Digital Assets & Its Numerous Instruments Governing Formation and Operation

2026 BLOCKCHAIN TAX CONFERENCE

Panelists

Sean McElroy,
Partner, Fenwick

Kale Wright,
Co-Founder,
Overland Blockchain

Yu-Ting Wang,
Tax Partner, Dello

Commonly Used Instruments

- SAFE
- SAFT
- Executory Forward Contracts for Tokens
- Token Options & Warrants

SAFEs

- A SAFE (Simple Agreement for Future Equity) is a legal contract between a startup company and an investor that allows the investor to provide funding (almost always cash) to a company, in exchange for the right to receive stock in the company at a future date – typically the company's next priced round or during a liquidity event.
- Developed by Y Combinator, designed to be a low-cost fundraising tool for early-stage companies.
  - Negates much of the need for formal negotiations between investors and companies
- SAFEs, per their own terms, are usually treated as equity for tax purposes.
- Significant open tax questions. Generally, a corporation has no gain or loss under section 1032 on the issuance of its own stock in settlement of a forward contract. See Rev. Rul. 2003-7; CCA 201025047.

SAFTs & Executory Forward Contracts

- A SAFT (Simple Agreement for Future Tokens) is a legal contract between a startup company and an investor that allows the investor to provide funding (almost always cash) to a company, in exchange for the right to receive tokens when there is a token generation event (a "TGE").
- A SAFT could be thought of as an executory forward contract for tokens.
- SAFTs are sales of property, and are not sales of stock – so section 1032 doesn't control.
- Income from SAFTs is taxable to companies selling tokens – if executory forward contract, upon delivery of the tokens after TGE.

SAFTs

- Commonly structured as a (prepaid) forward contract for future token delivery
- For investors, holding period begins when the investor actually receives/ controls the token
- The conversion/ delivery of tokens under a SAFT is not a taxable event
- Investor is subject to tax when the token is later used, swapped, or sold.
- Basis of the token generally is the prepaid purchase price of SAFT
- What about the issuer side? Timing for income recognition?

Executory Forward Contracts

- Require delivery of a digital asset for cash/other property/ services. Reg. 1.6045-1(a)(7)
- Execution often not taxable; settlement/termination is when gain/loss recognized
- Character of the gain/loss may depend on whether the underlying digital asset is a capital asset

Executory Forward Contracts for Tokens

- **Operator's Perspective**
- **What makes these hard**
  - Economic obligation exists off-chain
  - Nothing appears in wallets until settlement
  - Risk accumulates quietly between signing and delivery
- **What operations must track**
  - Off-chain contractual obligations
  - Delivery mechanics and settlement timing
  - Mark-to-market exposure *(if applicable)*
  - Reconciliation of contracts to on-chain settlement events

Where teams fail

- Legal is aware of the instrument
- Finance discovers it at settlement
- No interim accruals
- No disclosures
- No effective controls

Token Options & Warrants

- **Operator's Perspective**
- **Why these are complex**
- Traditional equity compensation logic
- Combined with crypto volatility
- Supported by immature tooling

What must be tracked

- Grant date vs. vest date
- Vesting schedules and service periods
- Strike price denominated in:
  - Tokens or
  - USD
- Expiration mechanics
- Exercise workflows *(often manual)*

Operational reality

- Most cap table tools do not natively support token options
- Parallel systems are required to remain audit-ready

Token Options/Warrants – Tax Perspective

- General rules for options in property apply. *See* Rev. Rul. 78-182 (providing rules for stock, but which are generally applicable to rules for options).
  - *Example*: call option to purchase tokens from perspective of holder:
    - No tax incident on account of either the receipt or payment of option premiums until terminated or exercised.
    - If allowed to expire without exercise – treated as a sale or exchange (and resulting in a capital loss).
    - If exercised, cost of premium is added to basis of tokens.
- Used both as an investment tool and as a compensatory tool.
- Valuation issues are always present. Token options/warrants are generally not subject to valuation safe harbors that apply to equity grants to employees.

Token Generation Events (TGE)

Token Allocation

Custodial Issues

Operational Reality

- **What TGE actually is (operationally)**
  - A liquidity and accounting event, not just a protocol milestone
  - First point where token economics collide with real wallets, prices, and controls
  - Often the first time, finance must reconcile legal intent vs on-chain reality
- **Immediate operational impact**
  - Wallet balances change in real time
  - Token pricing becomes observable
  - Treasury, accounting, tax, and legal all activate simultaneously
  - Monthly close risk spikes dramatically

What Operators Must Get Right

- **Core tracking requirements**
  - Token minting and initial distribution mapping
  - Wallet ownership and custody classification
  - Transfer restrictions vs operational availability
  - Fair value methodology at and after TGE
  - Separation of:
    - Issuance
    - Compensation
    - Investor allocations
    - Treasury holdings

- **Common failure modes**
  - Tokens treated as income because they are liquid
  - Restricted tokens reported as deployable treasury
  - No clean audit trail from contract → wallet → financials
- **Primary CPA risk: misstated income, misclassified restrictions, weak audit trail.**

Token Ownership

- Ownership of tokens under U.S. federal income tax law is a factual question.
- Having custody over a token does not mean the custodian (necessarily) owns the token. The tax law looks to the benefits and burdens of ownership.
  - A centralized exchange may have custody over tokens, but the owner may be the user.
  - A company may have a third-party custodian enforce vesting rights over unvested tokens.
- Crucial that custody providers of tokens ensure that the ownership of tokens (and the ownership of each token) is clear and factually documented – both from a commercial and tax perspective.

Token as Compensation

- Token Awards
- 83(b) Elections
- Restricted Tokens
- Token Options / Token Warrants
- Locked Tokens vs Vesting Tokens

Tokens as Compensation – Basic Tax Issues

- Early-stage and other web3 ventures want (like any other enterprise) to have the ability to compensate their employees.
  - In traditional venture-backed start-up ventures – traditionally stock, options/warrants, and cash.
  - In web3 ventures – we have those, but also have potentially ***tokens*** as a fourth compensation lever.
- Tokens are *generally* not stock (you could tokenize equities, but that's not what we are talking about here). Assume we are talking about a utility token.
  - Thus, there are key tax considerations early-stage companies (& Investors!) should be thinking about.
    - Rules can differ in important ways from the rules for stock.
  - Same basic compensation issues arise as with stock – value to employees above payment is compensatory.

Section 83(b) – Restricted Tokens

- Section 83 controls tax treatment of grants of <u>property</u>; not just of stock.
  - If you were given gold as compensation, section 83 would control the transfer of that property, too.
- Section 83(b) elections apply in the context of **restricted tokens** (that is, tokens which are subject to vesting). Restricted tokens are a key mechanism of compensation for web3 companies.
  - Key issue: vesting of tokens v. lockup of tokens. Different results under section 83 for each of these.
- Section 83(b) elections must be made within 30 days of grant of restricted tokens. You cannot revoke an 83(b) election without the consent of the IRS.

Section 83 – Applies to Token Grants

(a) General Rule. If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of—

> **(1)** the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over
>
> **(2)** the amount (if any) paid for such property,

shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable.

Token Compensation

- **Operational Reality**
- **Why token comp is uniquely hard**
  - Compensation logic layered onto volatile, on-chain assets
  - Vesting schedules live off-chain
  - Wallets live on-chain
  - Tax elections live nowhere unless explicitly tracked
- **Operational complexity**
  - Ownership ≠ custody ≠ transferability
  - Vesting does not align neatly with token issuance
  - Market price volatility impacts expense recognition and reporting

Token Compensation

- **What Operators Must Track**
- **Critical data elements**
  - Grant date vs vest date
  - Vesting schedules and service periods
  - Token price at vesting events
  - Transfer restrictions and lockups
  - 83(b) elections and their downstream impact

Systems reality

- Subledgers track tokens, not intent
- Cap tables track equity, not wallets
- Parallel registries are required to remain audit-ready

Common failure modes

- Expense recognized at mint or TGE
- Elections forgotten operationally
- Payroll and accounting misaligned

Primary CPA risk: incorrect expense timing, broken payroll alignment, unsupported elections.