



- Token Taxation - Proof of Work & Proof of Stake

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Virtual Currency as Property, not Currency

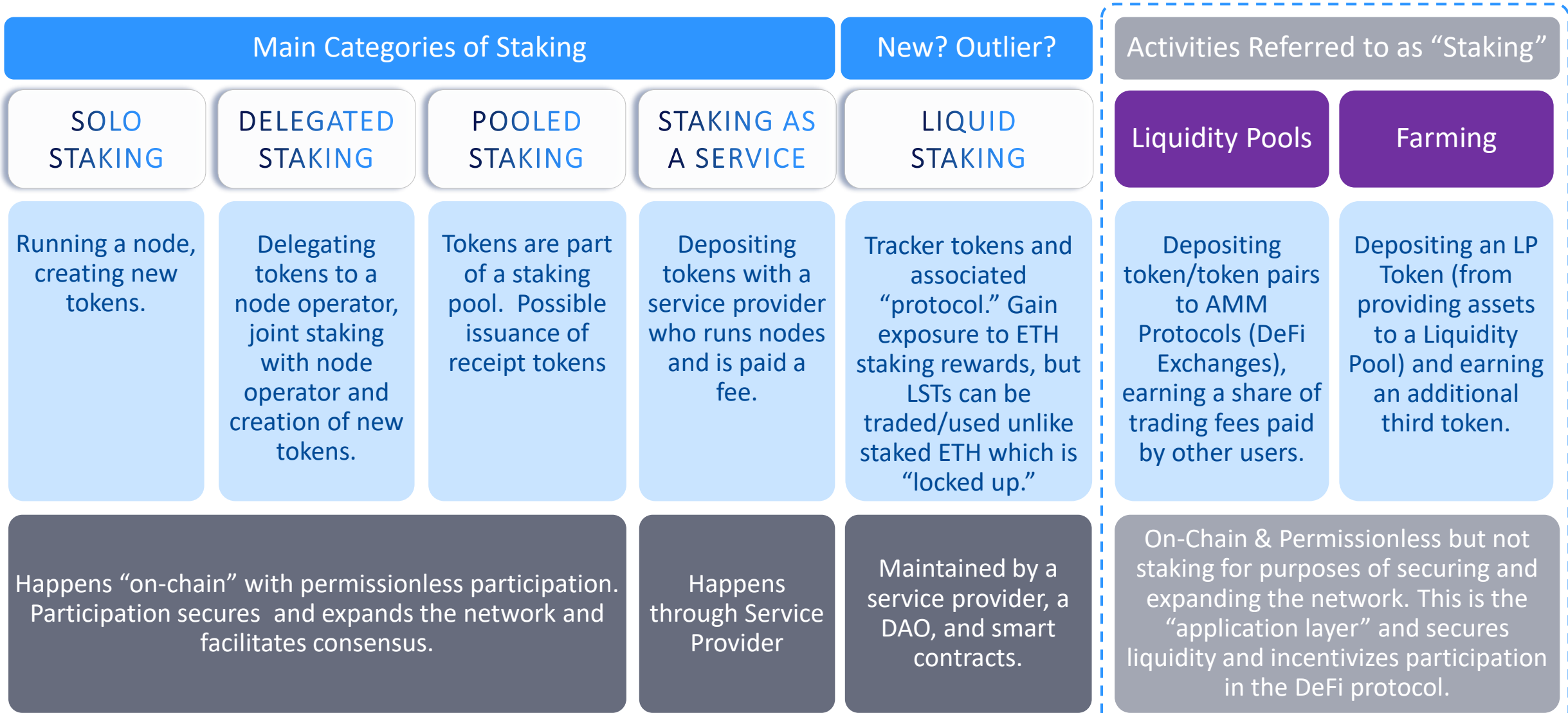
IRS NOTICE 2014-21

Virtual currency is “a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value other than a representation of the U.S. dollar or a foreign currency.” (italicized portion added by Rev. Rul. 2019-24).

- Taxpayer has **gain or loss** determined by reference to its basis in virtual currency and the FMV of property received in exchange for such virtual currency at the time the virtual currency is sold or otherwise disposed of.
- The **character of gain or loss** generally depends on whether the virtual currency is a capital asset in the hands of the taxpayer.
- A taxpayer who receives cryptocurrency **as payment for goods or services** must include in gross income the FMV of the virtual currency measured in USD as of the date the virtual currency was received.



The Universe & Taxonomy of Staking





General Tax Concepts, Meet Crypto

1 Supreme Court Test + 2 Treasury Regs + 3 IRS Rev Rulings

1 GLENSHAW GLASS

The U.S. Supreme Court's Glenshaw Glass test for income, cited in Rev. Ruls. 2019-24 and 2023-14.

Test

- Undeniable accession to wealth
- Clearly Recognized
- Over which the taxpayer has complete dominion

2 TREAS. REG. 1.451-2(A)

Constructive Receipt

REG.

- Income is constructively received by a taxpayer in the year when "it is **credited to his account, set apart for him, or otherwise made available** so that he may **draw upon it at any time.**"



General Tax Concepts, Meet Crypto

1 Supreme Court Test + **2** Treasury Regs + **3** IRS Rev Rulings

REV. RUL. 59-60

Provides guidelines for valuing an asset (in that case, privately-held stock)

Test

- Willing-buyer/willing-seller standard



Rev Rul. 2023-14

1

Facts: A cash method taxpayer who “stakes 200 units of [token] M and validates a new block of transactions on the M blockchain, receiving 2 units of M as validation rewards.”

The ruling posits that upon receiving the tokens [Date 2] the taxpayer lacks the ability to sell exchange or otherwise dispose of them, and that on the following day [Date 3] the taxpayer has the ability to sell, exchange, or otherwise dispose of the tokens.

2

- Conclusion: the taxpayer must include the “fair market value of the validation rewards received” in gross income in “the taxable year in which the taxpayer gains dominion and control.”
- As to precise timing, the ruling states, “The fair market value is determined as of the date and time the taxpayer gains dominion and control over the validation rewards.”
- Ruling cites *Glenshaw Glass* to determine when income arises under section 61.



Staking, Questions Remain...

Taxpayers still face myriad Questions, Gray Areas, and Technical Problems

LOCKED TOKENS

- ? Gray areas or lack of dominion and control (inability to dispose).
- ? Valuation – FMV not always readily obtainable.

LIQUID STAKING

- ? Disposal or not? (ETH>stETH)
- ? Income by block?

CHARACTER & SOURCE

- ? The tech innovations quickly outpace tax clarity.

BASIS TRACKING

- ? Practical issues tracking some staking rewards, depending on technical facts, how the protocol operates and availability of data.

ACCRUED AWARDS

- ? In practice, almost impossible to track.
- ? Cooldown periods and D&C?

LIQUIDITY POOLS

- ? Disposal or deposit?
- ? Calculating earnings in the pool, or “on the way out?”

LIQUIDITY DISC.

- ? Liquidity discounting as a valid method in valuation of illiquid tokens?

WITHHOLDING

- ? Corporate filer obligations and ability to track, withhold and remit for employee staking programs?