



June 21, 2024

Submitted via email to [pra.comments@irs.gov](mailto:pra.comments@irs.gov)

Attn: Andres Garcia  
Internal Revenue Service  
Room 6526, 1111 Constitution Avenue NW  
Washington, DC 20224

**Re: Digital Asset Proceeds From Broker Transactions**

Sorare SAS ("Sorare") appreciates the opportunity to provide feedback on the Internal Revenue Service ("IRS") draft form 1099-DA. We support the government's efforts to provide clarity to taxpayers regarding their tax obligations for digital asset transactions, and believe that this clarity will also help to foster growth and development in the Web3 ecosystem.

Broker type involved in the transaction.

The definition of "broker" under the Proposed Regulations would capture almost all Web3 actors, including small companies, startups, and non-financial entities. This would result in undifferentiated treatment for financial and non-financial entities, as well as undifferentiated treatment for high-risk and low-risk transactions.

For example, Sorare is a non-financial services business that provides a platform for customers to purchase and own baseball, basketball, and soccer trading cards that are backed by NFTs, that they can play in fantasy games. Purchases of Sorare sports trading cards are generally low dollar transactions. Cards sell for around \$30 on average, with a median price point of a little over \$5. Over 80% of all of the transactions for Sorare cards are below \$30, and over 60% of all transactions are \$10 or less.

Many digital asset transactions, particularly for game items backed by NFTs, are nominal and thus pose a low risk of use in illicit finance or tax evasion. Generally, for a platform like Sorare, the majority of transactions are relatively low value but a customer may purchase a number of different, low-value cards. In this context, the reporting obligation becomes even more burdensome for the broker and tax payer, as both will be tasked with reporting all transactions, even though each is of very little dollar value. Although a de minimis reporting limit may ameliorate the burden of reporting low-value transactions, brokers would still be required to collect and store personally identifiable information ("PII") from *all* customers to determine if their aggregate transactions will meet the threshold in any given year. This in turn would create increased risk for security breaches, in that bad actors would look to obtain this PII for identity theft, phishing, fraud, and potentially other nefarious activities.

We recommend that the IRS balance the potential tax benefit with the compliance burden for brokers and taxpayers, particularly in the context of low-value, repeated transactions.

Recipient information (Recipient TIN, name, address, account number).

The expected tax benefits are outweighed by the burden of collecting, storing, and transmitting the overbroad amount of PII that companies designated as brokers would be required to collect. The IRS estimates the burden of compliance per broker to take between 1,275 and 3,400 hours to set up the infrastructure for collecting, storing, backing up and creating the processes to



safely transmit the required identity and transactional data under the broker rule for new brokers, with an estimated cost between \$81,000 and \$216,000. After those initial set up costs, the IRS estimates that annual compliance would entail 425 hours of work and cost companies \$27,000.

Non-financial services companies providing consumer product digital assets, such as Sorare's sports trading cards, are not equipped to collect and report PII in the same way as financial services entities. Generally such consumer product companies do not have a reason to collect extensive transactional data, particularly on the granular customer level, and then store that data and have the capacity to safely transmit it to third parties.

Moreover, as a global company, in order to meet its obligations, Sorare would have to collect and process PII not only from U.S. taxpayers but all customers to determine which customers are U.S. taxpayers. This vast collection of all customer data would potentially violate the privacy rights of customers outside of the U.S., particularly if Sorare reasonably but incorrectly identifies a customer as a U.S. taxpayer, when they are not, and transmits that data to the U.S. or shares it with the IRS.

We recommend that the IRS reassess the cost and burden estimates for collection of PII in connection with the reporting obligation that would be imposed on non-financial, consumer product companies. Additionally the IRS should provide guidance on how such a provider can comply with these reporting obligations, and what penalty relief or exemption would be available for providers for transactions under a certain threshold. The IRS should additionally consider requiring less transaction information for consumer product digital assets. The IRS should further provide an explanation regarding what type of rationale is required if the recipient TIN cannot be obtained.

#### Boxes 1e, 1f, 1g.

Generally, this information is available on the blockchain, but where a digital asset is transferred from one platform to another, the originating platform would have very little reason to track if that digital asset was ever subsequently sold or "disposed of," and at what price the asset was resold for. Further, requiring this information from a platform like Sorares, where our users have only an unhosted, non-custodial wallet, would result in holes in reporting as we generally do not have any involvement with users' transferring and/or subsequent sale of assets. In the non-custodial wallet context, the provider has no part in the transfer and no take in the profit(s) or fee(s) that may be incurred in any subsequent sales; a platform like ours would not track if a digital asset is sold or disposed of, and at what price, after it is transferred out. The originating platform would be able to see if a digital asset is transferred from a non-custodial wallet associated with a customer account to a third-party wallet or platform, but such transfer would not necessarily be a taxable event (i.e. the individual could be transferring the asset to another wallet also owned by the individual) and in the event the individual is transferring the asset in a barter with another individual, the platform would not be aware of the fair market value for the item(s) exchanged for the digital asset, and thus would not be able to calculate the profit or loss associated with the transaction. This would result in further potential reporting inaccuracies and/or gaps.

The IRS should provide guidance on how such a provider can comply with these reporting obligations, and what exemption or penalty relief would be available to the provider in the event it is too operationally burdensome to provide this information, or where the provision of

information relating to the profits or losses relating to the digital asset resale are unavailable or unclear.

#### Box 5.

A broker is instructed in Box 5 to indicate that a loss is non-deductible due to a "reportable change in control or capital structure." It references Form 8949 and Schedule D Instructions. However, neither of those instructions give any guidance on what kind of events in crypto and digital assets could apply in these circumstances. The broker is seemingly left to decide when they would be required to report losses to recipients "on a separate statement."

We recommend that the IRS provide clarification on the events implicated in this context.

#### Boxes 4 and 16.

The federal and state tax withholding requirements have not generally been discussed in the commentary to the proposed regulations. Notably, it has not been clarified how a non-custodial provider would be able to perform the requisite tax withholding when it does not possess or control any of its customers' digital assets. The IRS should provide guidance on how such a provider can comply with its tax withholding obligations, and what exemption or penalty relief would be available to the provider in the event it cannot obtain a certified TIN from the customer.