US Treasury Releases Proposals to Increase Enforcement Using Enhanced Cryptocurrency Information Reporting

On May 20, 2021, the U.S. Treasury Department released "The American Families Plan Tax Compliance Agenda," a report detailing the Biden administration's legislative proposals to raise $700 billion in additional tax revenue over the next decade through Internal Revenue Service ("IRS") enforcement-related efforts (the "Treasury Plan").

The Treasury Plan would introduce two new information reports related to cryptocurrency transactions that must be filed with the IRS. The first would require financial institutions and "cryptoasset exchanges and custodians" to report gross inflows and outflows on all business and personal accounts. The second would require businesses that accept cryptocurrencies to report transactions that involve cryptoassets with a fair market value of more than $10,000, similar to the existing reporting requirements for cash transactions. These proposals would still need to go through the legislative process before they become operative.

The Treasury Plan is part of a growing trend among jurisdictions to adopt information reporting requirements. Indeed, the OECD in its October 2020 report entitled "OECD 2020: Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues" noted that it is currently developing technical proposals for an "adequate and effective level of reporting and exchange of information" with respect to cryptoassets. The report noted the importance of reporting as a means to promote "both simplicity for taxpayers and improved compliance."

The Treasury Plan notes the significant growth of virtual currency and states that it "already poses a significant detection problem by facilitating illegal activity broadly including tax evasion." However, as a former senior CIA analyst pointed out in an April 6, 2021 report entitled "An Analysis of Bitcoin's Use in Illicit Finance," "the illicit use of cryptocurrencies in general and Bitcoin in particular, as a share of total market activity, is certainly not higher than it is in the traditional banking system and is most likely less." For additional information on falling cryptocurrency crime, see Chainalysis' report entitled "The 2021 Crypto Crime Report."

Global Digital Finance ("GDF") supports technology neutral regulation and legislation, including for the digital assets industry. GDF's Tax Working Group, which published an informational paper entitled Tax Treatment of Cryptoassets, in July 2020, plans to study information reporting of cryptoassets in the coming months.

Carl Schonander, Head of Americas Regulatory Affairs at GDF said: "High-level Administration attention to tax compliance is welcome. Policymakers and legislators should take care at the same time to ensure that compliance priorities for any sector, including the digital assets industry, reflect the likely true dimensions of the "tax gap" policymakers seek to address."

Lisa Zarlenga, Co-Chair of GDF Tax Group, commented: "It is not clear how these proposals will coordinate with work the IRS is already doing to implement an information reporting regime for cryptocurrency exchanges under its existing statutory authority to require information reporting by brokers. The reporting proposals in some ways seem narrower (in terms of the information that must be reported) than broker reporting, and in some ways (in terms of which intermediaries and transactions it applies to) potentially broader."