



June 05, 2019

Internal Revenue Service
Attn: CC:PA:LPD:PR (NOTICE 2019-30)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Recommendations for the 2019-2020 Guidance Priority List ([Notice 2019-30](#))

Dear Sir/Madam:

The American Institute of CPAs (AICPA) is pleased to offer our suggestions regarding the 2019-2020 Guidance Priority List, which were prepared by the AICPA Tax Policy & Advocacy Division's committees and technical resource panels, and approved by our Tax Executive Committee.

The suggestions are listed under the AICPA working group that developed them, and we have indicated the priority order for our comments under each category of the attached document. For your convenience, contact information for each working group's chair and AICPA staff liaison is listed. Please feel free to contact these individuals directly with your specific questions or concerns.

In addition, the AICPA again encourages the Department of the Treasury and the Internal Revenue Service to continue pursuing tax simplification. Although we recognize you must balance competing interests and concerns when drafting guidance, we urge you to consider the following as part of the process:

- Use the simplest approach to accomplish a policy goal;
- Provide safe harbor alternatives;
- Offer clear and consistent definitions;
- Use horizontal drafting (a rule placed in one Internal Revenue Code ("Code") section should apply in all other Code sections) to the greatest extent possible;
- Build on existing business and industry-standard record-keeping practices;

- Provide a balance between simple general rules and more complex detailed rules; and
- Match a rule's complexity to the sophistication of the targeted taxpayers.

The AICPA is the world's largest member association representing the accounting profession, with more than 431,000 members in 137 countries and territories, and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education and consulting. The AICPA sets ethical standards for its members and U.S. auditing standards for private companies, nonprofit organizations, federal, state and local governments. It develops and grades the Uniform CPA Examination, offers specialized credentials, builds the pipeline of future talent and drives professional competency development to advance the vitality, relevance and quality of the profession.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact me at me at (612) 397-3071 or Chris.Hesse@CLAconnect.com; or Melanie Lauridsen, AICPA Senior Manager, Tax Policy & Advocacy at (202) 434-9235, or Melanie.Lauridsen@aicpa-cima.com.

Sincerely,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is fluid and cursive, with a prominent flourish at the end.

Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

Encl.

AICPA Tax Division
Comments on the
2019 - 2020 Guidance Priority List ([Notice 2019-30](#))
June 05, 2019

Corporations and Shareholders Taxation Technical Resource Panel (Julie Allen, Chair, (202) 414-1393, Julie.allen@us.pwc.com; or Kristin Esposito, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9241, Kristin.Esposito@aicpa-cima.com.)

Tax Cuts and Jobs Act Related¹

1. Provide final regulations related to section² 163(j).³
2. Issue guidance regarding the treatment of pre-2018 recognized built-in losses (RBIL) triggered in taxable years after December 31, 2017 and resulting in excess RBIL under section 382(h)(4). Specifically, clarification is needed regarding whether the net operating loss (NOL) is limited to the 20-year carryforward.

Other Issues

3. Provide guidance regarding the treatment of intercompany transactions in determining satisfaction of the gross receipts test for purposes of section 165(g)(3)(B).
4. Provide guidance for determining when the continuity of business enterprise requirement is satisfied following a section 382 ownership change.
5. Provide guidance on uncertain tax position (UTP) reporting of an acquiring corporation on its Schedule UTP, *Uncertain Tax Position Statement*:
 - Whether an acquiring corporation needs to report on its Schedule UTP, a tax position taken on a selling consolidated group's pre-closing consolidated return for which the selling group did not record a reserve.
 - Whether an acquiring corporation needs to report on its Schedule UTP on the acquiring consolidated group's post-closing return, tax positions already taken on a selling consolidated group's return (where the "only once rule" applies).

¹ Pub. L. No. 115-97 commonly referred to as the Tax Cuts and Jobs Act.

² All references to "section" or "§" are to the Internal Revenue Code of 1986, as amended, and all references to "Treas. Reg. §" and "regulations" are to U.S. Treasury regulations promulgated thereunder.

³ AICPA letter, "[Notice of Proposed Rulemaking Regarding the Limitation on Deduction for Business Interest Expense \[REG-106089-18\]](#)," February 21, 2019.

6. Provide guidance that excludes the application of section 351(g) to redemption transactions between members of a consolidated group where a member redeems its stock through the issuance of non-qualified preferred stock as defined under section 351(g).
7. Provide guidance concerning the application of Rev. Rul. 99-6 involving members of a consolidated group.

Corporations and Their Shareholders

8. Provide guidance, under section 382, on identifying 5% shareholders of public companies.

Employee Benefits Taxation Technical Resource Panel (Jeff Martin, Chair, (703) 946-4467, Jeffrey.Martin@us.gt.com; or Kristin Esposito, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9241, Kristin.Esposito@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Issue proposed regulations under section 274 as follows:
 - Section 274(a)(4) related to nondeductible employee parking expenses.⁴
 - Section 274(k) related to business meals.⁵
2. Issue proposed regulations related to the changes to section 162(m) on the limitation on excessive employee remuneration.
3. Issue final regulations on the definition of a casualty loss as it relates to hardship distributions pursuant to the rules of Treas. Reg. § 1.401(k)-1(d)(3)(iii)(B)(6). One of the safe harbor criteria for hardship distributions from 401(k) plans is for casualty losses within the meaning of section 165. However, the section 165(h) deduction for casualty losses was limited to those occurring in Presidentially-declared disaster areas. Therefore, access to hardship distributions from 401(k) plans for casualty losses in non-Presidentially-declared disaster areas (e.g. the loss of a home due to fire) is eliminated.
4. Provide guidance related to the definition of compensation in section 415 as it relates to section 199A.

⁴ AICPA letter, “[Notice 2018-99 – Parking Expenses for Qualified Transportation Fringes Under § 274 \(a\)\(4\) and § 512\(a\)\(7\) of the Internal Revenue Code](#),” May 14, 2019.

⁵ AICPA letter, “[Request for Immediate Guidance Regarding IRC Section 274 – Disallowance of Certain Entertainment, Etc., Expenses \(Pub. L. No. 115-97, Sec. 13304\)](#),” April 2, 2018.

Exempt Organizations Taxation Technical Resource Panel (Richard J. Locastro, Chair, (301) 951-9090, rlocastro@grfcpa.com; or Elizabeth Young, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9247, Elizabeth.Young@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Issue proposed regulations on computation of unrelated business taxable income for separate trades or businesses under section 512(a)(6). As indicated in [Notice 2018-67](#), this guidance should include methods of allocating expenses relating to dual use facilities.
2. Issue additional guidance on taxation of employee fringe benefits under section 512(a)(7).⁶
3. Issue additional guidance on the excise tax on excess remuneration paid by “applicable tax-exempt organizations” under section 4960.
4. Issue additional guidance on section 4968 that imposes a 1.4% excise tax on net investment income of an “applicable educational institution.”

Other Issues

5. Issue proposed regulations under section 4966 and section 4967 in response to guidance in [Notice 2017-73](#) regarding excise taxes on donor advised funds.
6. Issue final regulations on section 509(a)(3) supporting organizations.
7. Issue final regulations under section 529A on Qualified Achieve a Better Living Experience (ABLE) Programs as added by section 102 of the ABLE Act of 2014. Proposed regulations were published on June 22, 2015.
8. Provide guidance under section 4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
9. Issue final regulations under section 6104(c) (publication to state officials).
10. Issue final regulations designating an appropriate high-level United States (U.S.) Department of the Treasury (“Treasury”) official under section 7611.

⁶ AICPA letter, “[Notice 2018-99 – Parking Expenses for QTF Under §274\(a\)\(4\) and §512\(a\)\(7\)](#),” May 14, 2019.

Individual and Self-Employed Tax Technical Resource Panel (David Baldwin, Chair, (480) 758-5617, Dave@baldwintax.com; or Amy Wang, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9264, Amy.Wang@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Provide guidance on section 199A corrected final regulations (REG-107892-18) and proposed revenue procedures ([Notice 2019-07](#)) including:⁷
 - Allow for aggregation of commercial and residential rental real estate activities.
 - Allow taxpayers that enter into triple net lease arrangements to qualify under the revenue procedure, in situations where the activities of the taxpayer surrounding the triple net lease would otherwise satisfy the requirements outlined in the revenue procedure.
 - Provide clarity around the taxpayer’s use of real property as a residence in which the taxpayer rents a portion and resides in a portion of the real property.
 - Clarify that the time spent by a professional real estate management company would qualify toward the 250-hour requirement.
 - Reduce the 250-hour requirement.
 - Reduce the requirements of contemporaneous documentation as it relates to independent contractors and agents of the taxpayer.
 - Provide additional clarity around reporting, specify what a taxpayer needs to include in the reporting statement, and remove the signatory requirement.
 - Modify Treas. Reg. § 1.199A-1(b)(14) to include rentals to a commonly-owned C corporation as a deemed trade or business for the rental activity. However, aggregation under Treas. Reg. § 1.199A-4(b)(1)(i) should continue to deny aggregation with a commonly-owned C corporation.
 - Modify Treas. Reg. § 1.199A-3(b)(1)(vi) so that taxpayers may allocate the various deductions, which are not direct deductions of the trade or business, proportionately to the businesses based upon relative positive qualified business income (QBI) – net gross receipts.
 - Provide that an excess section 734(b) adjustment generates unadjusted basis immediately before acquisition (UBIA) in the same manner as an excess section 743(b) adjustment.
 - Expand Treas. Reg. § 1.199A-3(b)(1) to include items commonly reported by taxpayers owning or benefiting from relevant pass-through entities (RPEs).
 - Provide guidance on the definition of “separable books and records” to allow taxpayers to determine what constitutes a “separate and distinct” trade or business.
 - Provide guidance on the first-in, first-out rule in Treas. Reg. § 1.199A-3(b)(1)(iv) regarding how to account for pass-through entity (PTE) losses that were disallowed for taxable years ending before January 1, 2018 that are not included when calculating the section 199A deduction. Specifically, we suggest that guidance provide that taxpayers should apply the pre-2018 PTE passive loss carryovers to

⁷ AICPA letter, “[Guidance Concerning the Deduction for Qualified Business Income Under 199A of the Internal Revenue Code](#),” April 9, 2019.

offset separately stated current year items of income prior to offsetting separately stated current year items of income with current year losses.

2. Provide guidance on the section 461(l) excess business loss limitation.⁸
3. Provide guidance that the revised section 163(h) language “qualified residence interest” is interpreted as no longer including home equity debt. Therefore, tracing rules are applied to determine the category of interest this debt produces without the need to make the Treas. Reg. § 1.163-10T(o)(5) election to treat the debt as not secured by the home. Additionally, provide clarification that treating the interest on the home equity debt as described above does not affect the categorization of any acquisition debt that is part of a single loan or home equity debt.
4. Provide guidance on the charitable contribution carryover rule that after 2017, a taxpayer has a carryover under the 50% limit. For example, if a taxpayer makes cash donations in 2018 that total between 50% to 60% of the adjusted gross income, clarify that the 2017 carryover is available for 2018 provided the 60% limit is not exceeded.
5. Provide guidance on whether the annual election under section 266 to capitalize taxes and carrying charges of investment property (previously a 2% miscellaneous itemized deduction), in lieu of deducting the expense, remains available for taxpayers owning real estate – noting that section 266 requires an otherwise deductible expense.
6. Provide guidance on the meaning of “cash” under sections 170(b)(1)(G) and 170(f)(17). Specifically, provide clarity on whether the term “cash” for these two provisions has the same definition.
7. Provide guidance on the interaction between the 80% taxable income limit on NOLs created post-2017 and the 90% alternative minimum taxable income limit for alternative minimum tax (AMT) purposes.

Other Issues

8. Provide guidance on emerging issues including online crowdfunding and the sharing economy, which are quickly expanding mediums through which individuals obtain funds or seek new sources of income.
9. Provide guidance to address ownership and various uses of virtual currency.⁹
10. Provide guidance with respect to when a real estate leasing arrangement rises to the level of a trade or business requiring Form 1099-MISC, *Miscellaneous Income*, reporting by the lessor.

⁸ AICPA letter, “[Request for Guidance Related to Section 461\(l\) – Limitations on Excess Business Losses of Noncorporate Taxpayers](#),” February 28, 2019.

⁹ AICPA letter, “[Updated Comments on Notice 2014-21: Virtual Currency Guidance](#),” May 30, 2018.

11. Update and finalize the longstanding temporary regulations under section 163(h) (Treas. Reg. §§ 1.163-9T and 1.163-10T) to provide greater clarity and certainty to taxpayers and practitioners. Among unsettled issues are the following:
 - Section 163(h)(4)(A) does not provide certainty on how to define a qualified residence or a second residence in the context of divorce.
 - The proper method to determine deductible qualified residence interest when there are multiple debts that exceed the debt limit is not clear.
12. Update and finalize the longstanding temporary regulations under section 163 on interest tracing and identification of the type of interest generated from a debt. Also, incorporate the changes provided in Notices 89-35, 88-37 and 88-20, as well as any clarifications provided in court cases.
13. Provide formal guidance on filing, reporting and income/expense allocation procedures for registered domestic partners and similarly situated couples (e.g., civil unions) located in community property states.
14. Provide guidance on the statutory terms that were introduced by Title XII of the Pension Protection Act of 2006 pertaining to appraisals and individuals performing these appraisals.
15. Provide guidance to clarify the requirements for deductibility of real property taxes under section 164. Guidance is needed on the application of section 164 to payments labeled as real property taxes at the local level.
16. Provide guidance relating to the coordination of a tuition payment and the receipt of a distribution from a section 529 Plan. Specifically, guidance is needed on the permitted period of time prior to and after the payment of a qualified expense to make a qualified distribution. Guidance is also needed on what constitutes a taxable event with regard to the timing of distributions and subsequent payments.
17. Issue proposed regulations on section 529(c)(3)(D) on the recontribution within 60 days of refunded qualified higher education expenses to address the changes made according of the Protecting Americans from Tax Hikes Act of 2015 (the “PATH Act”).
18. Provide guidance regarding issues of basis reporting on Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*.

International Taxation Technical Resource Panel (David Sites, Chair, (202) 861-4104, David.Sites@us.gt.com; or Jonathan Horn, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9204, Jonathan.Horn@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Issue final regulations on Global Intangible Low-Taxed Income (GILTI) under section 951A and section 250, including the section 78 gross-up, the allocation of expenses, and the interaction with section 163(j).
2. Issue final regulations under section 245A including the definition of “other tax benefit” as related to a hybrid dividend.
3. Issue final regulations on foreign derived intangible income under section 250.
4. Issue final regulations under section 59A including clarification on the application of the service cost method exclusion.
5. Issue final regulations under section 267A including clarification on the definition of a hybrid entity.
6. Issue final regulations on the treatment of foreign tax credits under the various new and updated international tax provisions.
7. Provide guidance on changes to the existing Subpart F regime resulting from the enactment of the Tax Cuts and Jobs Act (TCJA).
8. Issue proposed regulations addressing certain issues arising from the TCJA with respect to foreign corporations with previously taxed earnings and profits (E&P) as described in [Notice 2019-01](#).
9. Issue final regulations on the application of section 864(c)(8) including in nonrecognition transactions and on the computation of the amount of gain treated as effectively connected income.
10. Issue computational, definitional and other guidance on the implications of the repeal of section 958(b)(4).

Other Issues

11. Issue temporary or proposed regulations under section 367 as described in [Notice 2016-73](#).
12. Provide more complete and definitive guidance under the passive foreign investment company (PFIC) regulations as follows:

- Update the PFIC regulations to take into account the enactment of section 1297(d), which eliminates the overlap of the PFIC and Subpart F regimes under certain circumstances (including the application of section 1297(d) to a PFIC owned by a U.S. partnership that has U.S. partners) (see e.g., private letter ruling (PLR) 200943004).
 - Provide guidance and explanatory examples under section 1297(c) regarding the 25% ownership look-through rule and its interaction with the section 1297(b)(2)(C) related party income rules.
 - Provide guidance on the application of the definition of passive income under section 1297(b)(1) including whether the section 954(h) exception applies to section 1297 for foreign corporations that are not controlled foreign corporations.
 - Expand guidance under Treas. Reg. § 1.1298-1(b)(2)(i) to allow disclosure of multiple PFICs on the same Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*.
 - Provide guidance on a standardized format for PFIC reporting by flow-through entities to their owners.
13. Provide guidance when finalizing Prop. Reg. § 1.1291-3(e) regarding indirect dispositions of section 1291 when access to books and records necessary to determine the amount of excess distribution is denied by the holder of the PFIC's books and records.
 14. Develop and provide guidance on a procedure under which U.S. partnerships may file a composite individual income tax return on behalf of partners who are nonresident aliens that have been allocated effectively connected income.
 15. Finalize the proposed section 898 regulations on conforming year-ends of certain foreign corporations to the year-ends of their U.S. shareholders.
 16. Provide a regulatory exception under section 6038 for down-stream attribution requiring partnerships, S-corporations, and trusts to file Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*, or Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, for constructive ownership of a foreign corporation (or partnership) created solely for attribution from its partners, shareholders or beneficiaries.
 17. Provide guidance under Treas. Reg. § 1.861-18 regarding the taxation of software as a service, platform as a service and other cloud computing platforms particularly in situations where the provider does not own the servers on which the solution is hosted. Guidance is needed in determining both the character and source of income.

IRS Advocacy & Relations Committee (Chastity Wilson, Chair, (612) 397-3358, Chastity.Wilson@claconnect.com; or Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9235, Melanie.Lauridsen@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Provide additional guidance under section 6662(d)(1), regarding the special rule for taxpayers claiming section 199A deduction, which lowers the penalty threshold from 10% to 5% for those taxpayers. Specifically, guidance is needed on the application of the penalty and available alternatives to avoid the penalty (such as disclosures, safe harbors or reasonable cause exceptions) are needed.

Other Issues

2. Issue regulations under sections 6662A, 6662, and 6664 regarding the accuracy-related penalty and reasonable cause. Specifically, issue regulations under section 6662A which addresses (among other matters): (a) the definition of a “reportable transaction understatement”; (b) coordination of the reportable transaction understatement penalty with the substantial understatement penalty, particularly when multiple years and both penalties are involved; (c) coordination of the reportable transaction understatement penalty with the accuracy-related penalty on underpayments; and (d) application of the penalty (if any) to NOL carryback and carryover years. Additionally, update the sections 6662 and 6664 regulations to reflect numerous statutory changes, such as changes made by the American Jobs Creation Act of 2004.

Partnership Taxation Technical Resource Panel Sarah Allen-Anthony, Chair, (574) 235-6818, Sarah.Allen-Anthony@crowe.com; or Jonathan Horn, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9204, Jonathan.Horn@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Issue final regulations under section 1446(f) for dispositions of certain partnership interests.
2. Provide guidance under section 1061 relating to partnership interests held in connection with performance of services.
3. Provide guidance under section 163(j) regarding:
 - Application of provisions in a tiered partnership structure.
 - Clarification of reporting requirements for partnerships eligible for the small business exception.

Centralized Partnership Audit Regime Related

4. Provide final regulations addressing adjustments to basis and tax attribute rules under Prop. Reg. § 301.6225-4 and Prop. Reg. § 301.6226-4.
5. Provide proposed regulations addressing certain special enforcement matters under section 6241(11) as identified in [Notice 2019-6](#).

Other Issues

6. Provide guidance on the treatment of limited liability company, limited liability partnership and limited liability limited partnership members (and limited partners in light of recent judicial rulings) under section 1402(a)(13).
7. Provide guidance under section 6063 defining the circumstances in which an originally filed partnership tax return is considered validly signed by a partner, within the meaning of this statute. In addition, guidance is needed regarding the circumstances under which the partnership representative's signature is considered valid on an original return, an amended return or a power of attorney for the partnership.
8. Provide guidance on the meaning of partners' interest in the partnership in connection with the use of targeted allocations under section 704(b), including under what circumstances the targeted allocations would qualify under the economic effect equivalence test under the regulations.¹⁰

¹⁰ AICPA letter, "[Draft Revenue Ruling on Partnership Targeted Allocations](#)," February 11, 2014.

9. Provide additional guidance on the definition and calculation of the Negative Tax Basis Capital Account required for inclusion on Form 1065, *U.S. Return of Partnership Income*, beginning with 2018 tax years.

S Corporation Taxation Technical Resource Panel (Robert Keller, Chair, (504) 584-1030, rkeller@kpmg.com; or Amy Wang, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9264, Amy.Wang@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Provide guidance on the treatment of the section 1371(f) distributions, including guidance on how distributions during the expanded post-termination transition period will be allocated between the accumulated adjustments account (AAA) and accumulated E&P.

Other Issues

2. Provide guidance regarding the proposed no-rule policy. Specifically, we request for the Internal Revenue Service (IRS) to:¹¹
 - Define formally and publish the parameters of the no-rule policy, and
 - Issue a revenue ruling or other authoritative pronouncement to provide clarity for certain S corporation matters on which the IRS will no longer rule.
3. Provide guidance regarding worthless stock deductions under section 165(g) for S corporations.
4. Develop a new shareholder-level basis schedule that shareholders are required to attach to any income tax return with items of income, loss, deduction, or credit of an S corporation.
5. Provide guidance under section 1367 regarding basis ordering rules of certain suspended losses.
6. Provide guidance regarding the computation of the period of limitations when a subsidiary of a corporation is improperly treated as a qualified subchapter S subsidiary (QSub) and all of its income, deductions, and credits are included in an S corporation return filed by the parent corporation.
7. Provide guidance as to whether the ability to decant a trust precludes the trust from qualifying as a qualified subchapter S trust within the meaning of section 1361(d).
8. Issue a revenue ruling incorporating the guidance from PLRs 201306004 and 201306005. Specifically, regarding whether a second class of stock is created if an S corporation has a governing provision allowing distributions based on the shareholders' varying interests in the S corporation's income for any taxable year.

¹¹ AICPA letter, "[IRS Informal 'No-Rule' Policy on Certain S Corporation Matters](#)," May 02, 2018.

9. Update Treas. Reg. § 1.1361-5 to reflect the addition of clause (ii) (relating to termination of a QSub by reason of the sale of the QSub stock) to section 1361(b)(3)(C) made by section 8234 of P.L. 110-28. We offer the following to accomplish this change:
 - Delete the obsolete portion of existing regulation;
 - Add a sentence to indicate that the old rules apply only for years before the effective date of the changes; or
 - Revise and expand the regulations to indicate that the old rules apply to years before the effective date of the changes and also set forth new rules that apply for years after the effective date of the changes.
10. Provide additional guidance as to when, for AMT purposes, S corporations will have attributes that are different for regular tax and AMT purposes.
11. Provide additional guidance as to whether a state tax refund attributable to the S portion of an Electing Small Business trust is allocated to the S portion. Specifically, issue guidance providing that the items attributable to the S portion include allocating the state tax refund to the S portion.
12. Provide additional guidance regarding the inability to utilize certain suspended passive activity losses upon redemption when the sale of S corporation stock is to a related party described in sections 267(b) and 707(b)(1).
13. Provide additional guidance regarding the ordering rule for adjustments to the AAA when ordinary and redemption distributions are made in the same year and an ordinary distribution occurs after the redemption distribution.
14. Provide guidance regarding the application of section 302(b)(4) to distributions by an S corporation. Specifically, guidance is needed on whether the shareholders can use an aggregate basis approach in a partial liquidation.
15. Provide guidance on the application of section 904(f) rules, relating to the recapture of overall foreign loss, to terminations of S corporations and the corresponding basis adjustments that are required to avoid double or triple taxation with respect to the same item.

Tax Methods and Periods Technical Resource Panel (Connie Cunningham, Chair, (310) 951-1694, ccunningham@bdo.com; or Elizabeth Young, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9247, Elizabeth.Young@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Provide guidance on TCJA changes to section 168(k).
2. Provide definitional and other guidance under revised section 451(b) and (c).
3. Provide further guidance on adopting small business accounting method changes under sections 263A, 448, 460, and 471.¹²
4. Provide computational, definitional, and other guidance under revised section 163(j).¹³
5. Provide additional guidance under section 162(f) and section 6050X.¹⁴
6. Provide guidance under section 179 for the specific types of assets that qualify as “qualified real property” under section 179.
7. Provide guidance under section 1256 regarding the definition of a tax shelter.¹⁵
8. Provide guidance allowing method changes on amended returns for section 965 transition tax year for any method change that increases a section 965 inclusion amount. In addition, provide guidance allowing taxpayers to elect a one-year spread period to include the entire adjustment into the computation of the section 965(a) earnings.
9. Update Rev. Proc. 2015-13 to disregard the 150% rule in Section 8.02(5).¹⁶
10. Provide guidance to address whether taxpayers should adopt new methods for the tested income regime under section 951A.
11. Provide guidance to address whether the use of the alternative depreciation system in the calculation of the qualified business asset investment requires an accounting method change.

¹² AICPA letter, “[Impact of Pub. L. No. 115-97 on Accounting Methods for Small Business Taxpayers](#),” July 23, 2018.

¹³ AICPA letter, “[Notice of Proposed Rulemaking Regarding the Limitation on Deduction for Business Interest Expense \[REG – 106089-18\]](#),” February 21, 2019.

¹⁴ AICPA letter, “[Notice 2018-23 – Transitional Guidance Under Sections 162\(f\) and 6050X with Respect to Certain Fines, Penalties and Other Amounts](#),” June 13, 2018.

¹⁵ AICPA letter, “[Small Business Relief from Definition of Tax Shelter](#),” February 13, 2019.

¹⁶ AICPA letter, “[Audit Protection for Controlled Foreign Corporations under Section 8.02\(5\) of Revenue Procedure 2015-13](#),” December 17, 2018; AICPA letter, “[Audit Protection for Controlled Foreign Corporations under Section 8.02\(5\) of Revenue Procedure 2015-13](#),” August 30, 2018.

Other Issues

12. Provide regulatory and/or procedural guidance under section 263A(f) that provide rules: (1) for applying section 263A(f) to related parties; (2) modifying Treas. Reg. § 1.263A-9 to permit taxpayers to use reasonable methods to allocate capitalizable interest to units of designated property; (3) modifying Treas. Reg. § 1.263A-9(d)(1) with respect to the election to trace debt; (4) modifying Treas. Reg. § 1.263A-8(b)(4) to make application of the *de minimis* rule for determining designated property elective; and (5) including routine interest capitalization changes in the list of automatic method changes, as well as other modifications and clarifications to the present regulations, notices, and other procedural guidance.
13. Provide guidance regarding advance payments under section 451:
 - Address the treatment of advance payments that are adjusted through purchase accounting in connection with an acquisition of stock (taking into account public comments with respect to the proposed regulations).
 - Address the treatment of advance payments between members of an affiliated group that are eliminated in consolidated financial statements.
 - Issue final regulations under section 451 regarding advance payments received for goods and services, including amounts received in exchange for the sale or issuance of gift cards, trading stamps, and loyalty points that are redeemable for goods or services.
 - Issue additional procedural guidance for accounting method changes necessitated by the Joint Financial Accounting Standards Board – International Accounting Standards Board Revenue Recognition Standard.
14. Modify and clarify Rev. Procs. 2018-31 and 2015-13 to, among other things, reinstate the 90-day window, and include additional method changes in the List of Automatic Method Changes.¹⁷
15. Provide guidance under section 263(a) regarding the capitalization of natural gas transmission and distribution property.
16. Provide guidance regarding changes in method of accounting for section 174 research and experimental expenses, including guidance for taxpayers making accounting method changes to comply with final Treas. Reg. § 1.174-2.
17. Issue final regulations under section 460 regarding the definition of a home construction contract, including the treatment of condominiums, for purposes of the completed contract method, and rules for certain changes in method of accounting for long-term contracts.

¹⁷ AICPA letter, "[Comments on Rev. Proc. 2018-31](#)," May 8, 2019.

18. Issue final regulations under section 267(a)(3)(B) addressing transactions entered into in the ordinary course of a trade or business in which the payment of the accrued amounts occurs within 8 ½ months after year end and transactions in which an amount accrued is includible in the E&P of a controlled foreign corporation.
19. Modify the regulations under section 170(e)(3) to provide that, for qualified contributions of inventory, the basis of the contributed inventory is included in cost of goods sold, and only the incremental “enhanced deduction” is treated as a charitable contribution subject to the 10% taxable income limitation for corporations under section 170(b)(2).
20. Provide guidance under section 453:
 - Issue proposed regulations under section 453A regarding contingent payment sales.
 - Issue final regulations under section 453B regarding non-recognition of gain or loss on the disposition of certain installment obligations.
21. Issue proposed regulations under section 472 regarding the carryover of last-in, first-out layers following a section 351 or section 721 transaction.
22. Issue proposed regulations under section 472 to provide rules relating to internal management reports.
23. Issue revenue procedure under section 168(k)(4) regarding election to accelerate carryover AMT credits in lieu of claiming bonus depreciation.

Tax Practice Responsibilities Committee (Joseph F. Scutellaro, Chair, (732) 460-4060, Joe.Scutellaro@cohnreznick.com; or Henry J. Grzes, Lead Manager – AICPA Tax Practice & Ethics, (919) 402-4889, Henry.Grzes@aicpa-cima.com.)

Other Issues

1. Provide guidance related to certain core principles (including “significant” and “avoidance”) for defining “tax shelter” under section 6662(d).
2. Provide guidance under section 6676(a) as to the level of authority needed to establish reasonable cause. There is uncertainty whether a penalty is imposed for a claim for refund or credit that was supported by reasonable basis.
3. Provide guidance regarding criteria the IRS will use in determining whether to:
 - Assert a section 6694 preparer penalty;
 - Refer a matter to the Office of Professional Responsibility, particularly in the case of alleged violations under the section 6694 preparer penalty provisions; and
 - Impose a sanction or otherwise limit a practitioner in providing tax practice services.
4. Provide guidance in connection with changes made under the PATH Act, related to the prevention of retroactive claims for various credits (section 32(m) - earned income credit, section 24(e) – child tax credit and section 25A(i) – American Opportunity Tax Credit).¹⁸
5. Provide guidance regarding signature authority and signature protocols in the following areas:
 - Issue criteria as to who can sign the e-file authorization form, specifically, in the Form 8879, *IRS e-file Signature Authorization*, instructions.
 - Issue guidance that the IRS follow federal law to adopt regulations consistent with the Electronic Signatures in Global and National Commerce Act of 2000, to permit the use of electronic signatures for all returns and other documents. This is particularly necessary when manual signatures are still required for certain documents (e.g., Form 8879-C, *IRS e-file Signature Authorization for Form 1120*).¹⁹
6. Additional clarification of [Notice 2009-5](#) (IRB 2009-03) is requested as well as incorporating such guidance as appropriate in sections 6662, 6664 and/or 6694 regulations and correcting the sections 6662 and 6664 regulations for the 2004 changes to section 6662(d)(2)(C).

¹⁸ For additional information, see Sections 204, 205 and 206 DivQ of P.L. 114-113 and General Explanation of Tax Legislation Enacted in 2015 - Joint Committee on Taxation ([JCS-1-16](#), page 225 et seq.).

¹⁹ See IRS website “[New esignature Guidance for IRS efile](#)”.

Trust, Estate and Gift Tax Technical Resource Panel (Peggy Ugent, Chair, (512) 983-8285, peggyugent@gsrjlaw.com; or Eileen Sherr, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9256, Eileen.Sherr@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Provide guidance regarding a beneficiary’s ability to claim excess deductions allowed to the beneficiary upon the termination of a trust or estate under section 642(h)(2),²⁰ including:
 - Clarify that section 642(h)(2) excess deductions are not miscellaneous itemized deductions subject to section 67(g) and are fully deductible by beneficiaries succeeding to the property of a terminated non-grantor trust or estate under the authority of section 642(h)(2).
 - Amend regulations, to the extent that section 642(h)(2) excess deductions are attributable to expenses described in section 67(e)(1), to provide that section 67(e)(1) related excess deductions are deductible by the beneficiary in determining the beneficiary’s adjusted gross income.
 - Provide that all other section 642(h)(2) excess deductions are deductible by the beneficiary in determining the beneficiary’s taxable income.
 - Clarify that expenses that are miscellaneous itemized deductions paid during an estate’s fiscal tax year starting before January 1, 2018 are deductible by the estate as miscellaneous itemized deductions even though some of those expenses are paid in 2018.
 - Provide consistent instructions for Schedule K-1 of Form 1041, *U.S. Income Tax Return for Estates and Trusts*, and Line 16 of Schedule A, *Itemized Deductions*, of Form 1040, *U.S. Individual Income Tax Return*, regarding beneficiaries’ ability to deduct trust and estate excess deductions.
2. Issue final regulations on the increased basic exclusion amount (BEA) for estate and gift taxes, including clarification that if the BEA is lower in future years (due to the 2026 expiration of the provision in the TCJA or other Congressional action), a taxpayer is allowed a deceased spousal unused exclusion (DSUE) that is not lower than the DSUE on the filed tax return of the first spouse to die (and not a lower BEA when the second spouse dies).²¹
3. Provide regulations referenced in [Notice 2018-37](#), (issued 4/13/18) regarding trust income payable to a former spouse who was divorced or legally separated under a divorce or separation instrument executed on or before Dec. 31, 2018.

²⁰ AICPA letter, “[Notice 2018-61 Concerning a Beneficiary’s Ability to Claim Excess Deductions Pursuant to Section 642\(h\)](#),” October 31, 2018.

²¹ AICPA letter, “[Comments on Proposed Regulations Regarding Estate and Gift Taxes and the Difference in the Basic Exclusion Amount](#),” February 15, 2019.

4. Provide additional guidance regarding section 965 and trusts and estates.²²
5. Provide additional guidance relating to section 199A and trusts and estates.²³
6. Provide additional guidance relating to S corporations and trusts and estates.²⁴
7. Provide additional guidance relating to section 461(l) excess business losses and trusts and estates.²⁵
8. Provide additional guidance regarding penalty relief for estimated taxes for trusts and estates.²⁶
9. Provide additional guidance regarding GILTI and trusts and estates.²⁷

Other Domestic Issues

10. Issue final regulations on compliance with consistent basis reporting between an estate and persons acquiring property from decedents.
11. Revise Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and instructions.
12. Issue final regulations, including examples, on the simplified method for computing net investment income under section 1411 for distributions from charitable remainder trusts.
13. Provide guidance regarding transfers by a trustee of an irrevocable trust to another irrevocable trust (often referred to as decanting).
14. Provide a final ruling on the consequences under various estate, gift, and generation-skipping trust (GST) tax provisions of using a family-owned company (private trust company) as the trustee of a trust.

²² AICPA letter, "[Application of 2017 Estimated Tax Payments to Section 965\(h\) Installment Obligations](#)," September 17, 2018, and AICPA letter, "[Proposed Guidance Regarding the Transition Tax Under Section 965 and Related Provisions \(REG-104226-18\)](#)," October 31, 2018.

²³ AICPA letter, "[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#)," October 1, 2018, and AICPA letter, "[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#)," April 9, 2019.

²⁴ AICPA letter, "[Request for Immediate Guidance Regarding S Corporation Items Included in Pub. L. No. 115-97](#)," August 13, 2018.

²⁵ AICPA letter, "[Request for Guidance Related to Section 461\(l\) – Limitations on Excess Business Losses of Noncorporate Taxpayers](#)," February 28, 2019; AICPA letter, "[Recommendation for the 2018 Instructions for Form 461 – Limitation on Business Losses](#)," April 3, 2019.

²⁶ AICPA letter, "[Penalty Relief Needed for Taxpayers for 2018 Filing Season](#)," January 28, 2019.

²⁷ AICPA letter, "[Proposed Guidance Related to Section 951A \(Global Intangible Low-Taxed Income\) \(REG-104390-18\)](#)," January 10, 2019.

15. Provide guidance on the ability to split gifts under section 2513 in *Crummey* or similar situations, where the donee spouse has an interest in the trust and others have the ability to withdraw the contributed assets but trust beneficiaries may withdraw all the transfers made to the trust during the year.
16. Expand regulations under section 6034 to add an administrative exception to the Form 1041-A, *U.S. Information Return Trust Accumulation of Charitable Amounts*, filing requirement for complex trusts that claim charitable deductions under section 642(c) solely for contributions flowed through to them from partnerships and S corporations.
17. Provide a simplified procedure to obtain an extension of time to elect out of the automatic allocation of the GST exemption to indirect skips and at the end of the estate tax inclusion period, similar to Rev. Proc. 2004-46.
18. Provide guidance regarding the appropriate means and timing of GST allocations to pour over trusts from a Grantor Retained Annuity Trust terminations. Guidance, and examples, is also needed under section 2632(c)(5)(A)(i) addressing the application of the GST exemption automatic allocation rules for indirect skips in a situation in which a trust subject to an estate tax inclusion period (ETIP) terminates upon the expiration of the ETIP, at which time the trust assets are distributed to other trusts that are possibly GST trusts.
19. Provide final regulations under section 2642(g) regarding extensions of time to make allocations of GST exemption.
20. Provide guidance for marital trusts under section 2056(b)(7) similar to Rev. Rul. 2006-26, regarding plans other than individual retirement accounts and defined contribution plans (i.e., defined benefit plans and deferred compensation plans).
21. Provide guidance under section 2632(c), regarding the deemed allocation of GST exemption to certain lifetime transfers to GST trusts. In particular, clarification is requested with regard to the exceptions to the definition of a GST trust contained in section 2632(c)(3)(B)(i)-(vi) as well as the exception in the flush language of this section dealing with gift tax annual exclusions.
22. Provide guidance on how the taxpayer can allocate additional GST exemption (as a result of the inflation adjustment each year) to a transfer made in the prior year. In particular, guidance should include whether an allocation on the gift tax return timely filed for the prior year is effective as of January 1 and what valuation date is used for purposes of determining the new inclusion ratio.
23. Provide a harmonization of what is necessary to satisfy the adequate disclosure requirements of Treas. Reg. §§ 301.6501(c)-1(e) and -1(f). At a minimum, Treas. Reg. § 301.6501(c)-1(e) should contain a safe harbor for appraisal reports as exists in Treas. Reg. § 301.6501(c)-1(f).

24. Amend the regulations under sections 6042 and 6049 to require payors to provide charitable remainder trusts information about interest and dividends paid to them in order for the charitable remainder trusts to comply with the ordering rules of section 664(b).

Other Foreign Issues

25. Provide guidance on the application of section 1411 to accumulation distributions from foreign trusts to U.S. beneficiaries, including the method to determine the portion of the distribution, if any, attributable to income accumulated in years prior to the effective date of section 1411.
26. Provide guidance on issues relating to foreign trusts and the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), including guidance on the section 679(d) presumption that a foreign trust has U.S. beneficiaries.
27. Provide further guidance on issues relating to reporting of foreign accounts by U.S. beneficiaries of foreign trusts on the Foreign Bank and Financial Accounts, and U.S. beneficiary reporting of foreign accounts and foreign financial assets owned by foreign trusts, as required by section 6038D.
28. Change the due date of Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under Section 6048(b))*, from March 15 to April 15, to coincide with the due date for calendar year filers of related returns.
29. Provide guidance on whether a foreign grantor trust with a U.S. grantor is required to file Form 1041 or Form 1040NR, *U.S. Income Tax Return for Foreign Estates and Trusts*, and whether a foreign grantor trust with a foreign grantor and some U.S. income is required to file Form 1041 or Form 1040NR.
30. Provide guidance on the reporting and recognition of gain under the expatriation mark-to-market rules in section 877A, including guidance on the interplay of sections 877A and 684, relating to a transfer or deemed transfer to a foreign estate or trust as a result of an individual's expatriation.
31. Provide guidance on how the GST tax applies to grandfathered domestic trusts that become foreign trusts.
32. Provide further guidance in addition to the proposed regulations ([REG-11299710](#)) regarding several aspects of section 2801.
33. Provide guidance (including safe harbor guidelines) as to what qualifies as a "reasonable period of time" for a U.S. grantor or beneficiary of a foreign trust to pay the trust the fair market value (FMV) for the personal use of trust property under section 643(i)(2). This guidance should also include information regarding the determination of the proper FMV

measurement and an exception for reporting *de minimis* amounts, as accounting for *de minimis* amounts is administratively impractical.

34. Provide regulations to enhance guidance in [Notice 2009-85](#) regarding the reporting of tax withholding and payment of these taxes by trustees to the IRS. This guidance should also define “adequate security” for a “tax deferred agreement” for the covered expatriate’s return under section 877A(b).
35. Provide regulations under section 6677 regarding the failure to file information returns with respect to certain foreign trusts.
36. Modify Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, and Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*, to assist in tracking U.S. withholding credit to which a U.S. beneficiary is entitled due to withholding flowing through a foreign non-grantor trust.