



June 14, 2018

Internal Revenue Service
Attn: CC:PA:LPD:PR (NOTICE 2018-43)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Recommendations for 2018-2019 Guidance Priority List ([Notice 2018-43](#))

Dear Sir/Madam:

The American Institute of CPAs (AICPA) is pleased to offer our suggestions regarding the 2018-2019 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 (408) 924-3508 or Annette.Nellen@sjsu.edu; or Melanie Lauridsen, AICPA Senior Manager, Tax Policy & Advocacy at (202) 434-9235, or Melanie.Lauridsen@aicpa-cima.com.

Sincerely,



Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

Encl.

AICPA Tax Division
Comments on the
2018 - 2019 Guidance Priority List ([Notice 2018-43](#))
June 14, 2018

Corporations and Shareholders Taxation Technical Resource Panel (Greg Featherman, Chair, (202) 533-5045, gfeatherman@kpmg.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 guidance related to section 163(j).²
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).
6. Provide guidance that excludes the application of section 351(g) to redemption transactions between members of a consolidated group where a member redeems

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.

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. Provide guidance related to the changes to section 274.
2. Provide guidance related to the changes to section 162(m) on the limitation on excessive employee remuneration.
3. Provide guidance on section 45S related to the new Employer Credit for Paid Family and Medical Leave.
4. Provide guidance related to the definition of a casualty loss as it relates to hardship distributions pursuant to the rules of Reg. Sec. 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.
5. Provide guidance related to the definition of compensation in section 415 as it relates to section 199A.

Exempt Organizations Taxation Technical Resource Panel (Richard J. Locastro, Chair, (301) 951-9090, rlocastro@grfcpa.com; or Ogochukwu Eke-Okoro, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9231, Ogo.Eke-Okoro@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Issue guidance on computation of unrelated business taxable income for separate trades or businesses under new section 512(a)(6).
2. Issue guidance on taxation of employee fringe benefits under new section 512(a)(7).
3. Issue guidance on the excise tax on excess remuneration paid by “applicable tax-exempt organizations” under section 4960.

Other Issues

4. Issue final regulations on section 509(a)(3) supporting organizations.
5. Provide guidance under section 512 regarding methods of allocating expenses relating to dual use facilities.
6. Issue guidance on section 529(c)(3)(D) on the recontribution within 60 days of refunded qualified higher education expenses as added by section 302 of the Protecting Americans from Tax Hikes Act of 2015 (the “PATH Act”).
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. Provide guidance regarding the new excise taxes on donor advised funds and fund management under section 4966 as added by section 1231 of the Pension Protection Act of 2006 (the “PPA Act”).
10. Issue final regulations under section 6104(c) (publication to state officials).
11. Issue final regulations designating an appropriate high-level United States (U.S.) Department of the Treasury (“Treasury”) official under section 7611.

Individual and Self-Employed Tax Technical Resource Panel (Donald Zidik, Chair, (617) 807-5175, Donald.Zidik@marcumllp.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 whether cash basis taxpayers may preserve the deduction in 2018 (subject to the \$10,000 limitation) for 2018 state and local taxes paid in 2017 and non-deductible in 2017, including whether the payment is included as an expense in determining the first quarter estimated tax payment due April 17, 2018.

Specifically, provide guidance on the \$10,000 state and local tax deduction limitation for individuals who itemize and have state and local taxes greater than \$10,000. Clarify that there are no ordering rules or that taxpayers may choose which taxes are deducted first (e.g., for alternative minimum tax (AMT) purposes).

Additionally, for purposes of the office in the home computations, provide guidance on how taxpayers should treat the \$10,000 Schedule A, *Itemized Deductions*, deduction.

Finally, provide guidance on real estate taxes paid on unrented real property held for investment (e.g., that they are not subject to the \$10,000 limitation).

2. Clarify whether a child filing a tax return receives the \$12,000 standard deduction.
3. Provide guidance on the section 461(l) excess business loss limitation.
4. Provide guidance regarding alimony and the conditions that would cause a post-2018 modification of a pre-January 1, 2019 divorce or separation agreement to have treatment as a post-December 31, 2018 agreement.
5. Provide guidance regarding state tax overpayments paid in 2017 and 2018. Specifically, provide an update to Internal Revenue Service (IRS) Publication 525, page 22, regarding recoveries to take into account the \$10,000 limit on deductions in 2018 through 2025 and match the similar \$10,000 limit for the amount taken into income for any overpayment related to state taxes.
6. 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.

7. 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.
8. Provide guidance on whether the annual election under section 266 to capitalize taxes and carrying charges of investment property, in lieu of deducting the expense (previously as 2% miscellaneous itemized deductions), remains available for taxpayers owning real estate – noting that section 266 requires an otherwise deductible expense.
9. Provide guidance on the treatment of the reimbursement of moving expenses incurred by an employee during the taxable year 2017 with the corresponding reimbursement made by the employer, to the employee, during the taxable year 2018.
10. 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.

Other Issues

11. 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.
12. Provide guidance to address ownership and various uses of virtual currency.³
13. 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.
14. 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.

³ AICPA letter “[Updated Comments on Notice 2014-21: Virtual Currency Guidance](#),” May 30, 2018.

- The proper method to determine deductible qualified residence interest when there are multiple debts that exceed the debt limit is not clear.
15. 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.
 16. 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.
 17. Provide guidance on the statutory terms that were introduced by Title XII of the PPA Act pertaining to appraisals and individuals performing these appraisals.⁴
 18. 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.
 19. 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. Additionally, provide guidance on the recontribution of refunded section 529 amounts in order to address the changes made according to the PATH Act.
 20. Provide guidance regarding issues of basis reporting on Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*.

International Taxation Technical Resource Panel (Philip Pasmanik, Chair, (212) 686-7160, ext. 156, Philip.Pasmanik@hertzherson.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. Provide additional guidance on the calculation, reporting and payment requirements under section 965.
2. Issue computational, definitional and other guidance on Global Intangible Low-Taxed Income under section 951A and section 250, including the section 78 gross-up, the allocation of expenses, and the interaction with section 163(j).

⁴ AICPA letter, “[Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions \(Reg-140029-07\)](#),” November 5, 2008.

3. Issue computational, definitional and other guidance under section 245A including the definition of “other tax benefit” as related to a hybrid dividend.
4. Issue computational, definitional and other guidance on Foreign Derived Intangible Income under section 250.
5. Issue computational, definitional and other guidance under section 59A including clarification on the application of the service cost method exclusion.
6. Issue computational, definitional and other guidance under section 267A including clarification on the definition of a hybrid entity.
7. Issue computational, definitional and other guidance on the treatment of foreign tax credits under the various new and updated international tax provisions.
8. Provide guidance on changes to the existing Subpart F regime resulting from the enactment of the Tax Cuts and Jobs Act.
9. Provide guidance 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.

Other Issues

10. Issue temporary or proposed regulations under section 367 as described in [Notice 2016-73](#).
11. 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*.⁵
 - Provide guidance on a standardized format for PFIC reporting by flow-through entities to their owners.
12. 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.
 13. 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.
 14. Finalize the proposed section 898 regulations on conforming year-ends of certain foreign corporations to the year-ends of their U.S. shareholders.
 15. 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.
 16. Clarify the administrative process for filing Form 5471 when an income tax return is not required.
 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.
 18. Provide additional guidance related to withholding tax regimes under Chapter 3 and Chapter 4.

⁵ See recommendation #9 of AICPA letter, "[Treatment of Shareholders of Certain Passive Foreign Investment Companies](#)," [May 12, 2014](#).

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.
2. Provide transitional rules and penalty relief, under sections 6651, 6654 and 6662, regarding potential underpayment of tax due to revisions to the income tax withholding tables and under-calculated estimated payments due prior to June 30, 2018.
3. Provide penalty relief under sections 6651, 6654 and 6662, for estimated payments due on January 15, 2018 for the 2017 tax year related to section 965 transition tax.
4. Clarify the due diligence requirements, under section 6695(g), and process in determining eligibility to file as a head of household.

Other Issues

5. 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 ((Michael Greenwald, Chair, (212) 842-7513, MGreenwald@friedmanllp.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 computational, definitional, and anti-avoidance guidance under section 199A. Specific areas needing guidance include, but are not limited to:⁶
 - Definition of section 199A qualified business income (QBI).
 - Aggregation method for calculation of the QBI of passthrough businesses.
 - Deductible amount of QBI for a passthrough entity with business in net loss.
 - Qualification of wages paid by an employee leasing company.
 - Application of section 199A to an owner of a fiscal year passthrough entity ending in 2018.
 - Availability of deduction for Electing Small Business Trusts (ESBTs).

2. Issue computational, definitional, and anti-avoidance guidance under section 163(j). Specific areas needing guidance include, but are not limited to:
 - Treatment of investment interest income and expense of a partnership which is allocated to a corporate partner.
 - Application of the carryover limitations of excess business interest and the use of excess taxable income at the partner level.
 - Treatment of the carryover limitation by partners when a partner transfers its interest.
 - Application of section 163(j) on self-charged interest between a partner and a partnership.
 - Application of section 163(j) with respect to section 734(b) and 743(b) adjustments.
 - Qualification by a partnership’s trade or business as an “electing real property trade or business.”

3. Provide guidance under section 168(k), specifically confirmation that Treas. Reg. § 1.197-2(g)(3) concepts apply. In addition, clarification is needed on how to apply the new full expensing provision permitted for new and used property to basis adjustments under sections 734(b) and 743(b), and sales of fractional interests in a partnership (such as disguised sales and transactions under Rev. Rul. 99-5 or 99-6).

4. Issue regulations under section 1446(f) for dispositions of certain partnership interests.

⁶ AICPA letter, “[Request for immediate Guidance Regarding IRC Section 199A – Deduction for Qualified Business Income of Pass-through Entities](#),” February, 21, 2018.

5. Provide guidance under section 461(l) regarding gain and loss from the disposition of interests in partnerships.
6. Provide guidance under section 1061 relating to partnership interests held in connection with performance of services.

Centralized Partnership Audit Regime Related

7. Provide final regulations on the changes to partnership filing, reporting and audit procedures enacted as part of the Bipartisan Budget Act of 2015 ([P.L. 114-74](#)).⁷
8. Provide guidance, including examples, under Prop. Reg. § 301.6225-2(d)(9) regarding a partnership requesting a modification not specifically listed in paragraph (d), and the determination of whether such requested modification is accurate and appropriate under Prop. Reg. § 301.6225-2(c)(4).
9. Provide guidance under section 6225(c)(2)(B) regarding the “pull-in” procedure added as part of the technical corrections to the partnership audit rules included in the Consolidated Appropriations Act, 2018 (P.L. 115-141) enacted on March 23, 2018.
10. Provide guidance on the timing and procedures related to taxpayer access to the IRS Office of Appeals for various IRS determinations under the partnership audit rules including, but not limited to, the actual audit determinations, denial of a requested modification, elections invalidated by the IRS, and partnership representative designations.

Other Issues

11. 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).
12. 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.

⁷ See AICPA letters, “[Notice 2016-23 – Implementation of the New Partnership Audit Regime Enacted as Part of the Bipartisan Budget Act of 2015](#),” October 7, 2016; “[Proposed Regulations Regarding the Centralized Partnership Audit Regime \(REG-136118-15, Docket ID IRS-2017-0009\)](#),” August 14, 2017; and “[Proposed Regulations Regarding the Centralized Partnership Audit Regime: Adjusting Tax Attributes \(REG-118067-17\)](#),” May 16, 2018.

13. 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.⁸

S Corporation Taxation Technical Resource Panel (Laura MacDonough, Chair, (202) 327-8060, Laura.Macdonough@ey.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 following items related to section 163(j), 199A, and 461(l):
 - Coordination of section 1366(d) suspended losses with section 199A qualified business income carryover losses by applying the order as follows: sections 163(j), 469, 461(l), and 199A.
 - Clarification that the carryforward rule for C corporations under section 163(j)(2) applies to S corporations despite section 1371(b)(2).
 - Clarification of the definition of real property trades or businesses beyond section 469(c)(7)(C) for purposes of disallowed business interest deduction carryforwards under section 163(j).
 - Application of the section 461(l) limitation on net operating losses and AMT
 - Application of section 163(j) on self-charged interest between a shareholder and an S Corporation.
 - Application on the new 163(j) limitation to the trade or business interest expense if it is not incurred by the S corporation. For example, an individual borrows money to purchase an S corporation.
2. Provide guidance on the treatment of the section 1371(f) distributions. Additionally, provide guidance on how distributions during the expanded post-termination transition period will be allocated between the accumulated adjustments account (AAA) and accumulated earnings and profits (E&P).
3. Provide guidance on the treatment of deferred foreign income upon transition to participation exemption system of taxation per section 965:
 - Clarification on how an S corporation shareholder can obtain IRS consent permitting an election to defer section 965 tax liability in the case of a triggering event.
 - Clarification on whether an S corporation target's participation in a section 338(h)(10) transaction is a triggering event for purposes of section 965(i).

⁸ AICPA letter, "[Draft Revenue Ruling on Partnership Targeted Allocations](#)," February 11, 2014.

- Clarification on the application of inclusion of deferred foreign income under section 965 on shareholder basis and AAA.
 - Clarification, in the context of S corporation trust shareholders, on what trust transactions are a section 965 triggering event and how might a transferee of S corporation stock held in trust assume the liability for the section 965 transition tax.
4. Provide guidance on whether for purposes of a triggering event with respect to the transition tax does there need to be a transfer of shares (sometimes deemed transfers) for U.S. federal income tax purposes, or an actual legal transfer of shares.
 5. Provide guidance on the application of section 163(j) on self-charged interest between a shareholder and an S Corporation.
 6. Provide guidance on how the sec 163(j) limitation on business interest expense applies to S corporations and their owners.

Other Issues

7. Provide guidance regarding worthless stock deductions under section 165(g) for S corporations.⁹
8. Develop a new shareholder-level income tax form that shareholders are required to attach to any income tax return with items of income, loss, deduction, or credit of an S corporation.
9. Provide guidance under section 1367 regarding basis ordering rules of certain suspended losses.¹⁰
10. 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.
11. Provide guidance as to whether the ability to decant a trust precludes the trust from qualifying as a QSST within the meaning of section 1361(d).
12. Issue a revenue ruling incorporating the guidance from PLRs 201306004 and 201306005. Specifically, regarding whether a second class of stock is created if

⁹ AICPA letter, "[Guidance Regarding Worthless Stock Deductions Under Section 165\(g\) for S Corporations](#)," September 18, 2015.

¹⁰ 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.

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.

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.
14. Provide additional guidance as to when, for AMT¹¹ purposes, S corporations will have attributes that are different for regular tax and AMT purposes.
15. Provide additional guidance as to whether a state tax refund attributable to the S portion of an ESBT 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.
16. 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).
17. 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.
18. 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 AICPA letter, "[AICPA Suggestions to Tax Reform Working Group on Business Income Tax](#)," March 31, 2015.

Tax Methods and Periods Technical Resource Panel (Jennifer Kennedy, Chair, (703) 918-6951, Jennifer.Kennedy@us.pwc.com; or Ogochukwu Eke-Okoro, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9231, Ogo.Eke-Okoro@aicpa-cima.com.)

Tax Cuts and Jobs Act Related

1. Provide guidance on new section 168(k).
2. Provide definitional and other guidance under new section 451(b) and (c).
3. Provide guidance on adopting the new small business accounting method changes under sections 263A, 448, 460, and 471.
4. Provide computational, definitional, and other guidance under new section 163(j).
5. Provide additional guidance under section 162(f) and new section 6050X.
6. Provide guidance under section 179 for the specific types of assets that qualify as “qualified real property” under section 179.

Other Issues

7. Provide additional guidance on capitalization under section 263A:
 - Modify and finalize the regulations regarding the modified simplified production method and negative additional section 263A costs.
 - Issue 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.¹²

¹² AICPA letter, “[Section 263A\(f\) Special Rules for Allocation of Interest to Property Produced by the Taxpayer](#),” January 4, 2017.

8. 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).¹³
 - Address the treatment of advance payments between members of an affiliated group that are eliminated in consolidated financial statements.¹⁴
 - Issue proposed 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.
9. Modify and clarify Rev. Procs. 2017-30 and 2015-14 to, among other things, reinstate the 90-day window, and include additional method changes in the List of Automatic Method Changes.¹⁵
10. Issue Rev. Proc. under section 263(a) regarding the capitalization of natural gas transmission and distribution property.
11. 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.
12. 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.
13. Issue proposed 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.
14. 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

¹³ AICPA letter, “[Recommendations for Modification of Rev. Proc. 2004-34 and Treas. Reg. § 1.451-5 Concerning the Deferral of Advance Payments](#),” February, 13, 2015.

¹⁴ *Id.*

¹⁵ AICPA letter, “[Revenue Procedure 2015-13, Changes in Methods of Accounting](#),” November 14, 2016.

charitable contribution subject to the 10% taxable income limitation for corporations under section 170(b)(2).¹⁶

15. 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.
16. Issue proposed regulations under section 472 regarding the carryover of last-in first-out (LIFO) layers following a section 351 or section 721 transaction.
17. Issue proposed regulations under section 472 to provide rules relating to internal management reports.
18. Issue final LIFO inventory price index computation pooling regulations under section 472.¹⁷
19. 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.)

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

¹⁶ AICPA letter, “[Recommendations for Modifying the Rules of Section 170 Charitable Contributions of Inventory](#),” June 7, 2016.

¹⁷ AICPA letter, “[REG-125946-10 – Dollar-Value LIFO Regulations: IPIC Method Pool](#),” May 21, 2018.

- 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, (P.L. 114-113, 12/18/2015) 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).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).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).

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. Clarify under sections 2001(g) and 2010(c)(3) that when the new gift, estate, and generation-skipping transfer (GST) tax exemptions sunset after 2025, and the exemption reverts to 2017 law in 2026, any 2018-2025 transaction is not taxable at sunset. It is necessary to clarify that the government will not require a clawback to the pre-2018 (2017) law for the 2018-2025 transactions.²⁰
2. Confirm that section 67(e) non 2% miscellaneous itemized items, such as tax preparation fees, trustee fees, accounting fees, and attorney fees, are still deducted by trusts and estates on Form 1041, *U.S. Income Tax Return for Estates and*

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](#)”.

²⁰ AICPA letter, “[Request for Immediate Guidance Regarding Pub. L. No. 115-97](#),” January 29, 2018.

Trusts, as these expenses are not miscellaneous itemized deductions for purposes of section 67(g).

3. Clarify the section 199A application to trusts and estates.
4. 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.

Other Domestic Issues

5. Issue final regulations on compliance with consistent basis reporting between an estate and persons acquiring property from decedents.²¹
6. Revise IRS Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and instructions.²²
7. Issue final regulations, including examples, on the simplified method for computing net investment income under section 1411 for distributions from charitable remainder trusts.²³
8. Provide guidance regarding transfers by a trustee of an irrevocable trust to another irrevocable trust (often referred to as decanting).²⁴
9. Provide a final ruling on the consequences under various estate, gift, and GST tax provisions of using a family-owned company (private trust company) as the trustee of a trust.²⁵
10. 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

²¹ AICPA letter, "[IRS Notice 2015-57 and Request for Immediate Guidance on Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvements Act of 2015 Regarding Consistent Basis Reporting Between Estates and Beneficiaries](#)," January 29, 2016.

²² *Id.*

²³ AICPA letter, "[Comments on REG-130843-13 relating to guidance under section 1411, as added by the Health Care and Education Reconciliation Act of 2010, regarding net investment income tax as relevant to estates and trusts \(12/16/2013\)](#)," March 31, 2014.

²⁴ AICPA letter, "[Comments on Notice 2011-101 regarding Transfers by a Trustee From an Irrevocable Trust to Another Irrevocable Trust \("Decanting"\); Requests for Comments \(12/27/2011\)](#)," June 26, 2012.

²⁵ AICPA letters, "[Pre-Release Comments on IRS Business Plan Project to Provide Guidance Regarding the Consequences Under Various Estate, Gift, and Generation-Skipping Transfer \(GST\) Tax Provisions of Using a Private Trust Company \(PTC\) as the Trustee of a Trust](#)," March, 29, 2006 and "[IRS Notice \(Notice 2008-63\) Regarding Proposed Guidance on Transfers with Retained Life Estate and the Creation of a Private Trust Company](#)," November 12, 2008.

have the ability to withdraw the contributed assets but trust beneficiaries may withdraw all the transfers made to the trust during the year.²⁶

11. 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.²⁷
12. 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. 2004-46.²⁸
13. 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.²⁹
14. Provide final regulations under section 2642(g) regarding extensions of time to make allocations of GST exemption.
15. 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).
16. 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.

²⁶ AICPA letter, "[AICPA Request for Guidance on the Allocation of GST Exemption to a Trust at the End of the Estate Tax Inclusion Period \(ETIP\) or Electing Out of the Automatic Allocation Rules at the End of the ETIP](#)," June 26, 2007.

²⁷ AICPA letters, "[Form 1041-A Filing Exception for Trusts with Charitable Deductions Only From S Corporation or Partnership Contributions](#)," September 14, 2010 and "[Request for Legislation to Exempt from the Filing Requirement of Section 6034\(a\) Trusts with Charitable Deductions only from Flow-through Entities](#)," October 19, 2012.

²⁸ AICPA letter, "[AICPA Request for Guidance on the Allocation of GST Exemption to a Trust at the End of the Estate Tax Inclusion Period \(ETIP\) or Electing Out of the Automatic Allocation Rules at the End of the ETIP](#)," June 26, 2007

²⁹ *Id.*

17. 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.
18. 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).
19. 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

20. 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.
21. 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.³⁰
22. 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.³¹
23. 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. .³²
24. 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*

³⁰ AICPA letter, "[Request for Guidance on Foreign Trusts as Part of the HIRE Act](#)," March 28, 2011.

³¹ AICPA letter, "[Additional Comments on Notice of Proposed Rulemaking \(RIN-1506-AB08\) regarding Amendment to the Bank Secrecy Act Regulations – Pertaining to Foreign Trusts](#)," November 19, 2010 and "[Request for Guidance on Foreign Trusts as Part of the HIRE Act](#)," March 28, 2011.

³² AICPA letters, "[Comments on Form 3520-A and Form 3520](#)," June 17, 2003; "[AICPA Foreign Trust Task Force Comments Regarding Foreign Trust Reporting](#)," January 31, 2007; "[AICPA response to May 25, 2007 IRS follow-up oral comments regarding Jan. 31, 2007, AICPA submission to IRS on foreign trust reporting](#)," March 3, 2008; and "[AICPA response to May 12, 2008 IRS follow-up oral comments regarding March 3, 2008, AICPA follow-up submission to IRS on foreign trust reporting](#)," June 12, 2008.

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.

25. 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.
26. Provide guidance on how the GST tax applies to grandfathered domestic trusts that become foreign trusts.
27. Provide further guidance in addition to the [proposed regulations](#) (REG-11299710) regarding several aspects of section 2801.³³
28. 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
29. 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).
30. Provide regulations under section 6677 regarding the failure to file information returns with respect to certain foreign trusts.
31. The IRS should 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 the IRS in tracking U.S. withholding credit to which a U.S. beneficiary is entitled due to withholding flowing through a foreign nongrantor trust.

³³ AICPA letter, "[IRS Proposed Regulations on Guidance under Section 2801 Regarding the Imposition of Tax on Certain Gifts and Bequests from Covered Expatriates \(REG-112997-10\)](#)," May 17, 2016.

³⁴ AICPA letter, "[Request for Guidance on Foreign Trusts as Part of the HIRE Act](#)," March 28, 2011.