RIKER
DANZIG
SCHERER
HYLAND
PERRETTI LLP

Bipartisan Infrastructure Bill Brings Tax Changes for Employers and Token Traders

Publication:

Riker Danzig Tax Client Alert November 15, 2021

Following its long-awaited passage by the House of Representatives on November 5, 2021, the Bipartisan Infrastructure Investment and Jobs Act (the "Act") was signed into law by President Biden on Monday, November 15, at a signing ceremony commemorating the landmark economic growth bill's passage. The Act will inject approximately $1.2 trillion dollars into the economy, with a focus on upgrading the nation's critical infrastructure. But two notable tax changes contained in the Act have been overlooked by many. The first of these changes is the early termination of the employee retention tax credit ("ERTC"). The second is an extension of 1099-B reporting requirements to brokers of digital currencies.

Employee Retention Tax Credit Termination

The ERTC is a fully-refundable tax credit for employers enacted under the CARES Act as part of Congress's COVID-19-related economic stimulus. The availability of the ERTC was extended under the American Rescue Plan Act of 2021 (discussed in our previous alert here) and set to expire after December 31, 2021.

The Act terminates the ERTC for most employers at the end of the third quarter of 2021, rather than continuing with the previous extension through the end of the year. The only exception to this under the Act is for "recovery startup businesses," which will still be able to take advantage of the ERTC for the fourth quarter. A "recovery startup business" is an employer that began carrying on any trade or business after February 15, 2020, and for which the average annual gross receipts of the employer for the three prior taxable years does not exceed $1,000,000.

Information Reporting for Brokers of Digital Assets

After months of speculation over whether and how Congress would extend tax information reporting rules to the world of cryptocurrency and token exchanges, the Act takes several steps towards incorporating digital transactions into the purview of the IRS. Specifically, the Act expands the rules applicable to brokers of securities transactions to also apply to transactions involving digital assets.

Under current law, brokers are supposed to annually report to the IRS and to their customers, the latter on Forms 1099-B, information about their customers' sales of securities during the past year, including the nature of the securities sold, the dates on which the customers acquired them, the proceeds of the sales, and the customers' adjusted tax basis in those assets. This is intended to help investors calculate their taxable gain and loss from securities transactions, and to enable the IRS to make sure that investors are properly reporting and paying tax on their gains from those transactions.

The Act amends the 1099-B reporting requirements to expand the definition of "broker" to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person." This is likely to pick up many digital currency exchanges, and possibly others. A "digital asset" is defined for this purpose as "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary [of the Treasury]." Of note, the new reporting requirement for digital asset transfers has a delayed effective date and will only apply to digital assets acquired after January 1, 2023, and returns filed after December 31, 2023.

The addition of this provision will likely have a significant impact on the trading of tokens and result in increased tax scrutiny of such transactions. Given the delayed start to this change, it is possible that there may be additional legislation surrounding the new rule. In any event, the practical impact of the new rule on token investors, digital currency exchanges (including those associated with decentralized exchanges), and others in the blockchain space will depend greatly on interpretive regulations, which are likely to be issued by the Treasury Department between now and 2023.

For more information about anything in this alert, please contact Jason Navarino or another member of the Riker Danzig Tax Group.

Attorneys:

Robert C. Daleo · Jason D. Navarino · Hannah J. Greendyk · Connor Bradford Breza

Practice:

Tax Law