

SENATE FINANCE COMMITTEE TAKES UP TAXATION OF DIGITAL ASSETS

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On 1 October the Senate Finance Committee (SFC) held a hearing to consider the tax treatment of digital assets, “Examining the Taxation of Digital Assets.” In his opening statement, Chairman Mike Crapo (R-ID) highlighted the significance of the hearing, saying “In recent years, digital assets have emerged to become an important part of our global financial ecosystem. Today, we will discuss how our tax code can provide a clear framework to ensure American leadership in this innovative industry.”

The hearing revealed broad bipartisan agreement that clarity on digital asset taxation is needed, but deep divides remain over how to balance fairness, enforcement, and US competitiveness.

Senators and witnesses addressed several issues during the hearing, including:

- The pros and cons of a de minimis exception from taxation when digital assets are used to buy a cup of coffee or a similar small purchase;
- Parity of treatment of digital assets with financial instruments, like stocks, commodities, and loans;
- Whether digital assets derived from staking or mining are taxable at the time the digital asset is awarded or at the time the digital asset is disposed of;
- Competition in the global market and the sourcing of digital asset income;
- The need for certainty and simplicity juxtaposed against the complexity of the blockchain and the digital asset space; and
- Privacy concerns.

Witnesses differed in their opinions on these issues but agreed on the importance of clarity in the tax code, warning that outdated rules risk driving innovation abroad. Lawrence Zlatkin, vice president of tax for Coinbase, cautioned that requiring reporting on billions of small stablecoin transactions would overwhelm both taxpayers and the IRS. Andrea Kramer, founding member of ASKramer Law, argued that de minimis exemptions could subsidize crypto in ways unavailable to other asset classes. Jason Somensatto, director of policy for Coin Center, further cautioned the SFC that unclear rules and a loss of US competitiveness could allow foreign regimes to seize a competitive edge. Annette Nellen, chair, digital assets tax task force, American Institute of CPAs, emphasized that clarity requires carefully defining key terms such as “digital assets,” “actively traded,” and “commodity” so that taxpayers and practitioners can comply with confidence.

The policy implications of digital assets is an increasingly popular topic in the White House and on Capitol Hill. The hearing comes on the heels of several other recent and notable developments in this policy space:

- The day before the hearing, the Treasury Department and the IRS released its 2025-2026 Priority Guidance Plan (PGP), identifying and prioritizing the tax-related issues that Treasury/IRS will work on through 30 June 2026, via regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The PGP lists 105 areas where Treasury/IRS will focus their resources, centering on five key areas. Digital assets is one of these key areas.
- On 23 January 2025, President Trump issued Executive Order 14178, establishing the President's Working Group on Digital Asset Markets (Working Group), and directing the Working Group to submit a report to the President recommending regulatory and legislative proposals that advance the policies established in the order.
- On 30 July 2025, the Working Group released a [report](#) pursuant to EO 14178, "Strengthening American Leadership in Digital Financial Technology," identifying many of the same issues impacting digital assets that were considered during the SFC's hearing. The report includes many policy recommendations.
- In July 2025, President Trump signed the [GENIUS Act](#) into law, enacting a legal and regulatory framework for stablecoins in the United States. The GENIUS Act passed both chambers of Congress with significant bipartisan support. Also in July, the House passed the [CLARITY Act](#), a digital assets market structure bill. The Senate is currently working on its version of a market structure bill.
- Again in July 2025, Sen. Cynthia Lummis (R-WY), a key player in cryptocurrency policy, introduced [legislation](#) reforming the tax treatment of digital assets. The bill includes sections on de minimis gains from the sale or exchange of digital assets, lending agreements, wash sales, mark-to-market election, mining and staking, and charitable contributions.
- Rep. Max Miller (R-OH) subsequently released an outline of a framework for the taxation of digital assets. The outline closely resembles Sen. Lummis's bill, including the addition of a provision on qualified retirement plans. Rep. Miller is expected to introduce legislative text soon. He is also a member of the House Ways and Means Committee's Oversight Subcommittee, which held a [hearing](#) on the taxation of digital assets in July.
- In 2021, Congress passed the Infrastructure Investment and Jobs Act (IIJA). Late in the Biden administration, the Department of Treasury and the Internal Revenue Service issued the [Gross Proceeds Reporting by Brokers that Regularly Provide Services Effectuating Digital Asset Sales](#) final regulations (known colloquially as the DeFi broker rule), implementing a digital assets tax provision in the IIJA. Congress nullified this rule in April 2025 using its authority under the Congressional Review Act.
- In 2023, then-SFC Chair Wyden and Ranking Member Mike Crapo (R-ID) solicited stakeholder feedback on the taxation of digital assets. In a [request for input](#), the lawmakers wrote "The rapid emergence of digital assets has raised novel regulatory issues, including the appropriate treatment under our federal tax law. The Internal Revenue Code of 1986, as amended, draws distinctions between types of property, with no straightforward classification for digital assets."

In preparation of the hearing, the Joint Committee on Taxation (JCT) published a document describing "selected tax issues relating to digital assets under present law," including descriptions of several issues commonly considered in the discussion of the tax treatment of digital assets, including a mark-to-market election, wash

sales, constructive sales, trading safe harbor, loans, mining and staking, charitable contributions, and the exclusion of de minimis gain upon certain dispositions of nonfunctional currency. The JCT document can be accessed [here](#) and recording of the SFC hearing can be found [here](#).

All indications are that interest in the treatment of digital assets from the White House and both parties in the House and Senate, as well as industry stakeholders, will continue, likely leading to further legislation and executive branch action. Please contact any member of our K&L Gates Tax practice group if you are interested in engaging on this issue and shaping the taxation of digital assets. More broadly, our cross-practice initiative on digital assets stands ready to assist regarding the full gamut of digital asset issues currently under debate.

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