Wolters Kluwer

Tax Briefing

2019 Post-Filing Season Update

April 18, 2019

Highlights

- ✔ Some Filing Issues Reported
- ✔ Changed Withholding Rules Lead to Underpayments, Reports of Lower Refunds
- ✔ Underpayment Penalties Waived
- ✔ TCJA-Related Guidance Issued
- ✔ Minor Legislation on the Horizon

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Continued Tax Reform Implementation Along with New Guidance; Minor Legislation on the Horizon

The week of April 15 marks the end of the filing season for the 2018 tax year. Most individual returns were due on April 15, with some taxpayers in certain parts of the country extended to April 17 due to local holidays. It was an interesting and unique filing season, full of complications and confusion due to tax reform and the federal government shutdown.

But, now it's over (or, at least, extended to the fall). Time to take a breath and see what you missed over the last few months. The IRS, Treasury, and the courts have been busy, especially during March, releasing new guidance and issuing opinions that affect the 2019 tax year and beyond.

GOVERNMENT SHUTDOWN

2019 opened with the partial government shutdown that began on December 22, 2018. After weeks of negotiation between the new Congress and the White House, an end to the shutdown was announced on January 25.

Throughout the shutdown and immediately after, there were conflicting reports as to how the shutdown would affect the tax filing season. Although high-level Treasury officials stated that tax-filing season would not be delayed, there were reports of long waits for assistance from the IRS, as well as huge backlogs of IRS responses to queries sent in before and during the shutdown.

Importantly, not all of the IRS was shuttered. Guidance was issued during the shutdown on several provisions related to the Tax Cuts and Jobs Act (TCJA). However, at or near the start of the filing season on January 29, a handful of 2018 forms and publications were still not yet available. Nevertheless, filing season was opened on time.

FILING ISSUES

Refunds Delayed, Smaller

As the filing season was underway, there were reports of delays in refunds due to, not only the ramp-up of operations after the shutdown, but also the imple-

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mentation of the TCJA. 2018 was the first full year for which the landmark tax reform bill was in effect, and new forms, procedures and systems had to be implemented at the IRS. Reports of early delays in refunds tapered off during the filing season and very few technical issues were reported.

However, as individual taxpayers began filing returns, it became clear that refunds were shrinking or disappearing altogether. An IRS report early in the filing season stated that average refunds were lower, despite promises of lower taxes resulting from the TCJA. This was due to a change in withholding rules early in 2018 as a result of the TCJA, as a Treasury spokesman stated, "The TCJA cut taxes across the board, particularly for middle-income families. Most people are seeing the benefits of the tax cut in larger paychecks throughout the year, instead of tax refunds that are the result of people overpaying the government. Smaller refunds mean that people are withholding appropriately based on their tax liability, which is positive news for taxpayers."

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Underpayments

In the wake of the TCJA, the IRS warned taxpayers to review withholding, as many older withholding elections based on the number of exemptions would not mesh well with the new individual tax system. Although many taxpayer did indeed heed that warning, the Government Accountability Office estimated that nearly 30 million taxpayers were expected to have underpaid taxes for 2018, many of whom would then be penalized for the underpayment. Relief was issued in early 2019, lowering the threshold for application of the penalty from 90 percent to 85 percent of the prior year's taxes (*Notice 2019-11*). However, in March the IRS announced a further reduction in the threshold to 80 percent (*Notice 2019-25*). In order to have the penalty waived, taxpayers were to complete Part I of Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts, with the return for 2018. For taxpayers who already filed their returns, a Form 843, Claim for Refund and Request for Abatement must be filed. Taxpayers should complete the form and include the statement "80% Waiver of estimated tax penalty" on Line 7.

TAX REFORM IMPLEMENTATION

Throughout 2018, the IRS issued extensive guidance implementing the TCJA. There is still much more to do, as the IRS and Treasury expect to continue issuing guidance throughout 2019. Even during and in the wake of the partial government shutdown, the IRS was busy in the early months of 2019. Below are highlights of some of the TCJA implementation guidance issued in thus far in 2019.

Safe Harbor for Taxpayers Claiming 100-Percent Bonus Depreciation on Vehicles Subject to Luxury Car Depreciation Caps. The IRS provided a long-expected safe harbor (Rev. Proc. 2019-13) that allows the owner of a vehicle that is subject to the annual luxury car depreciation caps to claim depreciation deductions during each year of the vehicle's regular recovery period, even though the 100-percent bonus depreciation (as allowed under TCJA) is claimed in the year the vehicle is placed in service. Without the safe harbor, the cost of a vehicle in excess of the first-year cap ($18,000 for a vehicle placed in service in 2018) is recovered at a specified rate ($5,760 per year for a vehicle placed in service in 2018) beginning in the first tax year after the end of the vehicle's regular recovery period.

Under the safe harbor, depreciation deductions after the first year are limited to the lesser of the applicable depreciation cap or depreciation computed using table percentages on the cost of the vehicle as reduced by the first-year cap. The election is made by using the safe harbor in the second year of the vehicle's recovery period. At first glance this seems odd, but the safe harbor does not affect depreciation calculations until the second year of the recovery period. With or without the safe harbor, a taxpayer claiming 100-percent bonus depreciation in 2018 may only claim an $18,000 deduction.

Proposed Regulations on Deduction for FDII and GILTI. For tax years beginning after December 31, 2017, and before January 1, 2026, U.S. corporate shareholders can deduct 50 percent of global intangible low-taxed income (GILTI), and the amount treated as a dividend under Code Sec. 78 (the section 78 gross-up). Foreign-derived intangible income (FDII) earned directly by a domestic corporation can be deducted at a rate of 37.5 percent. The IRS issued much anticipated proposed regulations (NPRM REG-104464-18) on the Code Sec. 250 deduction, which provides for these special deductions..

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The proposed regulations provide guidance for determining the amount of the Code Sec. 250 deduction allowed to a domestic corporation for its FDII and GILTI, and include:

- rules for determining the deduction amount, including rules for the taxable income limitation under Code Sec. 250(a)(2);
- general rules for computing a domestic corporation's FDII;
- rules for determining qualified business asset investment (QBAI), a component of the FDII computation;
- general rules for determining gross income included in gross foreign-derived deduction eligible income (gross FDDEI), a component of the FDII computation; and
- rules for determining gross FDDEI from the sales of property and provision of services, including provision to related parties.

Reporting Life Insurance Policy Sales and Death Benefit Payments. The IRS has issued proposed regulations (NPRM REG-103083-18) on the information reporting requirements under Code Secs. 101(a)(3) and 6050Y, added by TCJA. The regulations apply to reportable life insurance policy sales made, and reportable death benefits paid, after December 31, 2017. Transition relief applies until these regulations are finalized. The proposed regulations respond to comments generated by the IRS's pre-regulatory guidance in Notice 2018-41, and provide clarifications.

OTHER GUIDANCE

The IRS has been doing more than just implementing TCJA. Guidance on a wide spectrum of tax issues, including business credits, filing, corporate transactions, penalties and foreign compliance were all issued. Also, some notable opinions were issued by the courts. Below are some highlights.

Credits

Compliance Monitoring Obligations of Low-Income Housing Credit Agencies Finalized. Final regulations (T.D. 9848) relating to the low-income housing tax credit revise and clarify requirements that low-income housing agencies must follow when conducting physical inspections of low-income units and reviewing low-income certifications and other documentation. The regulations finalize previously issued temporary regulations.

Low-Income Housing Credit Regs Detail Submetered Utility Charge Treatment. Final regulations (T.D. 9850) cover the treatment of submetered utility costs paid by a low-income housing tenant, in situations where the building owner sells tenants energy produced from a renewable resource and the owner does not purchase the energy from a local utility company.

Foreign Transactions

New FAQs on Deferred Foreign Income. The IRS has issued new Frequently Asked Questions (FAQs) on Tax Year 2018 reporting and payments arising under Code Sec. 965 (deferred foreign income) (Questions and Answers about Tax Year 2018 Reporting and Payments Arising under Section 965).

FATCA (Foreign Account Tax Compliance Act) Compliance and Verification Procedures Finalized. Final regulations (T.D. 9852) provide compliance requirements and verification procedures for:

- sponsoring entities of foreign financial institutions (FFIs) and certain non-FFIs;
- trustees of certain trustee-documented trusts;
- registered deemed-compliant FFIs, and trustees of certain trustee-documented trusts; and
- FFIs that implement consolidated compliance programs.

The final regulations, which are part of the FATCA chapter 4 regulations, differ only in limited ways from proposed regulations that were published on January 6, 2017. The regulations are effective on March 25, 2019.

FAQs on FATCA Procedures. The IRS has updated its FAQs on FATCA General Compliance (FAQ 2019-2: FATCA – FAQs General).

Corporate Transations

Proposed Regulations Modify Rules Barring Gain Avoidance by Corporate Partners. Proposed regulations (NPRM REG-135671-17) would amend Reg. §1.337(d)-3, which prevents a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner or certain related entities. The proposed regulations modify what "stock of the corporate partner" means regarding:

- attribution of ownership;
- affiliated groups;
- value of an interest attributable to such stock; and
- the exception for certain dispositions.

Property Transfers to REITs Following 355 Distributions. Newly issued proposed regulations (NPRM REG-113943-17) under Code Sec. 337(d) revise prior proposed regulations addressing transactions in which property of a C corporation becomes the property of a real estate investment trust (REIT) (a conversion transaction) following a Section 355 distribution of controlled C corporation stock. The prior proposed regulations are partially withdrawn.

RIC Income Test. Final regulations (T.D. 9851) on the qualification of a regulated investment company (RIC) largely adopt earlier proposed regulations, but clarify the rules on foreign inclusions. The final regulations apply to tax years that begin after June 18, 2019.

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Retirement

Retiree Lump-Sum Windows. The IRS announced (Notice 2019-18) that it no longer plans to amend its required minimum distribution (RMD) regulations to prohibit a defined benefit plan from allowing still-living retirees to convert annuity payments into a lump-sum payment.

Penalties and Procedure

Reportable Transaction Penalty Amounts. Guidance (T.D. 9853) was issued clarifying the Code Sec. 6707A penalty calculation for failure to include on a return or statement any information required to be disclosed under Code Sec. 6011 on a reportable transaction. The final regulations affect any taxpayer who fails to properly disclose participation in a reportable transaction.

Penalty Relief to Partnerships for Missing Negative Tax Basis Capital Account Information. The IRS will waive penalties (Notice 2019-20) under Code Sec. 6722 and Code Sec. 6698 for certain partnerships that file and furnish Schedules K-1 to Form 1065 without reporting negative tax basis capital account information. The relief applies to partnerships that fail to report such information for the partnership's tax year that began after December 31, 2017, but before January 1, 2019.

Filing Certain Returns for Payment of Excise Taxes. The IRS has released regulations (T.D. 9855) specifying which return to use to pay certain excise taxes, and the time for filing the return. The regulations implement the statutory addition of two excise taxes to the first-tier taxes subject to abatement, and affect:

- applicable tax-exempt organizations and their related organizations;
- applicable educational institutions;
- sponsoring organizations that maintain certain donor advised funds, and fund managers of such sponsoring organizations; and
- certain donors, donor advisors, and persons related to a donor or donor advisor of a donor advised fund.

IRS May Charge Return Preparer's Fee for PTINs. The IRS has the authority to charge tax return preparers a fee to obtain and renew preparer tax identification numbers (PTINs), the D.C. Circuit Court of Appeals has ruled. The court vacated and remanded a federal district court decision enjoining the IRS from charging PTIN fees (*sub nom* Adam Steele, DC D.C.).

LEGISLATION

After a relatively quiet 2018, and a 2019 that began with a shutdown, Congress has begun negotiations on a number of smaller tax bills.

Tax Extenders. A slate of more than 30 taxpayer-favorable provisions has expired for tax years beginning after 2017. Included among these are expensing rules for certain businesses, many energy credits, the deductions for tuition and fees and mortgage insurance premiums, and the exclusion of discharged personal residence indebtedness. Although many members of Congress support the extension of these provisions beyond 2017, it is unclear what, if anything, can be done about these provisions for the 2018 tax year. It is possible they will be extended, but taxpayers may be required to file amended returns for the 2018 tax year in order to benefit from them.

Other Proposed Legislation. The House of Representatives passed the Taxpayer First Act of 2019 (H.R. 1957) on April 9, 2019. The bill largely affects the internal structure of the IRS, with some effect on penalties and post-filing procedural requirements. The bill has bipartisan support in the Senate and is likely to pass the Senate.

The SECURE Act (H.R. 1994), which revises several provisions relating to pensions and retirement plans, including required minimum distributions (RMDs) and increased flexibility for 401(k) plans, has been approved by the House Ways and Means Committee. A similar bill has been introduced in the Senate.

The Restoring Investment in Improvements Act (H.R. 1869), which would fix the TCJA "retail glitch" enjoys bipartisan support in the House. The Senate's Craft Beverage Modernization and Tax Reform Bill of 2019, which also has bipartisan support, is specifically tailored to reduce excise taxes and regulations for the U.S. craft beverage industry.

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