



August 7, 2020

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2020-47)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Recommendations for the 2020-2021 Guidance Priority List ([Notice 2020-47](#))

Dear Sir/Madam:

The American Institute of CPAs (AICPA) is pleased to offer our suggestions regarding the 2020-2021 Guidance Priority List, which was 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:

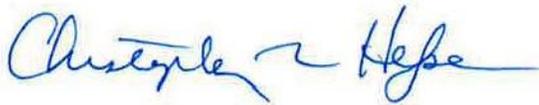
- Use the simplest approach to accomplish a policy goal;
- Provide safe harbor alternatives;
- Offer clear and consistent definitions;
- Use horizontal drafting (a rule placed in one Internal Revenue Code ("Code") section should apply in all other Code sections) to the greatest extent possible;
- Build 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 the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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 long horizontal flourish extending to the right.

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

Encl.

AICPA Tax Division
Comments on the
2020 - 2021 Guidance Priority List ([Notice 2020-47](#))
August 7, 2020

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. Provide final regulations on the treatment of net operating loss (NOL) carrybacks and split-waiver elections under Treas. Reg. § 1.1502-21(b)(3)(ii)(B) for 2018 transactions.
3. Provide guidance on the interaction of limitation regimes (e.g., section 383 and a separate return limitation year) with the refundable credit mechanism adopted in section 53(e).
4. Provide guidance on section 247 related to contributions by Alaskan Native Corporations to Settlement Trusts:
 - Coordination of taxable income limitations under sections 247 with 172 and section 163(j).
 - Clarify ambiguity created by reference to the Settlement Trust recognizing income in the year the contribution is received equal to the amount of the deduction allowed, when the deduction may not be allowed in the year the contribution is received. Specifically, clarify if the income should match the deduction or if the income arises in the year it is received.

CARES Act Related⁴

5. Provide published guidance addressing the interaction of carryback provisions with the former corporate alternative minimum tax (AMT) regime, including precedential guidance on the calculation of any alternative tax NOL arising in a post-2017 tax year.

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.

⁴ Pub. L. No. 116-136 commonly referred to as the CARES Act.

General Issues

6. Provide guidance regarding the treatment of intercompany transactions in determining satisfaction of the gross receipts test for purposes of section 165(g)(3)(B).
7. Provide guidance for determining when the continuity of business enterprise requirement is satisfied following a section 382 ownership change.
8. 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 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).
9. 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).
10. Provide guidance concerning the application of Rev. Rul. 99-6 involving members of a consolidated group.
11. Provide guidance, under section 382, on identifying 5% shareholders of public companies.

Employee Benefits Taxation Technical Resource Panel (Deborah Walker, Chair, (202) 257-5609, dwalker@cbh.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 final regulations under section 274 as follows:
 - Section 274(a)(4) related to nondeductible employee parking expenses.⁵
 - Section 274(k) related to business meals.⁶
 - Section 274(l) guidance on employer-paid employee commuting expenses.
2. Issue final regulations related to the changes to section 162(m) on the limitation on excessive employee remuneration.

CARES Act Related

3. Provide published guidance on the employee retention credit.
4. Provide form instructions and lines for repaying CARES Act payroll tax deferrals.

SECURE Act Related⁷

5. Provide guidance related to the following items:
 - a. Changes to 401(k) plans.
 - b. Adopting a 401(a) plan after year end.
 - c. Revised distribution rules for birth or adoption of a child

General Issues

6. Provide guidance on aggregation under section 414(m).
7. Provide guidance on student loans and section 401(k) and section 403(b) plans.

⁵ 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.

⁶ 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.

⁷ Pub. L. No. 116-94 commonly referred to as the SECURE Act.

Exempt Organizations Taxation Technical Resource Panel (Jennifer Becker Harris, Chair, (425) 454-4919, jharris@clarknuber.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 final 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. Proposed regulations were published on April 24, 2020.
2. Issue final regulations on the excise tax on excess remuneration paid by “applicable tax-exempt organizations” under section 4960. Proposed regulations were published on June 11, 2020.
3. Issue final regulations on section 4968 that imposes a 1.4% excise tax on net investment income of an “applicable educational institution.” Proposed regulations were published on July 3, 2019.

CARES Act Related

4. Issue guidance regarding the treatment of the Paycheck Protection Program (PPP) loan forgiveness for exempt organizations both for the characterization on the Form 990, *Return of Organization Exempt from Income Tax*, and public support test.

General 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. Proposed regulations were published on February 19, 2016.
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). Proposed regulations were published on March 15, 2011.

10. Issue final regulations designating an appropriate high-level United States (U.S.) Department of the Treasury (“Treasury”) official under section 7611. Proposed regulations were published on August 5, 2009.
11. Issue guidance on section 4943(g) philanthropic businesses.

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 Revenue Procedure 2019-11 including:⁸
 - Clarify that for section 199A purposes, all W-2 wages, including those amounts attributable to forgiven PPP loans, are still includible in the W-2 wage factor in calculating qualified business income (QBI).
 - Provide guidance related to the definition of compensation in section 415 as it relates to section 199A.
 - Clarify that the deductible portion of self-employment tax under section 164(f), the deduction for self-employed health insurance under section 162(l), and the deduction for contributions to qualified retirement plans under section 404, do not automatically reduce QBI.⁹
 - Modify Treas. Reg. § 1.199A-3(b)(1)(vi) to provide 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 QBI, not based upon gross receipts.
 - Update form instructions to Forms 8995, *Qualified Business Income Deduction Simplified Computation*, and 8995-A, *Qualified Business Income Deduction*, to conform the instructions on charitable contributions to Treas. Reg. § 1.162-20(a)(2). Confirm that certain charitable contributions paid by a business for charitable purposes are unrelated to the trade or business of the taxpayer. Specifically, confirm that charitable contributions to organizations described in section 170(c) are not business expenses under section 162, but rather, a deduction authorized under section 170. Deductions allowed by section 170 do not reduce QBI.
 - Update Treas. Reg. § 1.199A-6(d)(3)(i) to specifically provide that the calculation of QBI for trusts and estates should not include indirect expenses as a reduction of QBI. Additionally, update the QBI calculation example in Treas. Reg. § 1.199A-6(d)(3)(viii) to provide that the state and local taxes and trustee fees discussed therein are solely indirect expenses and, thus, not allocated to QBI.
 - Provide that an excess section 734(b) adjustment generates unadjusted basis immediately before acquisition in the same manner as an excess section 743(b) adjustment.

2. 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.

⁸ AICPA letter “[Guidance on the Qualified Business Income Deduction Under Section 199A](#),” March 4, 2020.

⁹ See IRS website: “[Tax Cuts and Jobs Act, Provision 11011 Section 199A - Qualified Business Income Deduction FAQs](#),” Question #32.

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.

3. 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.
4. 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.
5. Provide guidance on the section 461(l) excess business loss limitation.¹⁰

CARES Act Related

6. Provide guidance on the interplay of section 199A and the new five-year carryback period for 2018 – 2020 NOLs. Guidance is unclear as to how an individual with an NOL carryback applies a net QBI loss for the loss years. Section 199A(c)(2) indicates that net QBI losses are carried forward (no carryback) to the succeeding tax year. Treasury and the Internal Revenue Service (IRS) should provide clarity on whether carrying back the NOL while carrying forward the net QBI loss is allowed.
7. Provide guidance on the provision that allows deductibility of the cash charitable deductions up to 100% of adjusted gross income (AGI) (and 25% of taxable income for a corporation). Specifically:
 - Provide guidance on how and when the election is made.
 - Provide examples of how these contributions interact with carryover contributions from prior years and current year contributions in other AGI limitation categories.
 - Provide confirmation that this special deduction is also applicable in computational situations that cross reference section 170 deductions (*e.g.*, sections 512(b)(10)-(11), 545(b)(2), 641(c)(2)(E), and 681).
8. Provide guidance that the receipt and forgiveness through the PPP and receipt of a COVID-19 Economic Injury Disaster Loan Emergency Advance (EIDL Advance) does not affect the deductibility of ordinary business expenses. Specifically, allow taxpayers to deduct covered expenses paid or incurred by an eligible recipient of PPP loan or EIDL Advance.

¹⁰ AICPA letter “[Request for Guidance Related to Section 461\(l\) – Limitations on Excess Business Losses of Noncorporate Taxpayers](#),” February 28, 2019.

General Issues

9. Provide guidance on the taxation of virtual currency.¹¹

¹¹ AICPA letter “[Comments on Revenue Ruling 2019-24, the New Question on Schedule 1 \(Form 1040\), and the Internal Revenue Service’s Frequently Asked Questions on Virtual Currency Transactions](#),” February 28, 2020.

International Taxation Technical Resource Panel (David Sites, Chair, (202) 861-4104, David.Sites@us.gt.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. Issue final regulations under section 245A including the definition of “other tax benefit” as related to a hybrid dividend.
2. Issue final regulations under section 59A including clarification on the application of the service cost method exclusion.
3. Issue final regulations under section 267A including clarification on the definition of a hybrid entity.
4. Issue final regulations on the treatment of foreign tax credits under the various new and updated international tax provisions.
5. 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.
6. 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.
7. Issue computational, definitional and other guidance on the implications of the repeal of section 958(b)(4).

General Issues

8. Issue temporary or proposed regulations under section 367 as described in [Notice 2016-73](#).
9. 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 (CFC).
 - 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.
 - Provide further and definitive guidance under the PFIC regulations by reviewing and potentially increasing the *de minimis* reporting exception from the current \$25,000 threshold, such as an increase to mirror the Form 8938, *Statement of Specified Foreign Financial Assets*, reporting thresholds.
10. 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.
 11. 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.
 12. Finalize the proposed section 898 regulations on conforming year-ends of certain foreign corporations to the year-ends of their U.S. shareholders.
 13. 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.
 14. 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.
 15. Provide guidance under section 986(c) on how to compute foreign exchange gain and loss when taxpayers have tiered CFCs with different functional currencies, including in the section 964(e) context.
 16. Review current international information return requirements and consider additional exemptions similar to Rev. Proc. 2020-17. The following are some potential increased thresholds and exemptions to consider:
 - Expansion of foreign trusts eligible for the exemption from Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign*

Gifts, and Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (Under Section 6048(b)), reporting pursuant to Rev. Proc. 2020-17.

- Increase of Form 3520 reporting threshold, or at a minimum, threshold for automatic penalty assessment, for foreign gifts and inheritances.

IRS Advocacy & Relations Committee (Kathy Petronchak, Chair, (832) 373-6463, kpetronchak@comcast.net; 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).

General Issues

2. The IRS should provide guidance authorizing electronic services (E-Services) registrants to submit a Power of Attorney (POA) (Form 2848, *Power of Attorney and Declaration of Representative*) on the E-Services platform, similar to the method currently used for Form 8879, *IRS e-file Signature Authorization*, e-filing authorization and as previously available. Furthermore, as highlighted by the impact of COVID-19, a permanent solution is needed for submitting the POA through E-Services.
3. Issue regulations under sections 6662A, 6662, and 6664 regarding the accuracy-related penalty and reasonable cause. Specifically, issue regulations under section 6662A that address (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 Alexander Scott, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9204, Alexander.Scott@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Issue guidance under section 461(l) as to its application to sales of partnership interests.
2. Issue final regulations under section 1446(f) for dispositions of certain partnership interests.

CARES Act Related

3. Issue guidance on the application of the PPP forgiveness to partnerships. Specifically, we request for the IRS to provide an authoritative pronouncement on:
 - Reporting treatment of forgiveness amounts related to guaranteed payments to partners which were used in the forgiveness calculation amount,
 - Clarifying the treatment of forgiveness of PPP proceeds as tax-exempt income and not as cancellation of indebtedness income with regards to partnership allocations, and
 - Applying of the PPP on partners’ basis in the partnership.
4. Provide guidance and procedures regarding the CARES Act loss carrybacks and accompanying amended return procedures¹² on tiered partnerships and carryback effects under the Centralized Partnership Audit Regime procedures.

Centralized Partnership Audit Regime Related

5. Provide final regulations addressing adjustments to basis and tax attribute rules under Prop. Reg. § 301.6225-4 and Prop. Reg. § 301.6226-4.
6. Provide proposed regulations addressing certain special enforcement matters under section 6241(11) as identified in [Notice 2019-6](#).
7. Update guidance and procedures to reflect the Administrative Adjustment Request (AAR) process, as most guidance and regulations reference “amended return.”
8. Provide guidance on the application of the AAR process to tiered partnerships.
9. Provide a procedure for correcting informational items on a Form 1065, *U.S. Return of Partnership Income*, and/or Schedule K-1 outside of the AAR process.

¹² Rev. Proc. 2020-23.

10. Provide an automatic procedure for a superseding partnership return before the extended due date in cases where an extension has not been filed

General Issues

11. Provide guidance for taxpayers to rely on final copies of the forms and instructions even if those same forms and instructions are later updated in the tax year.
12. Provide a one-year delay for Notice 2020-43 on the new tax basis capital reporting requirement or provide a safe harbor for taxpayers relying on the methods provided in Notice 2020-43 in the 2020 tax year.
13. Provide comprehensive guidance on application of section 465, specifically the aggregation rules under section 465(c)(3)(C) and the application to partnerships.
14. 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).
15. 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 POA for the partnership (e.g., if the partnership representative is not a partner).
16. 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.¹³

¹³ AICPA letter, "[Draft Revenue Ruling on Partnership Targeted Allocations](#)," February 11, 2014.

S Corporation Taxation Technical Resource Panel (Robert Keller, Chair, (504) 584-1030, rkeller@kpmg.com; or Alexander Scott, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9204, Alexander.Scott@aicpa-cima.com.)

General Issues

1. Provide guidance regarding the IRS’s no-rule policy over certain matters and provide clarity to ultimately reduce a potential burden on both taxpayers and IRS. Specifically, we request for the IRS to:¹⁴
 - 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. Until the revenue ruling or pronouncement is released, we request that the IRS issue PLRs concerning disproportionate distributions.
2. Provide guidance on the application of GILTI and Subpart F to S corporations and their shareholders.
3. Provide regulatory guidance on section 465 aggregation and revisit and finalize existing proposed section 465 regulations.
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.¹⁵
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 additional guidance regarding the ordering rule for adjustments to the accumulated adjustments account (AAA) when ordinary and redemption distributions are made in the same year and an ordinary distribution occurs after the redemption distribution.¹⁶ Consider also the possibility of a closing of the books election for AAA purposes as of the date of the redemption.

¹⁴ AICPA Letter, “[IRS Informal ‘No-Rule’ Policy on Certain S Corporation Matters](#),” May 02, 2018.

¹⁵ AICPA Letter, “[Recommendation to Develop a New Income Tax Form to Improve S Corporation Shareholder Compliance with the Basis Rules of Section 1367](#),” February 21, 2017.

¹⁶ AICPA Letter, “[Ordinary and Redemption Distributions by S Corporations under Section 1368](#),” October 16, 2014.

8. 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.
9. 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).
10. 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.
11. 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).
12. 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.
13. 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.

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 final regulations on TCJA changes to section 168(k).
2. Provide final regulations under revised section 451(b) and (c).
3. Provide final regulations on adopting small business accounting method changes under sections 263A, 448, 460, and 471.¹⁷
4. Provide final regulations under section 162(f) and section 6050X.¹⁸
5. Provide guidance under section 179 for the specific types of assets that qualify as “qualified real property” under section 179.
6. Provide guidance under section 1256 regarding the definition of a tax shelter.¹⁹
7. Update Rev. Proc. 2015-13 to disregard the 150% rule in Section 8.02(5).²⁰
8. Provide guidance on TCJA changes to section 174, specifically in the context of contract research arrangements.

General Issues

9. Provide regulatory and/or procedural guidance under section 263A(f) that provide rules to: (1) apply section 263A(f) to related parties; (2) modify Treas. Reg. § 1.263A-9 to permit taxpayers to use reasonable methods to allocate capitalizable interest to units of designated property; (3) modify Treas. Reg. § 1.263A-9(d)(1) with respect to the election to trace debt; (4) modify Treas. Reg. § 1.263A-8(b)(4) to make elective application of the *de minimis* rule for determining designated property; and (5) include 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.

¹⁷ AICPA letter, “[Impact of Pub. L. No. 115-97 on Accounting Methods for Small Business Taxpayers](#),” July 23, 2018.

¹⁸ 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

¹⁹ AICPA letter, “[Small Business Relief from Definition of Tax Shelter](#),” February 13, 2019.

²⁰ 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.

10. Provide additional guidance regarding advance payments under section 451. Specifically, issue additional procedural guidance for accounting method changes necessitated by the Joint Financial Accounting Standards Board – International Accounting Standards Board Revenue Recognition Standard.
11. Modify and clarify Rev. Procs. 2019-43 and 2015-13 to, among other things, reinstate the 90-day window, and include additional method changes in the List of Automatic Method Changes.²¹
12. Provide guidance under section 263(a) regarding the capitalization of natural gas transmission and distribution property.
13. 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.
14. 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.
15. 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 CFC.
16. 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 (15% for contributions of food inventory by any taxpayer) under section 170(b)(2).²²
17. 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.
18. Issue proposed regulations under section 472 regarding the carryover of last-in, first-out layers following a section 351 or section 721 transaction.

²¹ AICPA letter, “[Comments on Rev. Proc. 2018-31](#),” May 8, 2019. Rev. Proc. 2019-43 supersedes Rev. Proc. 2018-31.

²² The CARES Act increase this amount to 25% of taxable income for 2020. Donations in excess of 25% may be deducted in the following five years.

19. Issue proposed regulations under section 472 to provide rules relating to internal management reports.
20. Provide guidance under Treas. Reg. § 1.263(a)-5(g) regarding treatment of capitalized transaction costs.
21. Provide guidance regarding the computation of alternative tax NOLs in tax years beginning after December 31, 2017, including the interaction between the 80% taxable income limit on NOLs and the 90% alternative minimum taxable income limit for AMT purposes.

Tax Practice Responsibilities Committee (Les Williford, Chair, (404) 688-6841, lwilliford@bdo.com; or Henry J. Grzes, Lead Manager – AICPA Tax Practice & Ethics, (919) 402-4889, Henry.Grzes@aicpa-cima.com.)

General Issues

1. Amend section 6651 to allow the availability of reasonable cause relief to taxpayers that use return preparers to submit their returns electronically and direct the Secretary to issue regulations specifying what constitutes ordinary business care and prudence for e-filed returns.
2. Provide guidance related to certain core principles (including “significant” and “avoidance”) for defining “tax shelter” under section 6662(d).
3. 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.
4. 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.
5. Provide guidance in connection with changes made under the Protecting Americans from Tax Hikes (PATH) Act of 2015, 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).²³
6. Provide additional clarification on [Notice 2009-5](#) (IRB 2009-03) as well as incorporate 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).

²³ 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.).

Trust, Estate and Gift Tax Technical Resource Panel (Michael Rudegear, Chair, (212) 863-1369, michael.rudegear@anchin.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 final regulations 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)²⁴ to:
 - Provide that by retaining their character in the hands of the beneficiary, the excess deductions are deductible in determining the beneficiary’s net investment income.
 - Provide that the category of expenses described as non-miscellaneous itemized deductions are fully deductible by the beneficiary and not subject to a second level of limitation because they already passed any limitations at the estate or trust level.
 - Correct Example 2 in Prop. Reg. § 1.642(h)-5(b) to treat real estate taxes on rental property as part of a business or rental activity that generally generate a passive activity loss rather than passing through to the beneficiary as taxes.
 - Provide, on the Schedule K-1 (Form 1041, *U.S. Income Tax Return for Estates and Trusts*), Beneficiary’s Share of Income, Deductions, Credits, etc., separate lines for each type of excess deduction and guidance on where the beneficiary should report the items on the beneficiary’s Form 1040, *U.S. Individual Income Tax Return*.
2. 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.
3. Provide additional guidance regarding section 965 and trusts and estates.²⁵
4. Provide additional guidance relating to section 199A and trusts and estates, including indirect expenses and loss allocation of trusts and estates.²⁶
5. Provide additional guidance relating to S corporations and trusts and estates.²⁷

²⁴ AICPA letter, “[Notice 2018-61 Concerning a Beneficiary’s Ability to Claim Excess Deductions Pursuant to Section 642\(h\)](#),” October 31, 2018, and AICPA letter, “[Comments on Proposed Regulations \(REG-113295-18\) Regarding a Beneficiary’s Ability to Claim Excess Deductions Pursuant to Section 642\(h\)](#),” June 16, 2020.

²⁵ 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.

²⁶ AICPA letter, “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#),” October 1, 2018, AICPA letter, “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#),” April 9, 2019, AICPA letter, “[Guidance on the Qualified Business Income Deduction Under Section 199A](#),” AICPA letter, “[Guidance Concerning the Proposed Section 199A Treasury Regulations for Cooperatives and Their Patrons](#),” September 5, 2019, March 4, 2020, and AICPA letter, “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A and Indirect Expenses and Loss Allocation of Trusts and Estates](#),” May 8, 2020.

²⁷ AICPA letter, “[Request for Immediate Guidance Regarding S Corporation Items Included in Pub. L. No. 115-97](#),” August 13, 2018.

6. Provide additional guidance relating to section 461(l) excess business losses for trusts and estates.²⁸
7. Provide additional guidance regarding GILTI and trusts and estates.²⁹

Domestic Issues

8. Provide implementation guidance regarding the SECURE Act and individual retirement accounts and trust issues, including guidance on the 10-year rule, other trust issues, age of majority, and reporting requirements.³⁰
9. Update Internal Revenue Manual (IRM) [20.1.12.7.4](#) for section 6695A penalty case reviews to provide that the review process include at least two qualified knowledgeable IRS appraisers.³¹
10. Issue final regulations on compliance with consistent basis reporting between an estate and persons acquiring property from decedents.³²
11. Revise Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and instructions.³³

²⁸ 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.

²⁹ AICPA letter, [“Proposed Guidance Related to Section 951A \(Global Intangible Low-Taxed Income\) \(REG-104390-18\),”](#) January 10, 2019.

³⁰ AICPA letter, [“Implementation Guidance Needed on Individual Retirement Account \(IRA\) and Trust Issues,”](#) June 16, 2020.

³¹ AICPA letter, [“IRS Memorandum on Interim Guidance on Internal Revenue Code Section 6695A Penalty Case Reviews \(Control Number: LB&I-20-0120-001, January 22, 2020\),”](#) June 16, 2020.

³² AICPA letter, [“IRS Proposed Regulations Regarding Consistent Basis Reporting Between Estates and Beneficiaries \(CC:PA:LPD:PR\) \(REG-127923015, Docket ID IRS-2016-0010-0002\),”](#) June 1, 2016, AICPA letter, [“Draft Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, and Draft Instructions,”](#) January 29, 2016, AICPA letter, [“Request for Legislation Modifying the Deadline for Estate Basis Reporting,”](#) August 31, 2016, AICPA letter, [“Request for Further Extension of 60 Days to May 31 of the March 31 Filing Deadline for Consistent Basis Reporting Between Estates and Beneficiaries as noted in IRS Notice 2016-19 and IRS Proposed and Temporary Regulations \(REG-127923-15, TD 9757\),”](#) March 4, 2016, and AICPA letter, [“IRS Notice 2015-57 and Request for Immediate Guidance on Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 Regarding Consistent Basis Reporting Between Estates and Beneficiaries \(CC:PA:LPD:PR\),”](#) January 29, 2016.

³³ AICPA letter, [“Draft Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, and Draft Instructions,”](#) January 29, 2016, AICPA letter, [“IRS Proposed Regulations Regarding Consistent Basis Reporting Between Estates and Beneficiaries \(CC:PA:LPD:PR\) \(REG-127923015, Docket ID IRS-2016-0010-0002\),”](#) June 1, 2016, AICPA letter, [“IRS Notice 2015-57 and Request for Immediate Guidance on Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 Regarding Consistent Basis Reporting Between Estates and Beneficiaries \(CC:PA:LPD:PR\),”](#) January 29, 2016, AICPA letter, [“Request for Legislation Modifying the Deadline for Estate Basis Reporting,”](#) August 31, 2016, and AICPA letter, [“Request for Further Extension of 60 Days to May 31 of the March 31 Filing Deadline for Consistent Basis Reporting Between Estates and Beneficiaries as noted in IRS Notice 2016-19 and IRS Proposed and Temporary Regulations \(REG-127923-15, TD 9757\),”](#) March 4, 2016,

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.
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, are 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).

Foreign Issues

25. Expand the foreign trusts eligible for relief and exemption from information reporting requirements and penalty abatement procedures in Rev. Proc. 2020-17 to exempt from Form 3520 and Form 3520-A reporting requirements from a few common foreign plans that are largely standardized governmentally-sanctioned savings plans, such as Canadian Registered Education Savings Plans (RESPs), Canadian Tax-Free Savings Accounts (TFSAAs), United Kingdom Self-Invested Personal Pensions (SIPPs) and Employer-type Australian Superannuation plans, which currently are not provided filing relief. Additionally, provide a *de minimis* filing exception for foreign trusts with year-end assets or actual plan value in a year under a specified monetary threshold, such as \$50,000.³⁴
26. Provide regulations under section 6677 regarding the failure to file information returns with respect to certain foreign trusts.³⁵ In administering the penalty for foreign trust reporting under section 6677, issue definitive guidance whereby deference is granted when the year at issue is the taxpayer's first year for which the foreign trust information form(s) are required. For example, add the penalty under section 6677 to the penalties for which administrative relief is granted under First Time Abate.³⁶

³⁴ These accounts are tax-advantaged and are not typically thought of as foreign trusts by their owners. Most taxpayers do not realize that they create Form 3520 and Form 3520-A filing requirements that are often costly.

³⁵ The foreign trust information reporting system is quite complex and almost always requires professional advice to identify and fulfill all related reporting obligations. Accordingly, many taxpayers are unaware of the full extent of their obligations to file Forms 3520-A and/or 3520. This situation is especially true in the case of taxpayers who are new to the U.S. income tax system (*e.g.*, an individual taxpayer who moves to the U.S. from a foreign country and is the beneficiary of a foreign pension that is classified as a foreign trust for U.S. income tax purposes).

³⁶ IRM 20.1.1.3.3.2.1 (11-21-2017) details First Time Abate (FTA), in which taxpayers who are otherwise compliant may have certain civil penalties abated. Among the criteria considered for FTA is whether the taxpayer was not required to file the same return, or if such return was required, whether the taxpayer was penalized in the prior three years. Currently, FTA does not apply to returns with an event-based filing requirement. Expanding the scope of FTA to cover the penalty under section 6677 is in the interest of sound tax administration, as it is reasonable to waive penalties for taxpayers who are otherwise compliant and inexperienced with the complexities of the foreign trust information reporting system.

27. 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.
28. 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.
29. 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.
30. Change the due date of Form 3520-A from March 15 to April 15, to coincide with the due date for calendar year filers of related returns.
31. 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.
32. 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.
33. Provide guidance on how the GST tax applies to grandfathered domestic trusts that become foreign trusts.
34. Provide further guidance in addition to the proposed regulations ([REG-11299710](#)) regarding several aspects of section 2801.
35. 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.
36. 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).

37. 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.