



May 9, 2023

Internal Revenue Service
Attn: CC:PA:LPD:PR ([Notice 2023-36](#))
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Recommendations for the 2023-2024 Guidance Priority List ([Notice 2023-36](#))

Dear Sir/Madam:

The American Institute of CPAs (AICPA) is pleased to offer our suggestions regarding the 2023-2024 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. As the IRS plans to prioritize providing additional guidance as stated in strategic initiative 1.7 in the [IRS Inflation Reduction Act \(IRA\) Strategic Operating Plan](#),¹ we encourage the IRS to issue guidance on the areas that we have suggested.

The suggestions are listed in priority order under each AICPA group that developed them. We also note with a footnote where similar issues are covered in more than one group's items. For your convenience, contact information for each 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 421,000 members in the United States and worldwide, and a history of serving the public

¹ See [IRS IRA Strategic Operating Plan](#), FY 2023-2031, April 5, 2023, strategic initiative 1.7 "Provide earlier legal certainty: Taxpayers will have greater upfront clarity and certainty additional guidance on tax issues," page 32.

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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 (601) 326-7119 or JanLewis@HaddoxReid.com; or Eileen Sherr, AICPA Director, Tax Policy & Advocacy at (202) 434-9256, or Eileen.Sherr@aicpa-cima.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Lewis".

Jan Lewis, CPA

Chair, AICPA Tax Executive Committee

Encl.

AICPA Tax Division
Comments on the
2023 - 2024 Guidance Priority List ([Notice 2023-36](#))
May 9, 2023

Corporations and Shareholders Taxation Technical Resource Panel (Jeff Borghino, Chair, (202) 521-1532, Jeff.Borghino@us.gt.com; or Reema Patel, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9217, Reema.Patel@aicpa-cima.com). Items are in priority order.

1. Provide guidance related to the key definitions and application of the corporate alternative minimum tax under section 55 including clarification of the definition of an Applicable Corporation under section 59(k) and the definition of Adjusted Financial Statement income under section 56A.²
2. Provide guidance related to the key definitions and application of section 4501 including the definition of a Covered Corporation and the definition of a repurchase.³
3. Provide guidance related to the interaction between section 163(j) and section 108.⁴
4. Provide guidance on section 247 related to contributions by Alaska Native Corporations to Settlement Trusts:
 - Coordination of taxable income limitations under section 247 with sections 172, 250 and 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.
5. Provide guidance regarding the treatment of intercompany transactions in determining satisfaction of the gross receipts test for purposes of section 165(g)(3)(B).
6. Provide further guidance on the application of Treas. Reg. § 1.1502-13 and clarification on the scope of the anti-abuse rule.

² AICPA letter, “[Comments on Notice 2023-7 – Initial Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code](#),” March 27, 2023. Corporate alternative minimum tax is also covered in the Employee Benefits, Partnership, and S corporation lists of items.

³ AICPA letter, “[Notice 2023-2 – Initial Guidance Regarding the Application of the Excise Tax on Repurchases of Corporate Stock under Section 4501 of the Internal Revenue Code](#),” March 28, 2023. Excise tax on repurchases of corporate stock is also covered in the Employee Benefits lists of items.

⁴ Section 163(j) is also covered in the International, Partnership, and S corporation lists of items.

7. Provide guidance under section 382:
- With regards to Subchapter S.
 - And the interaction with respect to controlled foreign corporations (CFCs) following an ownership change.
 - On identifying 5% shareholders of public companies, specifically with respect to:
 - Incorporating specific private letter rulings (PLRs) into a revenue ruling to provide comprehensive authoritative guidance as a safe harbor method.⁵
 - Coordinated acquisitions.
 - Proper application of “Non-Stock Treated as Stock” to debt of a distressed loss corporation.
 - The 10% threshold for the small issuance limitation and small redemption limitation (i.e., based on actual value or calculated under section 382(l)(3)(C)).
 - Specific guidance under section 382(l)(5) regarding the following:
 - Clarify how to determine whether a corporation’s parent or subsidiary is “under the jurisdiction of the court”⁶ or “in bankruptcy.”⁷
 - Clarify whether an owner of stock that is not stock for section 382 purposes (e.g., section 1504(a)(4) stock) is treated as a shareholder. If the general answer is no, clarify the interaction of Treas. Reg. §1.382-2T(f)(18)(iii) and section 382(l)(5). If the transfer makes an ownership interest become treated as stock such that there would be an ownership change, for purposes of section 382(l)(5), is the owner treated as a shareholder?
 - Clarify how broadly does Treas. Reg. §1.382-2T(f)(18)(iii) apply when certain ownership interests are transferred. For example, does it apply only to the interests transferred, all interests of the same class, all interests that have the same economic rights, or something else? Or does varying trading prices matter?
 - For section 382(l)(5)(E) and Treas. Reg. §1.382-9, clarify whether there is a look through rule for a holding company to determine whether indebtedness is ordinary course indebtedness, such that a holding company can contribute the proceeds to a subsidiary to pay an expense deductible under section 162 or included in COGS?
 - Provide regulations for the application of section 382(l)(5) to consolidated group members (Treas. Reg. §1.1502-97 is still reserved.).
 - For determining when the continuity of business enterprise requirement is satisfied following a section 382 ownership change.
8. Provide further guidance under section 1202 regarding Qualified Small Business Stock, specifically:⁸
- Clarifying the active business requirement under section 1202(e).

⁵ See, e.g., [PLR 201902022](#); [PLR 201403007](#); [PLR 201110006](#); [PLR 201024037](#); [PLR 200713015](#); PLR 9533024.

⁶ Section 382(l)(5)(A)(i).

⁷ Section 382(l)(5)(A)(ii).

⁸ Section 1202 is also covered in the Individual and self-employed tax list of items.

- What constitutes a qualified trade or business under section 1202(e)(3)(B), e.g., whether Financial Technology companies are a qualified trade or business thereunder and guidance defining an insurance business.
 - Guidance with respect to ordering rules and computing the applicable percentage exclusion and limitations when the taxpayer has multiple investments in the corporation.
 - The interaction of section 1202 in the case of a qualified stock sale and a subsequent qualifying reinvestment under section 1045.
 - Whether a partner with a carried interest subject to section 1061 that invests in a partnership fund (“fund of funds”) that acquires qualified section 1202 stock is deemed to acquire an interest in those qualified section 1202 shares for purposes of section 704(b).
 - Clarification of the definition of “substantially all” under the section 1202(c)(2)(A) holding period.
 - Guidance to clarify the extent that section 1202(d)(1)(C) requires a corporation to provide information to shareholders “to carry out the purposes” of section 1202.
9. Provide guidance concerning the application of Rev. Rul. 99-6 involving members of a consolidated group.
 10. Provide guidance regarding shareholder overlap and the scope of section 304, as applied to public merger and acquisition transactions.
 11. Provide guidance clarifying the tax characterization of Simple Agreement for Future Equity as a prepaid forward contract, a warrant, or equity.
 12. Provide guidance with respect to cancellation of debt owed by a corporation to its shareholder, specifically:
 - Confirm that generally form over substance governs (i.e., when stock is issued, section 108(e)(8) applies; when no stock is issued, section 108(e)(6) applies) in a meaningless gesture situation.
 - Confirm that section 108(e)(6) generally applies to transactions under section 367(c)(2).
 - Address extent to which contribution of debt to capital can qualify under section 108(e)(6) even when subsidiary remains insolvent after the contribution.
 - Address treatment of a reduction in the adjusted issue price of the debt owed by an insolvent subsidiary (i.e., is the reduction treated entirely as a contribution to capital under section 108(e)(6) or is there a deemed value-for-value debt exchange).
 13. Provide guidance concerning the proper application of the payment-ordering-rule in troubled companies context.
 14. Provide guidance to clarify whether stock meets sections 1504(a)(4)(B) and (C) including safe-harbors, factors to consider, and/or circumstances when stock does not meet the tests described in sections 1504(a)(4)(B) and (C).

Employee Benefits Taxation Technical Resource Panel (Tom Pevarnik, Chair, (202) 879-5314, tpevarnik@deloitte.com; or Kristin Esposito, Director – AICPA Tax Policy & Advocacy, (202) 434-9241, Kristin.Esposito@aicpa-cima.com). Items are in priority order.

1. Provide guidance under Section 305 of the SECURE 2.0 Act of 2022, (SECURE 2.0), signed into law on December 29, 2022, as part of the Consolidated Appropriations Act of 2023,⁹ addressing the expansion of the Employee Plans Compliance Resolution System (EPCRS), including clarification of the status of Revenue Procedure 2021-30 and the ability of plan sponsors to self-correct plan failures prior to the issuance of guidance on this provision.¹⁰
2. Provide guidance related to participation by long-term part-time employees, in section 401(k) plans, as added by the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019¹¹ and modified by SECURE 2.0.¹²
3. Provide guidance on exception to the 15% corporate alternative minimum tax carve out for tax impacts of defined benefit pension plans.¹³
4. Issue proposed regulations on section 4501(e)(2) related to the exception to the 1% excise tax on stock buybacks for amounts contributed to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan.¹⁴
5. Provide guidance on Section 201 of the SECURE Act permitting an employer to adopt a new qualified plan after the end of the employer’s plan year, but no later than the extended due tax of the tax return for that year. We suggest that guidance include relief for minimum funding issues that would arise if a new defined benefit plan is adopted after the deadline for making contributions to satisfy the minimum funding requirements for the year. In addition, guidance is needed on section 316 of SECURE 2.0 that permits plan sponsors to amend their plans after the end of the plan year if the amendment increases benefits.¹⁵
6. Provide guidance under Section 301 of SECURE 2.0, addressing the recovery of retirement plan overpayments, including clarification of how the effective date rules should be applied to certain actions (e.g., overpayment) occurring before the date of enactment.¹⁶
7. Provide guidance on student loan payments and qualified retirement plans and section 403(b) plans.

⁹ P.L. 117-328.

¹⁰ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

¹¹ P.L. 116-94.

¹² AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

¹³ Corporate alternative minimum tax is also covered in the Corporations, Partnership, and S corporation lists of items.

¹⁴ AICPA letter, “[Notice 2023-2 – Initial Guidance Regarding the Application of the Excise Tax on Repurchases of Corporate Stock under Section 4501 of the Internal Revenue Code](#),” March 28, 2023. Excise tax on repurchases of corporate stock also covered in the Corporations list of items.

¹⁵ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

¹⁶ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

8. Provide guidance under Section 110 of SECURE 2.0, related to the treatment of student loan payments as elective deferrals for purposes of matching contributions, including clarifying whether the term “qualified student loan payment” includes loans paid for the education of spouses and dependents. Also, we suggest permitting employers to allow self-certification subject to employer-provided criteria, including evidence of the loan and repayments.¹⁷
9. Provide guidance under Section 603 of SECURE 2.0, related to elective deferrals generally limited to regular contribution limits, mandating that any catch-up contributions made by certain highly paid individuals be made on a Roth basis. Guidance should clarify whether partners are considered eligible participants, and if so, how the section 3121(a) wages should be calculated for a partner.¹⁸
10. Provide guidance under Section 101 of SECURE 2.0, related to expanding automatic enrollment in retirement plans, including how to define a new plan.¹⁹
11. Provide guidance on section 162(m) rules related to the changes made by the American Rescue Plan Act of 2021 (ARPA).^{20 21 22}
12. Provide guidance related to remote and hybrid working environments, addressing issues such as deductible business expenses and tax home for determining travel away from home.²³
13. Issue regulations on income inclusion and various other issues under section 409A.
14. Issue regulations under section 457(f) and related guidance on ineligible plans.
15. Provide guidance on the special distribution provisions added by the SECURE Act and SECURE 2.0, including:²⁴
 - Guidance under Section 311 of SECURE 2.0 related to changes made to qualified birth and adoption distributions;
 - Guidance under Section 326 of SECURE 2.0 related to distributions to terminally ill participants, including whether a qualified plan can make such distributions without the loss of its qualified status;
 - Guidance under Section 115 of SECURE 2.0 related to withdrawals for personal emergencies;

¹⁷ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

¹⁸ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

¹⁹ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

²⁰ P.L. 117-2.

²¹ AICPA letter “[Request for Guidance Related to Changes to Section 162\(m\) Made by the American Rescue Plan Act of 2021](#).” February 24, 2023.

²² AICPA letter “[Request for Guidance Related to Changes to Section 162\(m\) Made by the American Rescue Plan Act of 2021](#).” August 29, 2022.

²³ AICPA letter “[Request for Guidance in Key Areas Related to Employees Working Remotely](#).” August 25, 2022.

²⁴ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023.

- Guidance under Section 314 of SECURE 2.0 related to withdrawals by victims of domestic abuse; and
 - Guidance under Section 331 of SECURE 2.0 related to withdrawals for qualified disasters.
16. Update Rev. Rul. 99-7 to eliminate references to section 280A(c)(1).
 17. Provide guidance under Section 102 of SECURE 2.0, addressing the modification of the credit for small employer pension plan startup costs, including clarification of whether the credit applies to the wages of owners. Also, we suggest providing an example indicating the years for which the credit is available.²⁵
 18. Provide guidance under Section 127 of SECURE 2.0, related to emergency savings accounts linked to individual account plans, including clarifying whether contributions to emergency savings accounts are taken into account for purposes of the section 402(g) limitation on retirement plan elective deferrals excluded from taxable income.²⁶
 19. Provide guidance under Section 109 of SECURE 2.0, related to the higher catch-up limits which apply at age 60, 61, 62, and 63, including clarifying that the cost-of-living adjustment contains a rounding convention.²⁷
 20. Issue a Revenue Procedure detailing closing agreement procedures for retirement plan items that cannot be settled in the Internal Revenue Service (IRS) Voluntary Correction Program as related to Employee Plans News Issue 2013-10, December 19, 2013.
 21. Provide guidance on aggregation rules under section 414(m), with an emphasis on section 414(m)(5).
 22. Provide guidance to eliminate section 4975(a) excise taxes related to qualified plans if the total tax is \$50 or less with the estimated tax contributed to the plan.
 23. Provide guidance on qualified retirement plans related to missing participants and uncashed checks, including mandating an electronic transfer of funds.
 24. Issue regulations under section 119, section 132, and section 274(o) regarding employer-provided meals and employer-operated eating facilities.

²⁵ AICPA letter, "[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#)," April 27, 2023.

²⁶ AICPA letter, "[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#)," April 27, 2023.

²⁷ AICPA letter, "[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#)," April 27, 2023.

Exempt Organizations Taxation Technical Resource Panel (Christopher Anderson, Chair, Canderson@maloneynovotny.com or Arlene Schwartz, Senior Manager – AICPA Tax Policy & Advocacy at (202) 434-9218, Arlene.Schwartz@aicpa-cima.com). Items are in priority order.

1. Provide an update on the potential revisions to [Rev. Proc. 80-27](#) regarding group exemption letters as described in [Notice 2020-36](#), published on May 18, 2020.
2. Provide further guidance regarding the allocation of indirect expenses between an exempt activity and unrelated trade or business or between more than one trade or business, as indicated in [TD 9933](#). Guidance should include the section 172 changes of net operating loss (NOL) deduction under the CARES Act and how it interplays with section 512(a)(6), as indicated in [TD 9933](#).
3. Issue proposed regulations under section 4966 and section 4967 in response to guidance in [Notice 2017-73](#) regarding excise taxes on donor advised funds.
4. Revise Treas. Reg. §1.6033-3(a)(2) to remove or modify the requirement for a private foundation to disclose individual grant recipient names and addresses for recipients who are not disqualified persons.²⁸
5. Revise Treas. Reg. § 1. 6033-3(a)(1) to remove or modify the requirement to disclose investments held at the end of the year on a security-by-security basis. Potential alternatives include disclosing a single amount for publicly traded securities, listing non-publicly traded securities separately only when the foundation has an ownership interest of 2% or more, and aggregating investments by category (e.g., “domestic partnerships,” “foreign partnerships,” “closely held stock,” etc.)²⁹
6. Issue final regulations on section 509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.
7. Provide guidance on whether Treas. Reg. § 1.501(c)(3)-1(e) permits substantial unrelated business activity.
8. Provide guidance on the circumstances under which the sale of an interest in a partnership with liabilities gives rise to unrelated business taxable income (UBTI) and, if so, how such UBTI is computed.
9. Provide guidance under section 4941 regarding a private foundation’s investment in a partnership in which disqualified persons are also partners.
10. Issue guidance on section 4943(g)(4) independent operation matters.

²⁸ AICPA letter, “[Request for Relief of Certain Form 990-PF Requirements](#),” November 30, 2022.

²⁹ AICPA letter, “[Request for Relief of Certain Form 990-PF Requirements](#),” November 30, 2022.

Individual and Self-Employed Tax Technical Resource Panel (Dana McCartney, Chair, (512) 370-3275, dmccartney@mlrpc.com; or Eileen Sherr, Director – AICPA Tax Policy & Advocacy, (202) 434-9256, Eileen.Sherr@aicpa-cima.com.) Items are in priority order.

1. Provide guidance on applying the state and local tax deduction cap under section 164,³⁰ including:
 - Guidance on an S corporation’s inability to specially allocate items and the single class of stock requirement.
 - Guidance on Notice 2020-75 and section 461 accrual basis taxpayers.
 - Guidance on Notice 2020-75 and sections 469 and 163 on nonpassive versus passive income and interest expense tracing.
 - Guidance on section 111 application to state tax refunds at the individual level, and ordering between passthrough entity income tax payments and nondeductible estimated payments and withholding.
2. Provide guidance on the section 461(l) excess business loss limitation.³¹
3. Provide guidance on the term “reports” under section 1202(d)(1)(C) in regard to partial exclusion for gain from certain small business stock.³²
4. Provide guidance on the taxation of virtual currency and digital assets,³³ including:
 - Guidance on tax treatment of losses of digital assets.
 - Guidance, updated instructions, and frequently asked questions (FAQs) pertaining to the 2022 and future years’ Form 1040 digital asset question.

³⁰ AICPA has previously provided comments on needed IRS guidance on this issue, including (1) AICPA letter, [“Additional Guidance Needed on Alignment of Notice 2020-75, Forthcoming Regulations Regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes with Internal Revenue Code Section 163 and Section 469 Regarding Nonpassive vs. Passive Income and Interest Expense Tracing,”](#) March 6, 2023; (2) AICPA letter, [“Additional Guidance Needed on Section 461 Accrual Basis Taxpayers and Notice 2020-75, Forthcoming Regulations Regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes,”](#) October 4, 2022, and (3) AICPA letter, [“Notice 2020-75, Forthcoming Regulations Regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes,”](#) October 26, 2021. Notice 2020-75 is also covered in the Partnership and S corporation lists of items.

³¹ AICPA letter, [“Request for Guidance Related to Section 461\(l\) – Limitations on Excess Business Losses of Noncorporate Taxpayers,”](#) February 28, 2019. Section 461(l) is also covered in the Partnership list of items.

³² Section 1202 is also covered in the Corporations list of items.

³³ The AICPA has previously provided comments on virtual currency taxation matters. See: (1) [“Comments on Notice 2014-21: Virtual Currency Guidance,”](#) June 10, 2016; (2) [“Updated Comments on Notice 2014-21: Virtual Currency Guidance,”](#) May 30, 2018; (3) [“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; (4) [“Comments on Virtual Currency Question on the Form 1040 and Instructions,”](#) August 29, 2022; (5) [“Comments on Virtual Currency Reporting under Internal Revenue Code Section 6045 and Section 6050I, and the Form 8300 and Instructions,”](#) October 28, 2022; (6) [“IRS Draft Instructions to 2022 Form 1040 Pertaining to Digital Assets,”](#) December 16, 2022; (7) [“AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question,”](#) February 17, 2022; and (8) [“Guidance Needed on the Tax Treatment of Losses of Digital Assets,”](#) April 14, 2023.

- Guidance concerning timing and nature of income from the validation of certain digital asset transactions, such as staking and lending.
 - Binding guidance on tracking and identification of basis of digital assets to compute gains and losses.
 - Guidance on when digital assets are considered a commodity for mark-to-market accounting under section 475.
 - Regulations regarding information reporting on digital assets under section 6045, as amended by the Infrastructure Investment and Jobs Act, regarding broker reporting of digital assets.
 - Regulations under section 6045A, as amended by the Infrastructure Investment and Jobs Act, regarding transfer reporting and digital assets.
 - Regulations under section 6050I, as amended by the Infrastructure Investment and Jobs Act, regarding certain information reporting of transactions involving digital assets.
5. Provide guidance on disaster tax and filing relief, including:
- Broaden the relief provided administratively under section 7508A(a), as was done in Notice 2023-21, and make permanent and automatically provide a postponed date lookback period as part of IRS administrative relief for all federally and state declared disasters going forward.³⁴
6. Provide guidance on section 199A corrected final regulations ([REG-107892-18](#)) and [Rev. Proc. 2019-11](#) including:³⁵
- 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 Qualified Business Income (QBI).³⁶
 - 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 on gross receipts.
 - 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.

³⁴ See AICPA letter, "[Automatic Postponement Date Lookback Period for Allowing Tax Credits or Refunds for All Disasters](#)," March 17, 2023.

³⁵ AICPA letter, "[Guidance on the Qualified Business Income Deduction Under Section 199A](#)," March 4, 2020. Section 199A is also covered in the IRS advocacy and relations, Partnership, and Trust, estate and gift tax lists of items.

³⁶ See IRS website: "[Tax Cuts and Jobs Act, Provision 11011 Section 199A - Qualified Business Income Deduction FAQs](#)," Question #32.

- 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.
7. 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.
 8. 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. Also, update to reflect current law and issue as final regulations the Treas. Reg. §§ 1.163-8T, 1-163-9T and 1.163-10T temporary regulations on interest tracing, personal interest, and qualified residence interest.
 9. Update to reflect current law and issue as final regulations the section 465 at-risk rules that are still in proposed regulations form and provide guidance on how to aggregate with the new check-boxes on the Schedules K-1.³⁷
 10. Update to reflect current law (for law changes made in 1987) the section 469 temporary and final regulations and issue all the section 469 regulations as final regulations.
 11. Provide guidance on the use of section 529 plans to pay student debt.³⁸ Treasury and the IRS should clarify priorities as this provision applies to both the plan beneficiary and siblings.
 12. 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.
 13. Provide guidance under section 301.9100 regarding relief for late regulatory elections.³⁹

³⁷ Section 465 is also covered in the Partnership and S corporation lists of issues.

³⁸ Section 529 plans are also covered in the Trust, estate, and gift tax list of items.

³⁹ AICPA letter, “[Tax Reform Administrative Relief for Various Statutory Elections](#),” January 23, 2015, and AICPA letter, “[AICPA Tax Reform Proposals on Business Income Tax](#),” July 17, 2017. Section 9100 relief is also covered in the IRS Advocacy and Relations, Partnership, and Trust, estate, and gift tax lists of items.

International Taxation Technical Resource Panel (Robert Russell, Chair, (714) 641-3493, RRussell@rutan.com; or Arlene Schwartz, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9218, Arlene.Schwartz@aicpa-cima.com). Items are in priority order.

1. Issue proposed regulations addressing certain issues arising from the Tax Cuts and Jobs Act (TCJA) with respect to foreign corporations with previously taxed earnings and profits (E&P) as described in [Notice 2019-01](#), including the application of sections 959 and 961 to passthrough entities.
2. Provide more complete and definitive guidance under the passive foreign investment company (PFIC) regulations as follows:
 - 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.
 - 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.⁴⁰
 - Provide guidance that retains the current “entity approach” that allows domestic partnerships and S corporations to be treated as shareholders for purposes of PFIC compliance filings and their related elections. The guidance should reject the adoption of the “aggregate approach” in the PFIC context.
3. 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:⁴¹
 - 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.
 - Establish a *de minimis* filing threshold for Form 5472 *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade*

⁴⁰ AICPA letter, “[AICPA International Tax Legislative Proposals – Simplification and Technical Proposals](#),” May 5, 2021.

⁴¹ Form 3520 and Form 3520-A are also covered in the Trust, estate, and gift tax list of issues.

or Business, to align gross payments requiring disclosure to no less than the associated penalty for non-filing.

4. Finalize proposed regulations under Treas. Reg. §§ 1.861-18 and -19 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.
5. Allow any reasonable method, including simultaneous equations, for purposes of determining deductions that are limited by taxable income (*e.g.*, deductions under sections 163(j), 170, 246(b)(1), and 250(a)(2)). Taxpayers need guidance regarding the coordination of deductions limited by taxable income.
6. Issue regulations on section 245A, including its application to foreign corporations.
7. 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.
8. Finalize the proposed section 898 regulations on conforming year-ends of certain foreign corporations to the year-ends of their U.S. shareholders.
9. A partner, even a small partner, that owns a foreign entity may cause the partnership to have a foreign information reporting obligation when the partner does not itself comply. Expand the regulatory exception under section 6038 (and the similar exception for Forms 8865) to exempt partnerships, S-corporations, and trusts from filing [Form 5471](#), *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*, where such reporting obligation results solely from constructive ownership of an entity by a partner, shareholder or beneficiary.
10. 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.

IRS Advocacy & Relations Committee (Rochelle Hodes, Chair, (202) 552-8033, Rochelle.Hodes@crowe.com; or Peter Mills, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9272, Peter.Mills@aicpa-cima.com). Items are in priority order.

1. 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 2004.⁴² Further, update the definition of “substantial authority” in Treas. Reg. §1.6662h-4(d)(3) to include Chief Counsel Advice (CCA) and related items.
2. Issue regulations on codified economic substance and the application of the economic substance penalty under section 7701(o). The criteria in section 7701(o) for determining whether a transaction satisfies the codified economic substance doctrine and whether economic substance is relevant to a transaction are not well-defined. Taxpayers and practitioners have relied on two notices ([Notice 2010-62](#) and [Notice 2014-58](#)) and two Large Business and International directives for guidance. The directive generally required Director of Field Operations (DFO) review and approval to propose the codified economic substance doctrine and penalty. The IRS modified the IRM on April 22, 2022, to significantly alter the process of determining when the doctrine should be imposed, which included removing the DFO review and approval requirement. Due to the lack of clarity of section 7701(o), the fact that the associated penalty is so high (potentially 40%) and is not eligible for reasonable cause, and the increased likelihood of section 7701(o) being raised during examination resulting in section 6662(b)(6) penalties, the IRS should issue proposed regulations under section 7701(o) and section 6662(b)(6). The regulations should provide clarification for situations in which economic substance will not apply (e.g., Congress specifies that something lacks economic substance and gets different treatment). We also request that the regulations provide examples of when application of the penalty is appropriate and when it is not.
3. Issue final regulations to implement section 7803 regarding the IRS Independent Office of Appeals.⁴³ Specifically, ensure that challenges to the validity of a Treasury regulation or Revenue Procedure/Notice can be heard by Appeals. Also ensure that section 9100 missed election relief and changes in method of accounting can be heard by appeals.⁴⁴

⁴² [P.L. 108-357](#).

⁴³ AICPA letter, “[AICPA Comments on Proposed Regulations to Implement Section 7803E Regarding IRS Independent Office of Appeals](#),” January 13, 2023.

⁴⁴ Section 9100 relief is also covered in the Individual and self-employed tax, Partnership, and Trust, estate, and gift tax lists of items.

4. Update section 301.9100-2 to provide that either filing an Administrative Adjustment Request (AAR) counts for corrective action or that [Bipartisan Budget Act \(BBA\) of 2015](#)⁴⁵ partnerships should be filing an amended return to obtain automatic relief under that provision. Section 301.9100-2 provides an automatic extension of time to file certain late elections provided corrective action is taken within a particular period (12 months or 6 months depending on the circumstance). Corrective action is generally filing an amended return and attaching the late election statement. In the case of missed elections that are eligible for this relief by BBA partnerships, such as section 754 elections, an amended return is not currently permitted – BBA partnerships must file an AAR to make adjustments to an already-filed return.⁴⁶
5. 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.⁴⁷ 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).
6. Provide for the ability to electronically sign and e-file all forms and the ability to electronically pay all taxes.⁴⁸
7. Utilize an online system to communicate with taxpayers and practitioners to answer questions, share documents and resolve notices.⁴⁹

⁴⁵ [P.L. 114-74](#).

⁴⁶ Section 9100 relief is also covered in the Individual and self-employed tax, Partnership, and Trust, estate, and gift tax lists of items. Penalty relief also discussed in the Trust, estate, and gift tax list of issues. BBA is also covered in the Partnership list of issues.

⁴⁷ Section 199A is also covered in the Individual and self-employed tax, Partnership, and Trust, estate, and gift tax lists of items.

⁴⁸ We appreciate that on March 31, 2023, the IRS noted its intent to extend the temporary policy exception [allowing taxpayers to electronically sign and email documents](#), and [allowing e-signatures for certain forms](#), beyond October 2023 while they develop long-term solutions for these capabilities. While specifics are still forthcoming as of the date of this letter, this development is welcome.

⁴⁹ We note that the IRS's [Strategic Operating Plan](#), released on April 6, 2023, states that the IRS intends to "...offer taxpayers more options for communicating securely with us through multiple channels after proving their identity."

Partnership Taxation Technical Resource Panel (Joseramon Carrasco, Chair, (202) 521-1552, jose.carrasco@us.gt.com; or Kristin Esposito, Director – AICPA Tax Policy & Advocacy, (202) 434-9241, Kristin.Esposito@aicpa-cima.com). Items are in priority order.

1. Provide guidance related to the Corporate Alternative Minimum Tax and partnerships, including:
 - Clarify the scope of the exception in section 59(k)(1)(D) to the Distributive Share Adjustment.⁵⁰
 - Provide a flexible approach to the meaning of “Distributive Share” for purposes of section 56A(c)(2)(D)(i).
 - Allow adjustments to adjusted financial statement income (AFSI) with respect to part recognition partnership transactions.
 - Clarify that unrealized gains and losses on partnership interests are excluded from AFSI, and that realized gains and losses on partnership interests are included in AFSI.
2. Finalize regulations under section 163(j) pertaining to tiered partnerships, debt-financed distributions, debt-financed acquisitions, and section 704(b).⁵¹
3. Issue proposed regulations on section 461(l), including rules related to sales of partnership interests and guaranteed payments and rules for suspending losses from multiple trades or businesses.⁵²
4. Issue proposed regulations pursuant to [Notice 2020-75](#) and clarify definition of “specified income tax payments.”⁵³
5. Provide guidance clarifying the effect of the wage reduction required under section 3134(e) and wage capitalization under sections 174 and 263A when determining wages for section 199A purposes.⁵⁴

⁵⁰ AICPA letter, “[Comments on Notice 2023-7 – Initial Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code](#),” March 27, 2023. Corporate alternative minimum tax is also covered in the Corporations, Employee benefits, and S corporation lists of items.

⁵¹ AICPA letter, “[Notice of Proposed Rulemaking \[REG-107911-18\] and Notice of Final Regulations \[T.D. 9905\] Regarding the Limitation on Deduction for Business Interest Expense under Section 163\(j\)](#),” December 21, 2020. Section 163(j) is also covered in the Corporations, International tax, and S corporations lists of items.

⁵² Section 461(l) is also covered in the Individual and self-employed tax list of items.

⁵³ AICPA letter, “[Notice 2020-75, Forthcoming Regulations regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes](#),” October 26, 2021. Notice 2020-75 is also covered in the Individual and self-employed tax and S corporation lists of items.

⁵⁴ Section 199A is also covered in the Individual and self-employed tax, IRS advocacy and relations, and Trust, estate, and gift tax lists of items.

6. Provide final regulations addressing adjustments to basis and tax attribute rules under Prop. Reg. § 301.6225-4 and Prop. Reg. § 301.6226-4.
7. Update guidance and procedures to reflect the Administrative Adjustment Request (AAR) process, as most guidance and regulations reference “amended return.”⁵⁵
8. Provide comprehensive guidance on application of section 465, specifically the aggregation rules under section 465(c)(3)(C) and the application to partnerships.⁵⁶
9. Provide guidance on the meaning of partners’ interest in the partnership in connection with the use of targeted allocations under section 704(b), including under what circumstances the targeted allocations would qualify under the economic effect equivalence test under the regulations.
10. Provide further guidance on the application of [Notice 2009-70](#) to section 704(c) layers.
11. 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 the 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).
12. Provide guidance on the application of global intangible low tax income (GILTI) and Subpart F to partnerships, specifically related to determining “pro-rata” share of CFC income inclusions.⁵⁷
13. Provide updated guidance concerning the interaction of section 1245 and section 743. The regulations under Treas. Reg. § 1.1245-1(e)(3) have not been amended to take into account changes to subchapter K, including the regulations under section 751.

⁵⁵ AICPA letter, “[Centralized Partnership Audit Regime, Including Related Forms and Schedules](#),” April 28, 2023. Section 9100 relief is also covered in the Individual and self-employed tax, IRS advocacy and relations, and Trust, estate, and gift tax lists of issues. BBA is also covered in the IRS Advocacy and Relations list of issues.

⁵⁶ Section 465 is also covered in the Individual and self-employed tax and S corporation lists of issues.

⁵⁷ AICPA letter, “[Global Intangible Low-Taxed Income \(GILTI\) Applied to Domestic Passthrough Entities under Subchapter K and Subchapter S](#),” March 11, 2021.

S Corporation Taxation Technical Resource Panel (Bryan Keith, Chair, (202) 419-1417, bryan.keith@andersen.com; or Kristin Esposito, Director – AICPA Tax Policy & Advocacy, (202) 434-9241, Kristin.Esposito@aicpa-cima.com). Items are in priority order.

1. Issue proposed regulations pursuant to [Notice 2020-75](#) and clarify definition of “specified income tax payments.” Additionally, provide guidance regarding whether the economic benefit discrepancies among shareholders of an S corporation related to specified income tax payments have the potential to create a second class of stock.⁵⁸
2. Modify section 3.06(2)(b)(ii) of Rev. Proc. 2022-19 to provide that only disproportionate distributions made pursuant to a non-identical governing provision disqualify the corporation from relief under Section 3.06.⁵⁹
3. Provide guidance clarifying the appropriate accounting treatment with respect to the receipt of an Employee Retention Credit (ERC) and the corresponding wage deduction disallowance and its impact on the accumulated adjustments account (AAA) and other adjustments account (OAA) of an S corporation.
4. Provide guidance which determined that under section 59(k)(1)(A), an excluded corporation cannot be part of a single employer group under section 52(a) or section 52(b) for purposes of the corporate alternative minimum tax.⁶⁰
5. Provide guidance under section 163(j) with respect to self-charged lending transactions involving S corporations.⁶¹
6. Provide guidance on the application of global intangible low tax income (GILTI) and Subpart F to S corporations and their shareholders.⁶²
7. Provide regulatory guidance on section 465 aggregation and revisit and finalize existing proposed section 465 regulations.⁶³
8. 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

⁵⁸ AICPA letter, “[Notice 2020-75, Forthcoming Regulations regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes](#),” October 26, 2021. Notice 2020-75 is also covered in the Individual and self-employed tax and S corporation lists of items.

⁵⁹ AICPA letter, “[Provide Clarification Under Revenue Procedure 2022-19](#),” March 28, 2022.

⁶⁰ AICPA letter, “[Comments on Notice 2023-7 – Initial Guidance Regarding the application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code](#),” March 27, 2022. Corporate alternative minimum tax is also covered in the Corporations, Employee Benefits, and Partnership lists of items.

⁶¹ AICPA letter, “[Notice of Proposed Rulemaking \[REG-107911-18\] and Notice of Final Regulations \[T.D. 9905\] Regarding the Limitation on Deduction for Business Interest Expense under Section 163\(j\)](#),” December 21, 2020. Section 163(j) is also covered in the Corporations, International tax, and Partnership lists of items.

⁶² AICPA letter, “[Global Intangible Low-Taxed Income \(GILTI\) Applied to Domestic Passthrough Entities under Subchapter K and Subchapter S](#),” March 11, 2021.

⁶³ Section 465 is also covered in the Individual and self-employed tax and Partnership lists of issues.

of its income, deductions, and credits are included in an S corporation return filed by the parent corporation.

9. Provide guidance as to whether the ability to decant a trust precludes the trust from qualifying as a Qualified Subchapter S Trust (QSST) within the meaning of section 1361(d).
10. 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.⁶⁴ Consider also the possibility of a closing-of-the-books election for AAA purposes as of the date of the redemption.
11. 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.
12. Provide additional guidance regarding the inability to utilize certain suspended passive activity losses upon redemption and the sale of S corporation stock to a related party described in sections 267(b) and 707(b)(1).
13. Provide additional guidance on tax attributes of an Electing Small Business Trust (ESBT). Specifically, the guidance should address tax attributes such as NOLs, foreign tax credits (FTCs), charitable contributions, and state tax refunds, and the tax treatment of such items upon termination of the S corporation.
14. 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).⁶⁵ 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.

⁶⁴ AICPA letter, "[Ordinary and Redemption Distributions by S Corporations under Section 1368](#)," October 16, 2014.

⁶⁵ [P.L. 110-28](#), §8234.

Tax Methods and Periods Technical Resource Panel (David Strong, Chair, (616) 752-4251, David.Strong@crowe.com; or Reema Patel, Senior Manager – AICPA Tax Policy & Advocacy, (202) 434-9217, Reema.Patel@aicpa-cima.com). Items are in priority order.

1. Provide guidance under section 179 for the specific types of assets that qualify as “qualified real property” under section 179.
2. Provide guidance under section 461(i)(3)(B) and (4) regarding the definition of a syndicate.⁶⁶
3. Provide guidance permitting the use of a book percentage of completion method for tax purposes to comply with section 451(b) and section 451(c) and safe harbor guidance for meeting the contractual delivery month requirement for advance payments for specified goods.
4. Update [Rev. Proc. 2015-13](#) to repeal the 150% rule in Section 8.02(5) and mirror the issue under consideration standard for non-CFCs.⁶⁷
5. Provide guidance on TCJA changes to section 174 and types of expenditures subject to the provision.⁶⁸
6. 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.⁶⁹
7. Provide additional guidance pertaining to negative additional section 263A costs and the regulations thereunder.⁷⁰
8. Provide guidance on the tax treatment and characterization of software and e-content transactions.

⁶⁶ AICPA letters, “[Notice of Proposed Rulemaking Regarding Small Business Taxpayer Exceptions under Sections 263A, 448, 460 and 471 – \[REG – 132766-18\]](#),” December 21, 2020; and “[Small Business Relief from Definition of Tax Shelter](#),” February 13, 2019.

⁶⁷ AICPA letters, “[Audit Protection for Controlled Foreign Corporations under Section 8.02\(5\) of Revenue Procedure 2015-13](#),” December 17, 2018; and “[Audit Protection for Controlled Foreign Corporations under Section 8.02\(5\) of Revenue Procedure 2015-13](#),” August 30, 2018.

⁶⁸ AICPA letter, “[Comments on Research & Experimental Expenditures under section 174.](#)” May 26, 2022.

⁶⁹ AICPA letter, “[Section 263A Regulations](#),” June 22, 2022.

⁷⁰ See T.D. 9843.

9. Modify and clarify [Rev. Proc. 2022-14](#) and [Rev. Proc. 2015-13](#) to, among other things, reinstate the 90-day window, and include additional method changes in the List of Automatic Method Changes.⁷¹
10. Provide guidance clarifying that taxpayers currently capitalizing section 174 expenditures to inventory may remove section 174 research and experimentation (R&E) expenditures from inventory when changing to the required section 174 method under Rev. Proc. 2023-11. 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.
11. 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 8½ months after year-end and transactions in which an amount accrued is includible in the earnings and profits (E&P) of a controlled foreign corporation (CFC).
12. Add back to the 2023-2024 Priority Guidance Plan guidance under section 170(e)(3) regarding charitable contributions of inventory. In addition, 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).⁷²
13. Provide guidance for installment sales:
 - 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.
 - Provide authoritative guidance clarifying and describing under what circumstances a related party sale of depreciable property will qualify for the installment method.
14. Issue proposed regulations under section 472 regarding the carryover of LIFO layers following a section 351 or section 721 transaction.
15. Provide guidance on the treatment of advance payments and deemed payments for assumed cost of performance obligations⁷³ with respect to both the seller and the acquirer in asset and partnership interest sales, including treatment under sections 704(c), 734, 743, and 751.

⁷¹ AICPA letters, “[Comments on Rev. Proc. 2018-31](#),” May 8, 2019. Revenue Proc. 2019-43 supersedes Rev. Proc. 2018-31 and [Revenue Procedure 2015-13, Changes in Methods of Accounting](#),” July 21, 2022.

⁷² 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.

⁷³ See *James M. Pierce Corporation v. Commissioner*, 326 F.2d 67 (8th Cir. 1964); AICPA letter, “[Recommendations on the Tax Treatment of Deferred Revenue in Taxable Asset Acquisitions](#),” April 23, 2015.

16. Provide guidance on the treatment of section 481(a) adjustments in partnership transactions with respect to sections 704(c), 734, and 743.
17. Issue proposed regulations under section 472 to provide rules relating to internal management reports.
18. Provide guidance under Treas. Reg. § 1.263(a)-5(g) regarding treatment of capitalized transaction costs.
19. Provide guidance under section 1234A that termination payments relating to the acquisition of an entire business (whether stock or assets, taxable or tax free) are not subject to section 1234A.

Tax Practice Responsibilities Committee (David Holets, Chair, (317) 706-2683, david.holets@crowe.com; or Henry J. Grzes, Lead Manager – AICPA Tax Practice & Ethics, (919) 402-4889, Henry.Grzes@aicpa-cima.com). Items are in priority order.

1. 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. Guidance should include application of reasonable basis standard to protective income tax refund claims filed in response to section 3134(l).
2. 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.
3. Provide guidance in connection with changes made under the [Protecting Americans from Tax Hikes \(PATH\) Act of 2015](#)⁷⁴, 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).⁷⁵
4. Provide additional clarification on [Notice 2009-5](#) 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).
5. Provide guidance related to certain core principles (including “significant” and “avoidance”) for defining “tax shelter” under section 6662(d).

⁷⁴ [P.L. 114-113](#).

⁷⁵ For additional information, see Sections 204, 205 and 206 Div. Q 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 (Irene Estrada, Chair, (703) 628-5243, Irene.C.Estrada@pwc.com; or Eileen Sherr, Director – AICPA Tax Policy & Advocacy, (202) 434-9256, Eileen.Sherr@aicpa-cima.com). Items are in priority order.

Domestic Issues

1. Provide regulations referenced in [Notice 2018-37](#) (issued April 13, 2018) regarding the application of section 672(e)(1)(A), section 674(d), and section 677 following a divorce or legal separation, in light of the repeal of section 682, enacted on December 22, 2017 by P.L. 115-97. In particular, guidance is needed on whether section 672(e)(1)(A) continues to treat an individual, who was the spouse of the grantor when a grantor power was created, as a grantor for income tax purposes following a divorce or legal separation.⁷⁶
2. Provide additional guidance relating to section 461(l) excess business losses for trusts and estates.⁷⁷
3. Provide final regulations and implementation guidance regarding the SECURE Act and SECURE 2.0 Act and individual retirement accounts and trust issues, including clarifying guidance on the 10-year rule and the SECURE 2.0 Act Section 302 correction window period and the SECURE 2.0 Act Section 313 includes trusts and estates and the section 4974 statute of limitations applies to income tax returns, including fiduciary income tax returns.⁷⁸
4. Issue final regulations on compliance with consistent basis reporting between an estate and persons acquiring property from decedents.⁷⁹
5. Issue revised regulations on section 645 election to treat trust as part of an estate.⁸⁰

⁷⁶ For further discussion on this issue and needed guidance, see American College of Trust and Estate Counsel (ACTEC) comments, “[Comments on guidance in connection with the Repeal of Section 682](#),” July 2, 2018.

⁷⁷ AICPA letters, “[Request for Guidance Related to Section 461\(l\) – Limitations on Excess Business Losses of Noncorporate Taxpayers](#),” February 28, 2019; and “[Recommendation for the 2018 Instructions for Form 461 – Limitation on Business Losses](#),” April 3, 2019.

⁷⁸ AICPA letter, “[Prioritization of Guidance Under SECURE 2.0 Act of 2022](#),” April 27, 2023, AICPA letter, “[Individual Retirement Account \(IRA\) and Trust and Estate Issues with the Required Minimum Distribution \(RMD\) Requirements and SECURE Proposed Regulations \(REG-105954-20\)](#),” June 14, 2022, and AICPA letter, “[Implementation Guidance Needed on Individual Retirement Account \(IRA\) and Trust Issues](#),” June 16, 2020.

⁷⁹ AICPA letters, “[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; “[Draft Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, and Draft Instructions](#),” January 29, 2016; “[Request for Legislation Modifying the Deadline for Estate Basis Reporting](#),” August 31, 2016; “[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 “[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.

⁸⁰ AICPA letter, “[OMB Number 1545-1578 – Election to Treat Trust as Part of an Estate and Request for Comments on Final Regulations TD 9032](#),” April 14, 2023.

6. 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.⁸¹
7. Provide regulations permitting section 9100 relief for an allocation if a GST election out has been made.⁸²
8. Provide guidance on section 6501(c)(9) and statute of limitations on unreported gifts. Specifically, provide guidance on whether tax on unreported gifts can be assessed after the statute of limitations for the estate tax return has expired. We recommend for certainty purposes, the statute of limitations for unreported gifts of a decedent expire when the estate tax return statute of limitations expires.
9. Provide guidance regarding transfers by a trustee of an irrevocable trust to another irrevocable trust (often referred to as “decanting”).⁸³
10. Revise [Form 8971](#), *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and instructions.⁸⁴
11. Revise and clarify [Form 706-GS\(T\)](#) and instructions and extensions as we have recommended,⁸⁵ including:

⁸¹ 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. 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.

⁸² Section 9100 relief is also covered in Individual and self-employed tax, IRS advocacy and relations, and Partnership lists of items.

⁸³ 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.

⁸⁴ *Id.* AICPA letters, “[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; “[Draft Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, and Draft Instructions](#),” January 29, 2016; “[Request for Legislation Modifying the Deadline for Estate Basis Reporting](#),” August 31, 2016; “[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 “[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.

⁸⁵ AICPA letter, “[OMB Number 1545-1145-Generation-Skipping Transfer Tax Return For Terminations and Recommendations for Improvements to Form 706-GS\(T\), Generation-Skipping Transfer Tax Return for Terminations, and Instructions and Extensions](#),” September 13, 2022.

- Revise and clarify Form 706-GS(T) and instructions for qualified severances or create a new form for reporting qualified severances.
 - Instead of Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for extending Form 706-GS(T) and Form 706-GS(D), *Generation-Skipping Transfer Tax Return for Distributions*, revise and clarify Form 4768, *Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, and the instructions to include Forms 706-GS(T) and 706-GS(D).
12. Revise [Form 706](#), *United States Estate (and Generation-Skipping Transfer) Tax Return* and [Form 706-NA](#), *United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States* to include a box to check for the executor to request the closing letter together with submitting the user fee at the time of filing the [Form 706](#) or [Form 706-NA](#). Until a box can be added to [Form 706](#) and [Form 706-NA](#), we suggest that the IRS allow executors to request a closing letter either by a handwritten request on the top of the first page of Form 706 or [Form 706-NA](#) or by attaching a request statement to [Form 706](#) or [Form 706-NA](#) when it is filed accompanied by the payment of the user fee, hopefully via an updated pay.gov interface.⁸⁶
 13. Provide for the ability to e-file [Form 706](#), *U.S. Estate (and Generation-Skipping Transfer) Tax Return*, [Form 706-NA](#), *U.S. Estate (and Generation-Skipping Transfer) Tax Return – Estate of Nonresident Not a Citizen of the U.S.*, and [Form 709](#), *U.S. Gift (and Generation-Skipping Transfer) Tax Return*, (and related, separately filed forms, such as [Form 3520](#), *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, [Form 3520-A](#), *Annual Information Return of Foreign Trust With a U.S. Owner*, [Form 4768](#), *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, [Form 1041-A](#), *U.S. Information Return Trust Accumulation of Charitable Amounts*, [Form 1041-T](#), *Allocation of Estimated Tax Payments to Beneficiaries*, [Form 8971](#), *Information Regarding Beneficiaries Acquiring Property From a Decedent*, and [Form 8892](#), *Application for Automatic Extension of Time To File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax*). In addition, Treasury and the IRS should provide taxpayers with the ability to electronically pay estate, gift and generation-skipping transfer taxes.⁸⁷
 14. Make improvements to the Form 709 and instructions that consider our submitted recommendations.⁸⁸ In addition, clarify that ratable portions of section 529 plans pursuant to the section 529 election should be reported as of January 1 of the tax year filing.⁸⁹ The date would be helpful for counting annual exclusions, and since the ratable portions appear to be counted before any other gift, we suggest the date of January 1.

⁸⁶ AICPA letter, “[Comments on Closing Letters for Forms 706 and 706-NA \(Proposed Regulations REG-114615-16\)](#),” February 25, 2021.

⁸⁷ AICPA letter, “[Comments on Electronic Filing \(e-filing\) of Forms 706, 706-NA, and 709](#),” December 4, 2020.

⁸⁸ AICPA letter, “[Suggestions for Improvements to Form 709, United States Gift \(and Generation-Skipping Transfer\) Tax Return, and Instructions](#),” September 13, 2022.

⁸⁹ Section 529 plans are also covered in the Individual and self-employed tax list of items.

15. Update [Form 1041](#), U.S. Income Tax Return for Estates and Trusts, Schedule G, Line 8 to facilitate electronic filing of that form by including among the “other taxes and amounts due” reported therein the following items:⁹⁰
 - Tax owed after foreign tax credits pursuant to an election under section 962 (election made by a domestic shareholder of a controlled foreign corporation to be taxed at corporate rates);
 - The aggregate increases in taxes pursuant to section 1291(c)(2) with respect to distributions from, and dispositions of, stock in a section 1291 fund (currently reported on Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund, line 16e);
 - The aggregate amount of interest charges pursuant to section 1291(c)(3) on the aggregate increases in taxes pursuant to section 1291(c)(2) with respect to a section 1291 fund (currently reported on Form 8621, line 16f); and
 - Accrued interest due upon the termination of an election to defer undistributed passive foreign investment company (PFIC) earnings tax liability under section 1294 (currently reported on Form 8621, line 24).
16. 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.⁹¹
17. Issue final regulations on section 2053 including changes based on our recommendations⁹² on the 2022 issued proposed regulations regarding:
 - Application of present value principles to amount deductible under section 2053,
 - Interest expense incurred in administering the estate, and
 - Deduction for claims against the estate.
18. Provide additional guidance relating to section 199A and trusts and estates, including indirect expenses and loss allocation of trusts and estates.⁹³ Update Treas. Reg. § 1.199A-

⁹⁰ AICPA letter, “[Suggested Updates to Form 1041 to Facilitate Electronic Filing, Foreign Tax Credits and Passive Foreign Investment Companies](#),” December 16, 2022.

⁹¹ 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. 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.

⁹² AICPA letter, “[Comments on Section 2053 Proposed Regulations \(REG-130975-08\) Guidance Regarding the Deduction for Interest Expense and Amounts Paid under a Personal Guarantee, Certain Substantiation Requirements, and Applicability of Present Value Concepts](#),” September 23, 2022.

⁹³ AICPA letters, “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#),” October 1, 2018; “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#),” April 9, 2019; “[Guidance on the Qualified Business Income Deduction Under Section 199A](#),” March 4, 2020; “[Guidance Concerning the Proposed Section 199A Treasury Regulations for Cooperatives and Their Patrons](#),” September 5, 2019; and “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A and Indirect Expenses and Loss Allocation of Trusts and Estates](#),” May 8, 2020. AICPA letters, “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the](#)

6(d)(3)(i) to specifically provide that the calculation of qualified business income (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.

19. Issue final regulations, including examples, on the simplified method for computing net investment income under section 1411 for distributions from charitable remainder trusts.⁹⁴
20. Provide guidance on section 2652(a) and 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.⁹⁵ In addition, if only withdrawal powers for children can be split on a trust created for the benefit of a spouse and children, clarification is needed that the entire gift is split for GST purposes based on the regulations even though not all of the gifts are split for gift tax purposes.
21. Expand regulations under section 6034 to add an administrative exception to the [Form 1041-A](#) filing requirement for complex trusts that claim charitable deductions under section 642(c) solely for contributions flowed through to them from partnerships.⁹⁶
22. 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](#).⁹⁷
23. Provide guidance regarding the appropriate means and timing of GST allocations to pour over trusts from a termination of a grantor retained annuity trust (GRAT). Guidance and examples are also needed under section 2632(c)(5)(A)(i) addressing the application of the

[Internal Revenue Code](#),” October 1, 2018; “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A of the Internal Revenue Code](#),” April 9, 2019; “[Guidance Concerning the Proposed Section 199A Treasury Regulations for Cooperatives and Their Patrons](#),” September 5, 2019; “[Guidance on the Qualified Business Income Deduction Under Section 199A](#),” March 4, 2020; and “[Guidance Concerning the Deduction for Qualified Business Income Under Section 199A and Indirect Expenses and Loss Allocation of Trusts and Estates](#),” May 8, 2020. Section 199A is also covered in the Individual and self-employed tax, IRS advocacy and relations, and Partnership lists of items.

⁹⁴ 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.

⁹⁵ AICPA letter, “[AICPA Request for Guidance on the Ability to Split Gifts under Section 2513 when the Donee Spouse has an Interest in the Trust but All the Transfers made to the Trust during the Year may be Withdrawn by Trust Beneficiaries](#),” June 26, 2007.

⁹⁶ 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.

⁹⁷ 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.

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.⁹⁸ In addition, clarification is needed as to whether the Treas. Reg. § 26.2632-1(c)(2)(ii)(A) exception to the ETIP rules for the possibility of inclusion in the gross estate being so remote as to be negligible eliminates the ETIP for almost all GRATs that are short term. Clarification is needed regarding this remoteness exception, including situations when there is no ETIP and whether a GST automatic allocation is equal to the property contributed to the GRAT or equal to the amount treated as a gift to the GRAT.

24. Provide final regulations under section 2642(g) regarding extensions of time to make allocations of GST exemption. Specifically, regarding section 2642(g)(1), taxpayers need guidance related to relief if the taxpayer opted out but wants to do a late allocation.
25. 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. In addition, further guidance is needed under section 2632(c)(3)(B)(i)(III) as per regulations, including examples regarding all the exceptions for a GST trust and on the following issues.
 - Definition of GST trust nuances with respect to survival period of a person at least 10 years older where there is a waiting period, and whether the taxpayer can survive only one person and does the waiting period disqualify.
 - Contingent general powers of appointment and impact on GST trust treatment.
 - A fix for hanging Crummey powers and the complexity where no election was made.
 - Clarification if the trust is a GST trust in the situation with a life insurance trust in which assets are distributed to children either when the parent who is the insured dies or when the children turn 40, whichever is later.
26. Provide guidance on how the taxpayer can allocate additional GST exemption (because of the inflation adjustment each year) to a transfer made in the prior year. 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.
27. Provide guidance on the automatic allocation rules at death where the estate tax return reflected GST exemption in excess of available GST exemption.
28. Provide guidance on substantial compliance under section 2642(g)(2).
29. Provide guidance for allocating GST exemption to a trust where only a loan was made and no gift was reported where the trust document reflected a contribution of \$10 and thus a

⁹⁸ *Id.*

deemed gift of a receivable.

30. Provide clarifying guidance on section 2632(d). Guidance is needed regarding how the rule operates if other events occurred before the death of the beneficiary and on how the interim events are treated, and if the original trust was divided after the original transfer into 0 and 1 inclusion ratios, whether the retroactive allocation applicable is only as to the 1 inclusion ratio trust.
31. Provide guidance as to whether a life estate tenant who holds S corporation stock qualifies as an eligible shareholder for S corporation purposes under section 1361, similar to regulations proposed in 1986 that would have permitted a life estate tenant to be an eligible shareholder if certain conditions were met. The proposed regulations were omitted from final regulations issued in 1995 with an indication that the issue would be addressed in other published guidance.
32. 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).
33. 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).
34. 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

35. Provide additional guidance regarding global intangible low tax income (GILTI) and trusts and estates.⁹⁹
36. Expand the types of non-U.S. trusts eligible for relief and exemption from information reporting requirements and penalty abatement procedures in [Rev. Proc. 2020-17](#). The expansion should exempt from [Form 3520](#) and [Form 3520-A](#) reporting requirements common foreign plans that are largely standardized governmentally-sanctioned savings plans, such as Canadian Registered Education Savings Plans, Canadian Tax-Free Savings Accounts, United Kingdom Self-Invested Personal Pensions and Employer-type Australian Superannuation plans, which currently are not provided filing relief.¹⁰⁰ Additionally,

⁹⁹ AICPA letter, "[Proposed Guidance Related to Section 951A \(Global Intangible Low-Taxed Income\) \(REG-104390-18\)](#)," January 10, 2019. AICPA letter, "[Proposed Guidance Related to Section 951A \(Global Intangible Low-Taxed Income\) \(REG-104390-18\)](#)," January 10, 2019.

¹⁰⁰ 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.

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. In addition, increase [Form 3520](#) reporting threshold, or at a minimum, threshold for automatic penalty assessment, for foreign gifts and inheritances.¹⁰¹

37. Provide regulations under section 6677 regarding the failure to file information returns with respect to certain foreign trusts.¹⁰² 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 Abatement.¹⁰³
38. 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.
39. Provide guidance on issues relating to foreign trusts and the [Hiring Incentives to Restore Employment Act of 2010](#) (HIRE Act),¹⁰⁴ including guidance on the section 679(d) presumption that a foreign trust has U.S. beneficiaries.¹⁰⁵
40. 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.¹⁰⁶

¹⁰¹ AICPA letters, "[Response to Request for Public Comments on 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 \(OMB Number: 1545-0159\)](#)," February 13, 2023; "[AICPA Comments on Foreign Gift Reporting Threshold – AICPA requests that the IRS further consider the issue of indexing for inflation the \\$100,000 threshold for gifts to be reported on the Form 3520](#)," March 3, 2008; and "[Comments on Foreign Trust Reporting Issues](#)," January 31, 2007. Form 3520 and Form 3520-A also covered in the International tax list of issues.

¹⁰² 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).

¹⁰³ See IRM 20.1.1.3.3.2.1. Currently, FTA does not apply to returns with an event-based filing requirement. Also, AICPA letter, "[Response to Request for Public Comments on 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 \(OMB Number: 1545-0159\)](#)," February 13, 2023.

¹⁰⁴ [P.L. 111-147](#).

¹⁰⁵ AICPA letter, "[Request for Guidance on Foreign Trusts as Part of the HIRE Act](#)," March 28, 2011.

¹⁰⁶ AICPA letters, "[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.

41. 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.¹⁰⁷
42. Provide guidance on whether a foreign grantor trust with a U.S. grantor is required to file [Form 1041](#), *U.S. Income Tax Return for Estates and Trusts*, or [Form 1040-NR](#), *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 1040-NR](#).
43. Provide a [Form 1041-NR](#) and instructions for foreign non-grantor trusts instead of the [Form 1040-NR](#).¹⁰⁸
44. Consider broader penalty relief, including two tiers of penalty assessments for [Form 3520](#) and [Form 3520-A](#) filings, similar to the prior voluntary disclosure penalty relief, providing one tier for de minimis filing issues, such as cases where a taxpayer reported and paid tax on all the income, but the taxpayer is new to the U.S. and was not aware of the need to file [Form 3520](#) or [Form 3520-A](#), or missed a [Form 4868](#) extension filing, or incorrectly completed [Form 3520](#) or [Form 3520-A](#), etc.¹⁰⁹
 - There are many situations that may result in U.S. taxpayers transacting with foreign trusts, such as individuals moving to the U.S. with existing estate planning structures in place, individuals moving to the U.S. after accruing benefits in a non-U.S. deferred compensation plan that is treated as a trust for U.S. tax purposes, etc.
 - A second tier of the (regular/current) penalties could be reserved for taxpayers who did not exercise due care in reporting income and assets, cannot demonstrate reasonable cause etc.
 - Consider creating a safe harbor for late filing of Forms 3520 and 3520-A, including providing relief similar to First Time Abate for Forms 3520 and 3520-A and providing more reasonable cause exceptions to the imposition of penalties (and reviewing and considering reasonable cause statements filed with returns prior to sending out penalty notices).
45. Provide broader administrative relief from reporting than set forth in Rev. Proc. 2020-17 and increase the thresholds in Rev. Proc. 2020-17 § 5.03(4) to an annual limit of \$200,000

¹⁰⁷ 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. Form 3520 and Form 3520-A are also covered in the International tax list of issues.

¹⁰⁸ AICPA letter, “[AICPA Draft Form 1041NR, U.S. Income Tax Return for Foreign Estates and Trusts, and Relevant Schedules, for Consideration by the IRS](#),” September 22, 2008. See [AICPA Letter](#) and AICPA proposed: [Draft Form 1041NR \(pages 1-5\)](#), [Draft Form 1041NR- page 6](#), [Draft Form 1041NR- page 7](#), [Draft Form 1041NR-T](#), [Draft Schedule D](#), [Draft Schedule K-1](#), [Draft Schedule K-1 – page 9](#), [Draft Form 4970FT](#), and [Draft Schedule J](#).

¹⁰⁹ AICPA letter, “[Response to Request for Public Comments on 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 \(OMB Number: 1545-0159\)](#),” February 13, 2023. Form 3520 and Form 3520-A are also covered in the International tax list of issues. Penalty relief is also covered in the IRS advocacy and relations list of issues.

or less and a lifetime limit of \$3,000,000 or less. Consider other changes to reporting gifts and inheritances from sources outside of the United States,¹¹⁰ including:

- Create a separate form for reporting large foreign gifts and inheritances along with instructions that clearly educate the public.
- Add a checkbox to Form 1040 asking taxpayers whether they received any gifts and inheritances from sources outside of the United States. If the answer is yes, then direct taxpayers to the appropriate form and instructions. This suggestion is similar to the Schedule B question concerning foreign bank accounts.
- Issue regulations under section 6039F that provide greater administrative relief from reporting, including relief for transfers from non-resident alien spouses to U.S. person spouses.

46. Make changes to the Form 3520 and Form 3520-A and instructions,¹¹¹ including:

- Allow e-filing of the Form 3520 and Form 3520-A, which could reduce the number of returns incorrectly being assessed late filing penalties.
- Make clear in the instructions to the Form 3520 when an employer identification number (EIN) is required. For example, clarify whether a foreign non-grantor trust needs to obtain an EIN if it has U.S. beneficiaries but otherwise does not derive any U.S. source income or have any connections to the United States.
- Provide that the U.S. agent form only needs to be attached to Form 3520 and Form 3520-A every three years unless there has been a change.
- Include an exemption from Form 3520 and Form 3520-A reporting for foreign pensions where deferral of tax on earnings is available under a tax treaty, as in the case of Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund. See Treas. Reg. § 1.1298-1(c)(4).

47. Provide more guidance on the issues of foreign trust reporting for foreign pensions.¹¹²

48. 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.

49. Provide guidance on how the GST tax applies to grandfathered domestic trusts that become foreign trusts.

¹¹⁰ AICPA letter, "[Response to Request for Public Comments on 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 \(OMB Number: 1545-0159\)](#)," February 13, 2023.

¹¹¹ AICPA letter, "[Response to Request for Public Comments on 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 \(OMB Number: 1545-0159\)](#)," February 13, 2023. Form 3520 and Form 3520-A are also covered in the International tax list of issues.

¹¹² AICPA letter, "[Response to Request for Public Comments on 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 \(OMB Number: 1545-0159\)](#)," February 13, 2023.

50. Provide further guidance in addition to the proposed regulations ([REG-112997-10](#)) regarding several aspects of section 2801.¹¹³
51. 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.¹¹⁴
52. 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).
53. Modify [Form 1042](#), *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, and [Form 1042S](#), *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.

¹¹³ 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.

¹¹⁴ AICPA letter, “[Request for Guidance on Foreign Trusts as Part of the HIRE Act](#),” March 28, 2011.