-equivalents. The Working Group emphasizes the importance of targeted guidance concerning the applicability of the wash sale and anti-bearer bond rules to stablecoins. In the absence of legislative action, the Working Group urges Treasury and the IRS to issue administrative guidance to clarify the proper tax treatment of stablecoins.

---

## Timing and value of income from digital asset receipts

Taxpayers holding digital assets commonly receive new digital assets that have minimal or speculative value. This group includes taxpayers who:

- delegate their staking rights to others
- receive unsolicited airdrops of newly created digital assets
- participate in a hard fork of a digital asset.

Under applicable law and current IRS guidance, taxpayers must include the fair market value of these assets in their income when they exercise dominion and control over the asset.<sup>xii</sup> Tracking and recording each event often creates administrative burdens for taxpayers, and the cost of these tracking requirements can exceed the value of the transactions. The Working Group suggests Treasury and the IRS issue administrative guidance addressing de minimis receipts of digital assets in airdrops, staking, hard forks, and mining rewards for taxpayers who do not operate a node or conduct digital asset mining.

Mining and staking are two forms of blockchain participation that allow miners and stakers to earn newly minted cryptocurrency by verifying blockchain transactions and adding them to the chain. Notice 2014-21<sup>xiii</sup> addressed the timing of inclusion for mining rewards, stating that the fair market value of cryptocurrency is includable in the miner's gross income as of the date of receipt. Similar guidance was issued in 2023 for staking rewards, holding that stakers receiving additional units of cryptocurrency as rewards for staking are includable in the staker's gross income in the year in which the staker gains dominion and control over the staking rewards.<sup>xiv</sup> The Working Group seems content with this issued guidance, but it recommended Treasury and the IRS review existing guidance relating to the timing and inclusion of income from mining and staking and consider recent developments since the issuance of the prior guidance.

---

## Section 6038D

Section 6038D obligates taxpayers with interests in "foreign financial assets" totaling at least \$50,000 during any taxable year to include a statement with their tax return detailing the relevant information. The definition of foreign financial assets encompasses both financial accounts held at foreign institutions and certain other specified assets located outside financial accounts.<sup>xv</sup> The Working Group raises concerns that some taxpayers may attempt to circumvent these reporting requirements by holding digital assets in place of traditional financial assets. To address this issue, the Working Group recommends that Congress enact legislation compelling taxpayers to report foreign digital asset accounts, which would encompass any custodial account containing digital assets and maintained by a foreign digital asset exchange or service provider.

However, the information required to be reported under section 6038D to the IRS is almost identical to the information that many taxpayers must disclose on their Report of Foreign Bank and Financial Accounts (FBAR) to FinCEN, resulting in duplicative reporting. The Working Group identifies this issue and proposes Congress enact legislation that would

permit a taxpayer subject to both reporting obligations to submit a single form available to the IRS and FinCEN, similar to the streamlined reporting requirement for large cash payments on FinCEN/IRS Form 8300.<sup>xvi</sup>

The Working Group highlights concerns with the default rule requiring payee statements to be delivered to taxpayers in paper form. Under existing rules, third parties reporting to the IRS, including digital asset exchanges, must provide payee statements to affected taxpayers, and electronic delivery is permitted only if the taxpayer consents in a manner prescribed by the IRS.<sup>xvii</sup> This requirement for paper statements creates unnecessary and costly administrative burdens for digital asset exchanges, whose operations are predominantly electronic. Accordingly, the Working Group urges Treasury and the IRS to draft regulations that would streamline the process for digital asset exchange brokers to secure customer consent for electronic delivery of payee statements.

---

## CARF

The Working Group also recommends Treasury and the IRS propose regulations to implement the Crypto-Asset Reporting Framework (**CARF**), an international tax transparency standard requiring digital asset service providers to report certain transactions involving digital assets to the tax administration or agency of the provider's jurisdiction. These reports are made available to each country participating in CARF. According to the Working Group, adding CARF to the reporting requirements would quell the federal government's concern of US taxpayers evading tax obligations by transferring digital assets to offshore digital asset exchanges. Implementing CARF would allow the IRS to obtain information on the digital asset transactions of US taxpayers in foreign jurisdictions.

CARF also requires digital asset exchanges to identify and report on the controlling person of certain passive entities, namely shell companies. The IRS does not have the authority to require digital asset exchanges to identify the controlling persons of these entities and therefore cannot share that information with other countries. The result is that US trading partners are unwilling to share information on US persons who control shell companies conducting digital asset transactions on foreign exchanges. Implementing CARF would permit the IRS to require US digital asset exchanges to report information on foreign controlling persons of shell companies and would ensure that other countries participating in CARF share information on US taxpayers who control shell companies.

---

## Recently enacted and pending legislation

President Trump recently signed the Guiding and Establishing National Innovation for US Stablecoins Act (**GENIUS Act**) establishing the first federal regulatory framework for payment stablecoins.<sup>xviii</sup> The GENIUS Act prohibits digital asset service providers from offering or selling payment stablecoins to US persons unless the payment stablecoin is issued by a permitted payment stablecoin issuer. It clarifies that payment stablecoins are not securities under federal securities laws or commodities under the Commodity Exchange Act and therefore is not subject to Securities Exchange Commission (**SEC**) or Commodity Futures Trading Commission (**CFTC**) oversight. Although the GENIUS Act does not address digital asset taxation issues, it does provide a starting point for regulating payment stablecoin transactions in the United States.

There are other bills currently under congressional review addressing digital asset regulation, most importantly the Digital Asset Market Clarity Act (**CLARITY Act**) passed by the House in July 2025.<sup>xix</sup> The CLARITY Act seeks to delineate digital asset jurisdiction between the SEC and CFTC and implement robust compliance standards of digital asset trading platforms providing legal certainty to developers and investors. The Anti-CBDC Surveillance State Act was also passed by the House at the same time as the CLARITY Act prohibiting the US Federal Reserve from issuing a retail central bank digital currency to the general public.<sup>xx</sup> Additionally, at least 40 states have introduced or are considering cryptocurrency legislation in their 2025 legislative sessions.<sup>xxi</sup> These legislative updates provide a starting point for regulating the digital asset industry, but the tax treatment of digital assets and other taxation issues involving the development and use of digital assets remain unresolved.

---

## Conclusion

The Working Group's Report reflects the US administration's interest in developing a regulatory scheme that effectively and accurately taxes cryptocurrency transactions and its anticipation for growth in the digital financial technology sector. As the sector continues to develop and influence markets, substantive tax issues will continue to evolve and create new

issues for statutory and regulatory guidance. Market participants including issuers, retail participants, institutional investors, centralized trading platforms, decentralized protocols, and others should consult with a tax adviser to ensure their compliance obligations are fulfilled and they stay informed on new and evolving guidance issued by Treasury and the IRS that could implement the Working Group's recommendations.

## Contact Us



**Reza Nader**

Partner

[reza.nader@bakermckenzie.com](mailto:reza.nader@bakermckenzie.com)



**Amir-Kia Waxman**

Partner

[amir-kia.waxman@bakermckenzie.com](mailto:amir-kia.waxman@bakermckenzie.com)



**Maxwell Holleman**

Associate

[maxwell.s.holleman@bakermckenzie.com](mailto:maxwell.s.holleman@bakermckenzie.com)

© 2025 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.



<sup>i</sup> US Crypto Holders, *2025 State of Crypto Holders Report*, NAT'L CRYPTOCURRENCY ASS'N (Mar. 2025); Tom Blackstone, *2025 Cryptocurrency Adoption and Consumer Sentiment Report*, SECURITY.ORG (Jan. 31, 2025); Team Gemini, *Introducing the 2025 Global State of Crypto Report*, GEMINI (May 27, 2025).

<sup>ii</sup> Alex Thorn, *Crypto & Blockchain Venture Capital – Q1 2025*, GALAXY (May 1, 2025); *State of Crypto Index*, A16ZCRYPTO (last visited Sept. 20, 2025).

<sup>iii</sup> Notice 2014-21.

<sup>iv</sup> Book income refers to the amount of income corporations report on their financial statements based on applicable financial accounting standards with material differences as compared to taxable income. This includes different treatment of losses, timing differences for when or whether income is recognized, and different treatment of costs and expenses.

<sup>v</sup> Inflation Reduction Act, Pub. L. No. 117-169 § 10101 (2022).

<sup>vi</sup> Treas. Reg. § 301.7701-4(c).

<sup>vii</sup> For example, a taxpayer hoping to stake Ethereum must own 32 ETH tokens (approximately \$143,271 as of September 20, 2025). See *ETH to USD*, KRAKEN (last visited Sept. 20, 2025). However, digital asset exchanges have expanded staking opportunities to investors owning less than the required amount through staking pools and staking-as-a-service providers.

<sup>viii</sup> § 731.

<sup>ix</sup> § 751.

<sup>x</sup> § 385(b)(1).

<sup>xi</sup> §§ 163(f), 1287, and 4701.

<sup>xii</sup> See Rev. Rul. 2023-14; Notice 2014-21.

<sup>xiii</sup> Notice 2014-21.

<sup>xiv</sup> Rev. Rul. 2023-14.

<sup>xv</sup> § 6038D(b) (cross referencing § 1471(d)(2), (4)-(5)).

<sup>xvi</sup> See § 6050I; 31 U.S.C. § 5331.

<sup>xvii</sup> See Job Creation and Worker Assistance Act, Pub. L. No. 107-147 § 401 (2002); I.R.S., Pub. No. 1179, *General Rules and Specifications for Substitute Forms 1096, 1099, 5498, and Certain Other Information Returns* (Jul. 22, 2024).

<sup>xviii</sup> See Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27 (2025).

<sup>xix</sup> See H.R. REP. NO. 119-168, at 1-253 (2025).

<sup>xx</sup> See *id.* at 253-257.

<sup>xxi</sup> *Cryptocurrency, Digital or Virtual Currency and Digital Assets 2025 Legislation*, NAT'L CONFERENCE OF STATE LEGISLATURES (Sept. 11, 2025).