July 22, 2020

The Honorable David Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Hon. Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Hon. Michael Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Recommendations for 2020-2021 Priority Guidance Plan

Dear Messrs. Kautter, Rettig and Desmond:

The American Bar Association Section of Taxation (the “Section”) welcomes the opportunity to provide recommendations for inclusion in the 2020-2021 Priority Guidance Plan (“Comments”). These recommendations represent the views of the Section. They have not been approved by the Board of Governors or House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

The enclosed recommendations were made by members of the following committees within the Section:

Affiliated and Related Corporations
Corporate Tax
Employee Benefits
Energy & Environmental Taxes
Individual & Family Taxation
Pro Bono & Tax Clinics
Tax Accounting
U.S. Activities of Foreigners and Tax Treaties

Civil and Criminal Tax Penalties
Capital Recovery and Leasing
Employment Taxes
Exempt Organizations
Partnerships & LLCs
S Corporations
Although members of the Section may have clients who might be affected by the federal tax principles addressed by these Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of one or more specific issues addressed by, these Comments has participated in the preparation of the portion (or portions) of these Comments addressing those issues. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of these Comments.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Tom Callahan  
Chair, Section of Taxation

Enclosure
cc: Lafayette “Chip” G. Harter III, Deputy Assistant Secretary (International Tax Affairs), Department of the Treasury  
Douglas L. Poms, International Tax Counsel, Department of the Treasury  
Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury  
Carol Weiser, Benefits Tax Counsel, Department of the Treasury  
Jeffrey Van Hove, Senior Advisor, Office of Tax Policy, Department of the Treasury  
Sunita Lough, Deputy Commissioner, Services and Enforcement, Internal Revenue Service  
Peter Blessing, Associate Chief Counsel (International), Internal Revenue Service  
John Moriarty, Associate Chief Counsel (Income Tax & Accounting), Internal Revenue Service  
Holly Porter, Associate Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service  
Robert H. Wellen, Associate Chief Counsel (Corporate), Internal Revenue Service  
Kathryn Zuba, Associate Chief Counsel (Procedure & Administration), Internal Revenue Service  
Janine Cook, Deputy Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes), Internal Revenue Service
These comments are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

As requested in Notice 2020-47 (the “Notice”), the Section has identified the following tax issues that we recommend the Department of Treasury (“Treasury”) and the Internal Revenue Service (the “Service”) address through regulations or other published guidance in 2020-2021.

We have divided our recommendations into the four categories included in the priority guidance plan: (1) Recommendations related to Public Law 115-97 (the “2017 Act”); (2) Burden Reduction; (3) Other Legislation, and (4) General Guidance. Within these categories, the name and contact information for a representative of the committee making the suggestion is provided.

I. IMPLEMENTATION OF THE 2017 ACT

AFFILIATED AND RELATED CORPORATIONS
William R. Pauls, Chair, (202) 220-2059, wpauls@deloitte.com

1. Regulations under section 1502 (possibly including revisions to Treas. Reg. §§ 1.1502-21 and 1.1502-47) regarding the absorption of consolidated net operating losses in view of statutory amendments made by the 2017 Act and the Coronavirus Aid, Relief and Economic Security (“CARES”) Act. Proposed Regulations were published on July 8, 2020. (Priority: High)
2. Regulations or other published guidance addressing the application of section 53(e) with respect to minimum tax credits that carried forward to the first tax year beginning in 2018 in a situation where some or all of those minimum tax credits are (or become) subject to a limitation under section 383 or the separate return limitation year provisions of Treas. Reg. § 1.1502-55(h)(4)(iii). (Priority: High)

3. Regulations under section 1502 (possibly including revisions to Treas. Reg. § 1.1502-47) regarding consolidated group computations under multiple provisions of the 2017 Act. (Priority: Medium)
   - This item is a carryover from the 2019-2020 Priority Guidance Plan. As noted in the preamble discussion to the Proposed Regulations published on July 8, 2020, Treasury and the Service continue to study issues pertinent to life-nonlife consolidated groups for purposes of potential future guidance.

4. Regulations under section 1502 addressing the proper treatment of gross receipts when a member joins or departs a consolidated group. (Priority: Medium)
   - Proposed Regulations issued in December 2019 (under section 59A) noted that Treasury and the Service are studying this issue. For example, for purposes of section 59A, a pertinent question involves the appropriate treatment of a deconsolidating member’s gross receipts history as it relates to the original consolidated group and the acquiring consolidated group.

EMPLOYMENT TAXES
Ed Leyden, Chair, (301) 390-6600, ejleyden@leydenlaw.com

Regulations under section 274 concerning meal expenses. This item is a carryover from the 2019-2020 Priority Guidance Plan. Proposed Regulations were published on February 26, 2020. (Priority: Medium)

ENERGY AND ENVIRONMENTAL TAXES
Amish M. Shah, Chair, (202) 383-0456, amishshah@eversheds-sutherland.com

Guidance under section 168 to clarify the normalization requirements for excess tax reserves resulting from the corporate tax rate decrease in the 2017 Act. Notice 2019-33 requested comments about ratemaking issues that have arisen or are anticipated due to the corporate rate decrease and the requirements of section 13001(d) of the 2017 Act. (Priority: High)

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EXEMPT ORGANIZATIONS
Carolyn O. (Morey) Ward, Chair, (202) 508-4645, Morey.Ward@ropesgray.com

1. Regulations under section 4960, taxing the payment of compensation by applicable tax-exempt organizations of certain employees in excess of $1 million and certain excess parachute payments, including whether transitional relief will be granted. Proposed Regulations were published on June 11, 2020. (Priority: High)

2. Regulations under section 512(a)(6) requiring tax-exempt organizations with more than one unrelated trade or business to compute unrelated business taxable income separately for each such trade or business. Proposed Regulations were published on April 24, 2020.6 (Priority: High)

3. Regulations under section 4968, taxing the net investment income of certain private colleges and universities. Proposed Regulations were published on July 3, 2019. (Priority: High)

INDIVIDUAL AND FAMILY TAXATION
Timothy M. Todd, Individual and Family Taxation Chair, (434) 592-5300, tmtodd@liberty.edu

Guidance applying a “constructive” personal exemption amount under section 6012(a) to exempt certain non-resident aliens from Form 1040-NR filing requirements. (Priority: Medium)

PARTNERSHIPS & LLCs
Beverly Katz, Chair, (202) 533-3820, beverlykatz@kpmg.com

1. Guidance under section 163(j), as amended by the CARES Act, on the application to partnerships generally, including the following specific items: (i) partnership mergers and divisions; (ii) tiered partnerships; and (iii) self-charged interest (as defined in the section 469 Regulations). (Priority: High)

2. Regulations under section 168(k), including the impact of the technical correction for qualified improvement property under the CARES Act. Proposed Regulations were published on September 24, 2019. (Priority: High)

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3. Guidance under section 1061. This item is a carryover from the 2019-2020 Priority Guidance Plan. Specifically, we recommend that such guidance address the following issues (Priority: High):

- the meaning of the term “investment real estate”;
- application of the section when there is an installment sale of a partnership interest;
- application of the section to a distributive share of section 1231 gain;
- application of the section when a partnership interest held for more than three years is sold where partnership property is held for three years or less;
- application of the section to redemption using partnership assets if the redeemed partner sells assets within three years of receiving the applicable partnership interest or the distributed assets have a holding period of three years or less;
- application of the section, in particular the exception for capital interests, to a partnership restructuring if a partner receives a partnership interest representing a “straight-up” interest in the restructured partnership equal to the percentage of the fair market value of the partnership’s assets;
- the meaning of the term “portfolio investment” as used in section 1061(b), and guidance on when a portfolio investment is held on behalf of third-party investors; and
- whether a “corporation” as used in section 1061(c)(4)(A) includes an S corporation.

S CORPORATIONS
Brad Gould, Chair, (772) 464-7700, bgould@deanmead.com

1. Guidance under the section 951A Regulations and 1373(a) on the impact the global intangible low-taxed income (“GILTI”) inclusion calculated and reported by a shareholder of a S corporation who is a U.S. shareholder as defined by 951(b) on the S corporation’s accumulated adjustment account under 1368 and on the basis of stock under 1367 of an S corporation shareholder. It would be helpful to have guidance prior to the next filing season. The Section is preparing comments on these issues. (Priority: Medium)

2. Regulations under 1371(f) on the treatment of earnings and profits in the post-termination transition period when an entity converts from an S Corporation to a C Corporation. It would be helpful to have guidance prior to the next
filing season. Proposed Regulations were published on November 7, 2019. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

TAX ACCOUNTING; CAPITAL RECOVERY AND LEASING
Ryan Corcoran, Tax Accounting Chair, (202) 370-8235, ryan.corcoran@rsmus.com; Tracy Watkins, Capital Recovery and Leasing Chair, (202) 370-8195, tracy.watkins@rsmus.com

(Listed in order of decreasing priority)

1. Regulations under section 451(b) and (c). Proposed Regulations were published on September 9, 2019. This item is a carryover from the 2019-2020 Priority Guidance Plan.

2. Regulations under section 163(j) regarding the limitation on business interest deductions. Specifically, we recommend that such regulations address the following issues:
   - how other Code provisions impact the determination of business interest for purposes of section 163(j) (e.g., sections 263A and 467); and
   - what is meant by “trade or business” (e.g., section 446 or case law) in relation to an electing real property trade or business.

3. Regulations and other procedural guidance under section 168(k).

4. Guidance providing relief for taxpayers unable to file accounting method changes in the section 965 year due to the timing of the Proposed Regulations and final Regulations.

5. Guidance regarding the adoption and changes in methods of accounting for tested income under section 951A.

6. Regulations under sections 162(f) and 6050X. Proposed Regulations were published on June 11, 2020. This item is a carryover from the 2019-2020 Priority Guidance Plan.
7. Guidance regarding Small Business Accounting Method Reform and Simplification not addressed by Revenue Procedure 2018-40,\(^7\) including the following:

- guidance regarding the annual election under section 266 to capitalize taxes and carrying costs in lieu of deducting the interest for taxpayers owning real estate;

- guidance clarifying the accounting for inventory as non-incidental materials and supplies, and the costs required to be capitalized—specifically, what costs are required to be capitalized as non-incidental materials and supplies for a manufacture of goods;

- guidance regarding the transition rules for section 263A(f) small taxpayers and the two-year exemption from the capitalization of interest during the post-production period for beer, wine, and distilled spirits;

- guidance related to section 179 for taxpayers that do not have basis in an asset until a taxable year after the asset is placed in service; and

- guidance regarding the definition of a tax shelter under section 448(a)(3) including the application of the syndicate rules under section 1256(e)(3)(B).

8. Guidance providing for a safe harbor method for allocating income and expenses among multiple trades or businesses under section 199A.

9. Guidance on the state and local deduction cap under section 164 for electing pass-through entities.

10. Guidance clarifying the interaction of the definition of “real property” for purposes of section 1031 with the classification of property for purposes of depreciation under section 168.

II. BURDEN REDUCTION

CORPORATE
Scott M. Levine, Chair, (202) 879-3437, smlevine@jonesday.com

1. Regulations related to the treatment of certain interests in corporations as debt or equity under section 385. We recommend that Treasury and the Service modify the distribution regulations, including eliminating the per se rule, under Treas. Reg. § 1.385-3 and consider entirely eliminating the distribution regulations in light of the legislative response to base erosion enacted as part

\(^7\) 2018-34 I.R.B. 320.
of the 2017 Act and the burden reduction objectives identified in Executive Order 13789.\(^8\) An advance notice of proposed rulemaking was published on November 4, 2019. \textbf{(Priority: High)}

2. Guidance related to satisfying the gross income test for worthless securities in affiliates corporations under section 165(g)(3). Section 165(g)(3) provides that the character of deductions resulting from securities of affiliated corporations becoming worthless during the year depends in part on whether more than 90% of the aggregate of an affiliated corporation’s gross receipts for all taxable years has been from sources other than those specified in section 165(g)(3)(B). This requirement imposes a significant compliance and administrative burden on corporations with long histories and corporations that have multiple predecessors. Further, the gross receipts from earlier years have reduced relevance taking into account inflation. We recommend that Treasury and the Service consider providing safe harbor relief whereby taxpayers satisfy this requirement by establishing that more than 90% of the aggregate of the affiliated corporation’s gross receipts for some number of the most recent taxable years has been from sources other than those specified in section 165(g)(3)(B). \textbf{(Priority: Medium)}

**CIVIL AND CRIMINAL TAX PENALTIES**

Caroline Ciraolo, Chair, (443) 845-4898, cciraolo@kflaw.com

We recommend that Treasury and the Service revise the implementation of the Delinquent International Information Return Submission Procedures to ensure and document the review of reasonable cause statements prior to a penalty assessment. \textbf{(Priority: Medium)}

**EMPLOYMENT TAXES**

Ed Leyden, Chair, (301) 390-6600, ejleyden@leydenlaw.com

1. Regulations updating the classification system for the line of business determination under Treas. Reg. § 1.132-4 for purposes of qualified employee discounts and no-additional-cost services. This item is a carryover from the 2019-2020 Priority Guidance Plan. \textbf{(Priority: Medium)}

2. Regulations under section 3405 for distributions to payees with an address outside of the United States. Proposed Regulations were published on May 31, 2019. This item is a carryover from the 2019-2020 Priority Guidance Plan. \textbf{(Priority: Low)}

PARTNERSHIPS & LLCs
Beverly Katz, Chair, (202) 533-3820, beverlykatz@kpmg.com

Regulations on the section 754 election statement. Proposed Regulations were published on October 12, 2017. (Priority: Low)

S CORPORATIONS
Bradley Gould, Chair, (772) 464-7700, bgould@deanmead.com

1. Guidance under 1362(f) regarding the validity or continuation of an S corporation election in certain situations involving disproportionate distributions, inconsistent tax return filings, or omissions on Form 2553, Election by a Small Business Corporation.9 This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: High)

2. Guidance concerning the effect of momentary ownership of stock of a S corporation by another corporation during a transaction described in sections 355 and 368(a)(1)(D). This item is carried over from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

TAX ACCOUNTING; CAPITAL RECOVERY AND LEASING
Ryan Corcoran, Tax Accounting Chair, (202) 370-8235, ryan.corcoran@rsmus.com; Tracy Watkins, Capital Recovery and Leasing Committee, (202) 370-8195, tracy.watkins@rsmus.com

(Listed in order of decreasing priority)

1. Transition guidance allowing taxpayers to revoke a prior real property trade or business election or farming business election under section 163(j)(7) by filing an accounting method change request.

2. Transition guidance allowing taxpayers to revoke a prior election under section 168(g)(7) to use the Alternative Depreciation System by filing an accounting method change request.

3. Transition guidance related to the 2017 Act allowing taxpayers to modify various elections/methods from the 2017 Act due to the volume of guidance issued post-2018 due dates as well as the ongoing COVID-19 emergency.

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9 See ABA Section of Taxation, Comments on Draft Revenue Procedure addressing issues under Section 1362(f) (2017), available at https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/050417comments.authcheckd.pdf.
4. Guidance updating the section 263A Regulations on the allocation of costs under simplified methods as adopted by T.D. 9843 to address the de minimis amounts and variance safe harbors. Specifically, we recommend (i) revisions to the de minimis and variance safe harbor thresholds to allow netting of positive and negative amounts and (ii) a revenue procedure to increase the de minimis amount and the safe harbor rule.

U.S. ACTIVITIES OF FOREIGNERS AND TAX TREATIES

Jeffrey Rubinger, Chair, (305) 350-7261, jrubinger@bilzin.com

Guidance simplifying the disqualified imported mismatch rules under Treas. Reg. § 1.267A-4 to reduce administrative complexity and compliance burden. (Priority: Medium)

III. IMPLEMENTATION OF OTHER RECENT LEGISLATION

AFFILIATED AND RELATED CORPORATIONS

William R. Pauls, Chair, (202) 220-2059, wpauls@deloitte.com


   a. Regulations addressing the interaction of (i) Section 2301(j) of the CARES Act, which provides that an eligible employer that receives a PPP loan cannot claim the employee retention credit, and (ii) Section 2301(d) of the CARES Act, which generally treats all controlled group members as a single employer for purposes of the employee retention credit. (Priority: High)

   - By way of example, suppose that Corporation P wholly owns each of Corporation S1 and Corporation S2, and S1 receives a PPP loan. The PPP loan may still be outstanding or may have been repaid or forgiven. Buyer, another domestic corporation, purchases the stock of S2 from P. Does the fact that S2 was a member of the P group when S1 received the PPP loan mean that S2 is permanently “tainted” even after it leaves the P group, with the “taint” carrying over to the buyer group (even as it continues to apply to the P group) so that no member of the buyer group may claim the employee retention credit? This potential result seems unwarranted and would require a new level of due diligence for all acquisitions. Concern about this issue already is having a negative impact on stock acquisition activity.

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b. Regulations addressing the outcomes, including consolidated return considerations, of PPP loan forgiveness where the pertinent corporate taxpayer either (i) is or is not in bankruptcy at the time of such forgiveness or (ii) is or is not insolvent at the time of such forgiveness. *(Priority: High)*

- Section 1106(i) of the CARES Act provides that “any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness” of a PPP loan “shall be excluded from gross income” for federal tax purposes. One possible outcome under Section 1106(i) of the CARES Act is that the income resulting from a forgiven PPP loan is excluded if that amount otherwise would be included in gross income after application of sections 61(a)(11) and 108. However, if a corporation that experiences PPP loan forgiveness is in bankruptcy or is insolvent at the time of such forgiveness, then, based on the relevant statutory language, section 108(a) could override Section 1106(i) of the CARES Act because the PPP loan forgiveness otherwise would not be includible in gross income. In such a case, it appears to follow that attribute reduction under section 108(b) applies, although it is questionable whether such a result is warranted in these circumstances. Another possible outcome under Section 1106(i) of the CARES Act is that the provision is not limited to the exclusion of cancellation of indebtedness income. For example, the provision could be read to preclude a gross income inclusion resulting from a reduction in asset basis, capital losses, or net operating losses under section 108(b) because that inclusion occurred “by reason of” the forgiveness of the PPP loan. Given these possible outcomes, regulatory guidance addressing these issues would be welcomed.

c. Regulations or other published guidance addressing the treatment (to both buyer and seller) of a PPP loan where (i) there is an asset sale involving an assumption of liabilities, including (x) a deemed asset sale on account of an election under section 338(h)(10) or section 336(e) or (y) an applicable asset acquisition to which section 1060 applies, before a PPP loan is forgiven and (ii) the liability associated with the PPP loan is assumed by the buyer. For example, how is the PPP loan treated for purposes of computing amount realized and basis? *(Priority: Medium)*

2. Guidance related to net operating loss carrybacks.

a. Regulations under section 1502 (possibly including revisions to Treas. Reg. § 1.1502-21) addressing whether a “split-waiver” election under
Treas. Reg. § 1.1502-21(b)(3)(ii) is available for transactions that occurred in 2018 where such an election was not included in the relevant consolidated return filed for that year. Proposed and Temporary Regulations were published on July 8, 2020. (Priority: High)

b. Regulations or other published guidance allowing a split-waiver election to be made with respect to a net operating loss arising in (i) a tax year beginning in 2017 and ending in 2018 or (ii) a tax year beginning in 2018, 2019, or 2020, where an acquired member was a stand-alone corporation in a carryback year. (Priority: High)

- Treas. Reg. § 1.1502-21(b)(3)(ii) allows a split-waiver election only if a member was in another consolidated group in a carryback year. Further, the Proposed and Temporary Regulations published on July 8, 2020, do not depart from this approach.

c. Regulations or other published guidance addressing the application of Notice 2020-26\(^{11}\) by a consolidated group. (Priority: Medium)

- A frequently asked question (“FAQ”) released by the Service on June 29, 2020, indicates that the “extension granted by Notice 2020-26 appl[ies] to consolidated groups.” Given the importance of this outcome for consolidated groups that experienced a consolidated net operating loss for a tax year that began during calendar year 2018 and that ended on or before June 30, 2019, Regulations or other published guidance describing the application of Notice 2020-26 by consolidated groups would be welcomed.

3. Corporate alternative minimum tax and minimum tax credits.

a. Regulations or other published guidance addressing the potential impact of a net operating loss carryback to a tax year to which the corporate alternative minimum tax still applies. (Priority: High)

- FAQs released by the Service on May 27, 2020, suggest that, if a net operating loss arising in a tax year beginning after December 31, 2017, is taken into account in determining the alternative tax net operating loss deduction in a carryback year, there may be a delay in processing any refund sought by the taxpayer with respect to that carryback year. Given the potentially disparate outcomes that could result from opting not

\(^{11}\) 2020-18 I.R.B. 744.
to take into account a net operating loss arising in a tax year beginning after December 31, 2017, in determining the alternative tax net operating loss deduction in a carryback year, Regulations or other published guidance addressing this topic would be welcomed.

b. Regulations or other published guidance addressing the application of the election under section 163(j)(10)(B) to use 2019 adjusted taxable income for a tax year beginning in 2020 where a member joins or departs a consolidated group in 2020 under various circumstances (stock sale, spin-off, etc.). (Priority: High)

c. Regulations or other published guidance addressing the impact of the CARES Act acceleration of the refundability of minimum tax credits carried forward to the first tax year beginning in 2018. (Priority: Medium)

- For corporate taxpayers, the refundability of minimum tax credits that carried forward to the first tax year beginning in 2018 has been accelerated under the CARES Act, either by way of the election available under new section 53(e)(5) or through the other amendments made to section 53(e). If a member of a consolidated group was sold to another consolidated group in 2019 or 2020 before the CARES Act was enacted, with the expectation that the departing member would be allocated a portion of the selling group’s remaining minimum tax credits, those minimum tax credits may no longer exist to be allocated to the departing member. Transition relief may be warranted in such an instance.

ENERGY AND ENVIRONMENTAL TAXES
Amish M. Shah, Chair, (202) 383-0456, amishshah@eversheds-sutherland.com

1. Guidance under section 45J regarding changes made to the nuclear production tax credit by the Bipartisan Budget Act of 2018.12 (Priority: High)

2. Final Regulations under section 45Q regarding changes made to the credit for carbon oxide sequestration by the Bipartisan Budget Act of 2018. Proposed Regulations were published on June 2, 2020. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: High)

EXEMPT ORGANIZATIONS
Carolyn O. (Morey) Ward, Chair, (202) 508-4645, Morey.Ward@ropesgray.com.

1. Guidance allowing public charities to treat grants received in 2020 that are related to the COVID-19 emergency as “unusual grants” for purposes of calculating their public support under Treas. Reg. §§ 1.509(a)-3(c)(3) and 1.170A-9(f)(6)(ii). (Priority: High)

2. Guidance clarifying the dollar limit for married individuals filing joint returns and surviving spouses. Questions have arisen as to the interpretation of the statutory language under section 62(a)(22) and (f)—specifically, whether the $300 limit applies per tax form filed or per individual. Are married individuals filing joint returns using the standard deduction able to take an above-the-line charitable contribution deduction of up to $600 or only up to $300? The Joint Committee on Taxation interprets the provision to mean a $300 limit for married individuals filing joint returns. We recommend that Treasury and the Service provide guidance on this issue to prevent possible confusion. (Priority: High)

3. Guidance regarding the exception in section 4943(g), added by the Bipartisan Budget Act of 2018, for philanthropic businesses, and in particular the meaning of “acquired by means other than by purchase,” and what constitutes “all profits to charity.” (Priority: Low)

INDIVIDUAL AND FAMILY TAXATION
Timothy M. Todd, Individual and Family Taxation Chair, (434) 592-5300, tmtodd@liberty.edu

Regulations or other published guidance under the Coronavirus Preparedness Response Supplemental Appropriations Act, 2020, Families First Coronavirus Response Act, and CARES Act, so that taxpayer can rely on such guidance as substantial authority. If such guidance is not forthcoming, we recommend that

13 Joint Committee on Taxation, Description of the Tax Provisions of Public Law 116-136, The Coronavirus Aid, Relief, and Economic Security Act (JCX-12R-20) at n.76 (April 23, 2020) (“The $300 limit applies to the tax-filing unit. Thus, for example, married taxpayers who file a joint return and do not elect to itemize deductions are allowed to deduct up to a total of $300 in qualified charitable contributions on the joint return.”).


16 Existing guidance is in the form of FAQs posted on IRS.gov and frequently revised. However, FAQs cannot be relied on as substantial authority by taxpayers or practitioners and are not subject to judicial deference. For further discussion, see e.g., Stephanie Hunter McMahon, Classifying Tax Guidance According to End Users, The Tax Lawyer, Vol. 73, No. 2 (2020), available at https://www.americanbar.org/groups/taxation/publications/tax_lawyer_home/20win/mcmahon/; SBSE-04-0517-0030 (May 18, 2017) (“frequently asked questions (FAQs) and other items posted on IRS.gov that have not been published in the Internal Revenue Bulletin are not legal authority”).
the Service update unpublished guidance appearing on the Service’s official website with uniform disclaimers advising taxpayers that such information is for informational purposes only, cannot be used for penalty protection, and is not binding on the Service or on any court. (Priority: High)

PARTNERSHIPS & LLCs
Beverly Katz, Chair, (202) 533-3820, beverlykatz@kpmg.com

Regulations addressing adjustments to bases and capital accounts and the tax and book basis of partnership property under the Bipartisan Budget Act of 2015. Proposed Regulations were published on February 2, 2018, and re-proposed on August 17, 2018. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: High)

PRO BONO AND TAX CLINICS
Caleb Smith, Co-Chair, 612-624-5813, smit2014@umn.edu

Guidance under section 6428 of the CARES Act, Recovery Rebates for Individuals, relating to the following (listed in decreasing order of priority):

1. regulations clarifying whether incarcerated individuals may be considered “eligible individuals” under section 6428(a) or 6428(f) to receive 2020 recovery rebate payments;

2. regulations clarifying whether deceased individuals may be considered “eligible individuals” under section 6428(a) or 6428(f) to receive 2020 recovery rebate payments;

3. guidance clarifying the applicability of the Service’s erroneous refund procedures under section 7405 or common law right to offset for individuals that received advanced payments under section 6428(f) in calendar year 2020 but were not eligible individuals under that section; and

4. guidance clarifying how the section 6428(f)(3)(A) prohibition against advanced refunds and credits being made after December 31, 2020, applies to eligible individuals that were issued advanced payments in 2020 but never actually received the payments.

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18 Congress has granted the Treasury “specific authority” to issue regulations under section 6428(h). The Service has presently issued online guidance in the form of FAQs. See IRS Economic Impact Information Center, available at https://www.irs.gov/coronavirus/economic-impact-payment-information-center. See supra note 16 and accompanying recommendation.
S CORPORATIONS
Bradley Gould, Chair, (772) 464-7700, bgould@deanmead.com

Guidance on the impact of forgiven PPP loans on the outside basis of S corporation stock. (Priority: High)

TAX ACCOUNTING; CAPITAL RECOVERY AND LEASING
Ryan Corcoran, Tax Accounting Chair, (202) 370-8235, ryan.corcoran@rsmus.com;
Tracy Watkins, Capital Recovery and Leasing Chair, (202) 370-8195, tracy.watkins@rsmus.com

(Listed in order of decreasing priority)

1. Guidance on disaster losses under section 165(i).

2. Guidance on the timing of tax-exempt income and allocation of expenses under section 265 for taxpayers that obtained PPP funding where loan forgiveness will not occur until after the taxable year in which the funding is utilized.

TRANSFER PRICING
Elizabeth Stevens, Chair, (202) 862-5039, estevens@capdale.com

Guidance confirming that, in applying section 482 and the Regulations thereunder and in evaluating taxpayers’ compliance with Advance Pricing Agreements, the Service will appropriately take into account the extraordinary effects of COVID-19 travel and similar restrictions on (i) the presence or absence of taxpayers’ employees in the United States and other jurisdictions; and (ii) the financial results of controlled taxpayers and uncontrolled parties. (Priority: High)

IV. GENERAL GUIDANCE

AFFILIATED AND RELATED CORPORATIONS
William R. Pauls, Chair, (202) 220-2059, wpauls@deloitte.com

1. Regulations under section 1502 addressing the application of section 382(l)(5) and (l)(6) in the context of a consolidated group. Treas. Reg. § 1.1502-97 was reserved in T.D. 8824, 1999-2 C.B. 62. (Priority: High)

2. Regulations or other published guidance discussing the application of section 165(g)(3) in the context of a consolidated group. (Priority: High)

- On October 13, 2017, the Service released a statement indicating that it is studying issues associated with the application of
section 165(g)(3) in the context of a consolidated group. This topic has taken on significantly increased importance in the current economic climate. Issues for potential consideration include (i) the character of gross receipts received by a consolidated group member in an intercompany transaction and (ii) whether some form of dispensation may be appropriate in situations where a consolidated group does not have access to documentation or other pertinent information for purposes of determining the gross receipts of a member due to circumstances such as (x) the age of that corporation (and the attendant considerations associated with the relatively recent advent of electronic recordkeeping) or (y) the acquisition of the stock of that corporation from another consolidated group.

3. Regulations under section 1502 (possibly including revisions to Treas. Reg. § 1.1502-76) regarding when a member joins or leaves a consolidated group. Proposed Regulations were published on March 6, 2015. This item is a carryover from the 2018-2019 Priority Guidance Plan. (Priority: High)

4. Regulations under section 1502 (possibly including revisions to Treas. Reg. § 1.1502-75(d)) regarding group continuation. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

5. A revenue ruling amplifying Revenue Ruling 99-6 addressing intercompany sales of partnership interests. This item is a carryover from the 2018-2019 Priority Guidance Plan. (Priority: Medium)

CIVIL AND CRIMINAL TAX PENALTIES
Caroline Ciraolo, Chair, (443) 845-4898, cciraolo@kflaw.com

1. Guidance updating Interim Guidance Memo LB&I-09-1118-014 (Nov. 20, 2018) with respect to voluntary disclosures for employment tax liabilities. The April instructions to Form 14457 (Voluntary Disclosure Practice Preclearance Request and Application) indicated that further guidance is pending on this issue. (Priority: High)

2. Guidance expanding the exception to the filing of Forms 3520 (Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts) and 3520-A (Annual Information Return of Foreign Trust With a U.S. Owner) to include accounts that are similar to, but do not meet the requirements of, Revenue Procedure 2020-17. For example, we recommend including United Kingdom self-invested personal pensions and Canadian tax-

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20 1999-1 C.B. 432.

21 2020-12 I.R.B. 539.
free savings accounts in the filing exception or at least provide a safe harbor for small accounts. (Priority: High)

EMPLOYEE BENEFITS
Andrew Liazos, Chair, (857) 991-8343, aliazos@mwe.com

Additional guidance relating to the use of electronic delivery of notices to participants in employee benefit plans, including coordination of such requirements with the Department of Labor’s final regulations regarding electronic delivery of notices under ERISA.\(^\text{22}\) (Priority: Medium)

EMPLOYMENT TAXES
Ed Leyden, Chair, (301) 390-6600, ejleyden@levydenlaw.com

Guidance under Revenue Procedures 2016-33 and 2017-14\(^\text{23}\) regarding procedures for Certified Professional Employer Organizations (CPEOs). This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: High)

ENERGY AND ENVIRONMENTAL TAXES
Amish M. Shah, Chair, (202) 383-0456, amishshah@eversheds-sutherland.com

Regulations under section 48 to define certain types of property qualifying for the energy credit. Notice 2015-70\(^\text{24}\) requested comments on how to define these types of property. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: High)

EXEMPT ORGANIZATIONS
Carolyn O. (Morey) Ward, Chair, (202) 508-4645, Morey.Ward@ropesgray.com

1. In the event that Treasury is not prohibited at any time during the fiscal year from finalizing Regulations or other guidance relating to the standard that is used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4), Regulations under sections 501(c) and 527 relating to political campaign intervention.\(^\text{25}\) (Priority: High)


\(^{23}\) 2016-25 I.R.B. 1034 and 2017-3 I.R.B. 426, respectively.

\(^{24}\) 2015-43 I.R.B. 604.

2. Regulations pursuant to sections 4958, 4966, and 4967 regarding donor-advised funds. Notice 2017-73\textsuperscript{26} requested comments on specific proposals relating to Proposed Regulations on donor advised funds.\textsuperscript{27} (Priority: High)

3. A revenue ruling under section 4944 regarding the qualification of an equity investment in a limited liability company as a program-related investment.\textsuperscript{28} (Priority: Medium)

4. Guidance under section 4941 regarding a private foundation’s investment in a partnership in which disqualified persons are also partners.\textsuperscript{29} (Priority: Low)

5. Regulations under section 509 clarifying that, in certain circumstances, Type I and Type II supporting organizations that designate their supported organizations by name, rather than by class, are permitted to make distributions to publicly supported organizations other than those specifically designated by name. (Priority: Low)

6. Regulations under section 6104(c) relating to publication of information to state officials. Proposed Regulations were published on March 15, 2011. (Priority: Low)

7. Regulations under section 7611 relating to church tax inquiries and examinations. Proposed Regulations were published on August 5, 2009. (Priority: Low)

**INDIVIDUAL AND FAMILY TAXATION**

Timothy M. Todd, Individual and Family Taxation Chair, (434) 592-5300, tmtodd@liberty.edu

1. Guidance under section 7502 or 7508A regarding the effect of closures of service centers and of the U.S. Tax Court on timely filing, including

\textsuperscript{26} 2017-51 I.R.B. 562.

\textsuperscript{27} See ABA Section of Taxation, Comments on Notice 2017-73, Request for Comments on Application of Excise Taxes With Respect to Donor Advised Funds in Certain Situations (2019), available at https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/041918comments.pdf.

\textsuperscript{28} See ABA Section of Taxation, Comments on New Examples of Program-Related Investments in Proposed Regulations Section 53.4944-3(b) (2012), available at https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/080811comments.authcheckdam.pdf.

\textsuperscript{29} See ABA Section of Taxation, Comments on Issues on Which Precedential Guidance is Needed (2016), available at https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/062216comments.authcheckdam.pdf.
circumstances where private delivery services are unable to deliver mail.\textsuperscript{30} (Priority: High)

2. Guidance regarding the virtual currency question on Form 1040, Schedule 1,\textsuperscript{31} including threshold definitions for each listed activity requiring an affirmative response, and guidance on how taxpayers should report virtual currency transactions that require an affirmative response to the question but that do not result in recognition of gain or loss and are not reported elsewhere on the return. (Priority: Medium)

3. Guidance related to the home office deduction, including (i) updating the safe harbor rate under Revenue Procedure 2013-13\textsuperscript{32} to account for inflation; (ii) addressing employer reimbursements of COVID-19-related work-from-home expenses, including the “convenience of the employer” test for home office expenses; and (iii) addressing the qualification of a home office used by one member of a household when either the same individual or a second member of the household is required to “work-from-home” and uses the home office. (Priority: Medium)

PARTNERSHIPS & LLCs
Beverly Katz, Chair, (202) 533-3820, beverlykatz@kpmg.com

1. Guidance on reporting partners’ tax capital on Form 1065, Schedule K-1 (Partner’s Share of Income, Deductions, Credits, etc.). (Priority: High)

2. Regulations under section 267 on the application of Treas. Reg. § 1.267(b)-1(b) to partners and partnerships, particularly given the increased potential that losses will be realized in the current economic environment. (Priority: Medium)

3. Guidance on the dual status of partners as employees of the partnership.\textsuperscript{33} (Priority: Medium)

4. Guidance on the application of section 1402(a)(13) to members of limited liability companies. (Priority: Medium)

\textsuperscript{30} Recent situations resulting in closures include the federal government shutdown of 2018-2019, as well as the COVID-19 emergency. See Baldwin v. United States, 921 F.3d 836 (9th Cir. 2019).

\textsuperscript{31} Form 1040, Schedule 1 (Additional Income and Adjustments to Income) (2019), asks “At any time during 2019, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?”

\textsuperscript{32} 2013-6 I.R.B. 478.

5. Regulations under section 751(b). Proposed Regulations were published on November 3, 2014. (Priority: Medium)

6. Regulations on the fractions rule of section 514(c)(9)(E). Proposed Regulations were published on November 23, 2016. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

7. Regulations under sections 704, 734, 743, and 755 arising from the American Jobs Creation Act of 2004,34 regarding the disallowance of certain partnership loss transfers and no reduction of basis in stock held by a partnership in a corporate partner. Proposed Regulations were published on January 16, 2014. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

8. Guidance under section 707 on disguised sales, including disguised sales of partnership interests. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

9. Regulations under section 752 regarding related person rules. Proposed Regulations were published on December 16, 2013. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

10. Regulations under sections 761 and 1234 on tax treatment of noncompensatory partnership options. Proposed Regulations were published on February 5, 2013. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

11. Regulations regarding the stock of a corporate partner under section 337(d). Proposed Regulations were published on March 25, 2019. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Medium)

**S CORPORATIONS**

Bradley Gould, Chair, (772) 464-7700, bgould@deanmead.com

Guidance on the statute of limitations for a wholly owned subsidiary mistakenly classified by the parent as a Qualified subchapter S subsidiary. (Priority: High)

TAX ACCOUNTING; CAPITAL RECOVERY AND LEASING
Ryan Corcoran, Tax Accounting Chair, (202) 370-8235,
ryan.corcoran@rsmus.com;
Tracy Watkins, Capital Recovery and Leasing Chair, (202) 370-8195,
tracy.watkins@rsmus.com

1. A revenue procedure under section 263(a) regarding the capitalization of natural gas transmission and distribution property. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Low)

2. Regulations under section 472 regarding dollar-value last-in, first-out inventories, including rules for combining pools as a result of a change in method of accounting, certain corporate acquisitions, and certain nonrecognition transactions. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Low)

3. Regulations amending Treas. Reg. § 1.472-8 regarding the inventory price index computation method. Proposed Regulations were published on November 28, 2016. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Low)

4. Guidance clarifying whether the business use of an aircraft via lease to a five-percent owner or related party of the lessor of the aircraft is qualified business use for the purpose of section 280F. This item is a carryover from the 2019-2020 Priority Guidance Plan. (Priority: Low)

5. Guidance updating and modernizing Revenue Procedure 87-56.35 (Priority: Low)

U.S. ACTIVITIES OF FOREIGNERS AND TAX TREATIES
Jeffrey Rubinger, Chair, (305) 350-7261, jrubinger@bilzin.com

Guidance and/or relief for taxpayers relying on the derivative benefits test to satisfy the limitation on benefits provision in U.S. income tax treaties with most European countries following the United Kingdom’s withdrawal from the European Union. (Priority: High)