2019 Tax Year-In-Review

January 16, 2020

Highlights

- ✔ Late 2019 Legislation Boosts an Already Busy Year
- ✔ Continued Implementation of Tax Reform
- ✔ Changes in IRS and Filing May Require New Approach in 2020

Inside

SPECIAL REPORT

Year-End Legislation and Ongoing Tax Reform Implementation Make 2019 Another Stand-Out Year in Tax Policy

Sweeping, bipartisan legislative reforms to retirement security, IRS administration, and the renewal of over 30 temporary tax breaks known as "tax extenders" are just some of the developments that made 2019 another stand-out year in tax policy. Additionally, the IRS issued several packages of proposed and final regulations during the 2019 tax year pertaining to the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97).

SECURE ACT

The Further Consolidated Appropriations Act, 2020 (P.L. 116-94), a government spending bill enacted on December 20, 2019, which funds the government through September 30, 2020, served as the legislative vehicle for several year-end tax measures. Notably, the Act included the bipartisan Setting Every Community Up for Retirement Enhancement Act, known popularly as the SECURE Act. The SECURE Act draws upon the identically named House bill (HR 1994) and Senate's bipartisan Retirement Enhancement and Savings Act (RESA) (S 972). The SECURE Act makes major substantive as well as administrative reforms to retirement security, many of which are already effective.

> **COMMENT.** *The SECURE Act is largely considered a "win" for employees as well as the financial services industry. However, many lawmakers, stakeholders and industry leaders are saying that although the reforms are a big step, more needs to be done. To that end, congressional tax writers on Capitol Hill appear unfinished in the realm of retirement security. Top bipartisan, bicameral tax writers have already expressed an appetite for moving forward this year on additional retirement security legislation.*

The SECURE Act made reforms to retirement planning and security in a number of areas, including Individual Retirement Accounts (IRAs), 401(k) plans, plan administration, and employer funding.

IRA Changes

The new legislation includes major changes for IRAs, including:

- Moving the start date for requirement required minimum distributions (RMDs) to the year the owner turns 72;
- Ending the 70 ½ age limit for contribute contributions to an IRA; and
- Shortening the distribution period for nonspouse inherited IRAs to a 10-year maximum.

The 10-year window for distributions to a nonspouse beneficiary applies regardless of when the IRA owner dies. Thus, the change will severely limit the use of "stretch IRAs" as an effective planning tool. Limited exceptions are available.

401(k) Changes

Some of the most significant 401(k) changes include:

- Requiring plans to offer participation to long-term, part-time employees;
- Encouraging auto-enrollment by increasing the cap; and
- Streamlining the safe harbor for non-elective contributions.

Employers with 401(k) plans must offer employees who work between 500 and 1000 hours year an additional means to participate in the plan. The rule change would only affect 401(k) cash or deferral arrangements, and no other qualified plans.

Administrative Changes

The new law also provides several other administrative changes:

- Permitting distributions of up to $5,000 for the birth or adoption of a child without incurring the early-withdrawal penalty;
- Count taxable stipends and nontuition fellowships as compensation for making IRA contributions;
- Counting nontaxable difficulty of care payments earned by home healthcare workers as compensation for purposes of retirement contributions;
- Allowing direct trustee-to-trustee transfers between retirement plans of lifetime income investments or annuities; and
- Providing a safe harbor for plan sponsors in the selection of an annuity provider.

Changes For Employers

Small employers are now able to more easily band together to participate in pooled multiple employer plans (MEPs). Additionally, employers are encouraged to steer employees towards lifetime annuities. Other changes include:

- allowing plans administrative flexibility, including relief for "close" plans;
- new annual disclosure requirements; and
- providing a safe harbor for plan sponsors in the selection of an annuity provider.

Further, qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans are now able to make direct trustee-to-trustee transfers to other employer-sponsored retirement plans or IRAs of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held under the plan. Participants are now able to preserve their lifetime income investments and avoid surrender charges or fees.

"There is still more that we can do to help more Americans save for their retirement," Sen. Rob Portman, R-Ohio said. "I believe that passage of the SECURE Act can help pave the way for bolder reforms in legislation I have introduced with Senator Cardin called the Retirement Security and Savings Act. I believe the Senate Finance Committee [(SFC)] should hold hearings and a markup on this legislation, and I will work closely with Senator Cardin to move it forward," Portman added.

COMMENT. *A spokesperson for SFC Chairman Chuck Grassley, R-Iowa, told Wolters Kluwer on January 14 that "nothing is planned at the moment," when asked about the potential SFC markup.*

Additionally, House Ways and Means Committee Chairman Richard Neal, D-Mass., is expected to introduce a retirement savings bill this year that will closely resemble his Automatic Retirement Plan Act and Retirement Plan Simplification and Enhancement Act introduced in 2017. There is similar legislation in the Senate. Notably, this expected "2.0" retirement package could include a provision requiring certain employers to maintain automatic enrollment retirement plans or face an excise tax for failure to comply.

EXTENDERS AND ACA TAXES AND DISASTER RELIEF… OH MY!

The Act also carried the renewal of over 30 expired and nearly-expired so-called tax extenders. Historically, many of these business and individual taxpayer-friendly temporary tax provisions have been extended consistently on an annual or biannual basis by Congress. However, 2018 and nearly all of 2019 passed without any bicameral consensus on moving tax extenders legislation, leaving the fate of the expired temporary tax provisions, as well as temporary tax policy overall, uncertain. Yet to the glee and disappointment of many, and little surprise to most, Congress ultimately decided to extend nearly all expired or soon-to-be expired provisions.

Extended Provisions

Energy. Most of the energy-related temporary tax breaks that expired in 2017 were extended retroactively through 2020. However, a longer extension was provided through 2022 for biodiesel and renewable diesel fuel incentives.

Individual Extenders. Among the temporary provisions extended for individuals included the TCJA's reduction in the adjusted gross income (AGI) floor for medical and dental expense deductions from 10% to 7.5%, the above-the-line deduction for tuition and fees, the treatment of mortgage insurance premiums (PMI) as deductible qualified residence interest, and the exclusion of qualified principal residence indebtedness from gross income.

Business Extenders. A number of business incentives are also included among the extended provisions, most of which relate to the recovery or expensing of business investments. The classification of certain racehorses as 3-year property, the allowance of a 7-year recovery period for motorsports entertainment complexes, and accelerated depreciation for business property on an Indian reservation are all extended through 2020. Also, the provision of special expensing rules for film, television, and live theatrical performances are all extended through 2020, retroactive to 2018. Additionally, the new markets tax credit and the incentives for investments in empowerment zones, both intended to spur investment in economically depressed areas, are extended through 2020. The new markets tax credit was not scheduled to expire until the end of 2019, so only the empowerment zone incentives needed to be retroactively extended.

Additional TCJA Extenders. The Act extends through 2020 several TCJA-related tax breaks that were set to expire in 2019, such as the credit for employers providing paid family and medical leave, the look-thru rule for controlled foreign corporations, and several provisions meant to incentivize the production of beer, wine, and distilled spirits.

COMMENT. *Most of the tax extenders renewed in the Act at the end of 2019 are set to expire after 2020. Thus, Congress will need to either address the bulk of these temporary tax provisions with another extension at the end of this year (or a retroactive extension in 2021 or 2022 as has been the trend recently), or lawmakers could continue to examine temporary tax policy as a whole before passing another extension. Many lawmakers on a bipartisan, bicameral basis have expressed the importance of moving away from temporary tax policy to provide more stability in the tax code and certainty for taxpayers.*

> *"...to the glee and disappointment of many, and little surprise to most, Congress ultimately decided to extend..."*

Hill Reaction. SFC ranking member Ron Wyden, D-Ore., said that a "better agreement" to make permanent many of the tax extenders was close to the finish line but that the Trump administration allegedly opposed it. Meanwhile, House Ways and Means Committee ranking member Kevin Brady, R-Tex., who has for years remained vocal in his disapproval of temporary tax policy, seemed none too pleased with the most recent clean date change for the extenders, as expected.

"'Business as usual' won this round. [The] fight isn't over – yearly temporary tax circus needs to end. Focus on 2020," Brady said in a tweet, adding, "When I die, sprinkle my ashes over the extenders – so I live through eternity."

Many practitioners, however, seemed unsurprised that the tax extenders were yet again renewed. "There were numerous fits and starts, but this result is a reminder that Congressional muscle memory on extenders is very strong, so ultimately the members did what they always do – extend them," John Gimigliano, principal-in-charge of the federal legislative and regulatory services group in the Washington National Tax practice of KPMG LLP told Wolters Kluwer.

ACA Taxes

Additionally, the Act fully repealed the Patient Protection and Affordable Care Act's (ACA) (P.L. 111-48) excise taxes on high cost employer-sponsored health care plans ("Cadillac" tax) and medical devices. The Act also permanently repealed the fee on health insurance providers.

Disaster Relief

The Act also includes disaster tax relief for federally declared disaster areas generally during 2018 and 2019. The relief includes the forgiveness of early-withdrawal penalties for qualified disaster distributions, the recontribution of amounts withdrawn for home purchases, and an increase in the amount of loans from qualified plans. An employee retention credit is also allowed for employers in affected areas, as well as special casualty loss rules for affected individuals.

TCJA FIXES

Although the Act includes several "fixes" and extensions of TCJA provisions, it does not include many technical corrections to the 2017 tax reform law as originally hoped for by Republicans. However, the application of the estates and trusts tax rate to certain unearned income of children, known as the "kiddie tax," has been reverted to the prior use of the parents' tax rate for tax years beginning after 2019. The TCJA's original change, although meant to simplify the application of the kiddie tax, had the unintended consequence of increasing the tax on the unearned income, such as military death benefits, of children in low-income families. Taxpayers can elect to apply the "new" rate to 2018 (on an amended return) and 2019.

The Act also eliminates the controversial "church parking tax," an unintended consequence of the TCJA's attempt to treat the employee fringe benefits of C corporations and tax-exempt entities in the same manner. This had the effect of requiring church employees to pay tax on reserved parking spaces. The IRS attempted to rectify the issue through regulatory guidance, but Congress ultimately eliminated the "tax" entirely.

COMMENT. *Notably, the Act does not include a fix for the so-called retail glitch, a drafting error that inadvertently left leasehold improvement property outside the category of 15-year recovery property for depreciation purposes, leaving it in the 39-year recovery category. More significantly, this oversight eliminates such property from qualifying 100%-bonus depreciation, which means improvements must be recovered over a long period instead of being expensed in the year incurred.*

TCJA IMPLEMENTATION

Throughout 2019, the IRS released massive amounts of guidance. While some of these items were simply reflections of changes in regulatory policy, the majority of them were continued implementations of the Tax Cuts and Jobs Act. These include, among others, proposed and final regulations relating to the qualified business income deduction (QBI), bonus depreciation, and opportunity zones. The agencies are expected to continue to release TCJA-related rules through fall of 2020.

Some of the more significant items include:

T.D. 9847/REG-134652-18 - Final regulations for the section 199A QBI, "passthrough" deduction, which largely adopt the proposed regulations in NPRM REG-107892-18 (August 16, 2018), but with substantial modifications. All items treated as capital gain or loss, including Section 1231 gains and losses, are excluded from QBI. Taxpayers should continue to apply the Section 1231 netting and recapture rules when calculating the Code Sec. 199A deduction. The final regulations drop the rule that treated an incidental non-SSTB as part of an SSTB if the businesses were commonly owned with shared expenses and the non-SSTB's gross receipts were no more than five percent of the business's combined gross receipts.

T.D. 9846 - Final regulations for determining the inclusion under Code Sec. 965 of a U.S. shareholder of a foreign corporation with post-1986 accumulated deferred foreign income. The tax imposed on the inclusion is referred to as the transition tax. The final regulations retain the basic approach and structure of the proposed regulations originally released in August 2018 (NPRM REG-104-226-18), with certain changes.

T.D. 9864/Notice 2019-12 - Final regulations that require taxpayers to reduce the amount any charitable contribution deduction by the amount of any state and local tax (SALT) credit they receive or expect to receive in return. The rules are aimed at preventing taxpayers getting around the SALT deduction limits. A safe harbor was also provided to certain individuals to treat any disallowed charitable contribution deduction under this rule as a deductible payment of taxes.

T.D. 9866/REG-101828-19 - Final regulations that address the global intangible low-taxed income (GILTI) provisions of Code Sec. 951A. The final regulations retain the basic approach and structure of the proposed regulations published on October 10, 2018. The regulations on the foreign tax credit also adopt proposed regulations published December 7, 2018. These rules were issued to ensure that the applicability dates coincide with the applicability dates of the Code sections to which they relate. The final foreign tax credit regulations also retain the basic structure and approach of the proposed regulations. Also include proposed regulations on the treatment of domestic partnerships for determining amounts included in their partners' gross incomes under Code Sec. 951 with respect to CFCs owned by the partnership, and the GILTI treatment of gross income that is subject to a high rate of foreign tax under Code Sec. 951A.

T.D. 9865/REG-106282-18 - Temporary regulations that limit the application of the Code Sec. 245A participation dividends received deduction (the participation DRD) and the Code Sec. 954(c)(6) exception in certain situations that present an opportunity for tax avoidance. The temporary regulations also provide related information reporting rules under Code Sec. 6038.

T.D. 9874/REG-106808-19 – Final regulations on the 100 percent bonus depreciation allowance for qualified property acquired and placed in service after September 27, 2017, allowing property, which is constructed pursuant to a pre-September 28, 2017, binding contract to qualify for the 100 percent rate. The final regulations adopt proposed regulations published in the Federal Register on August 8, 2018 (REG-104397-18) with certain modifications, including the revised constructed property rule.

T.D. 9885/REG-112607-19 - Final regulations implementing the base erosion and anti-abuse tax (BEAT) under Code Sec. 59A and providing BEAT related reporting requirements. The final regulations provide guidance on how to determine the amount of BEAT liability and how to compute the components of the tax calculation. In response to comments received on the 2018 proposed regulations, the IRS also issued new proposed regulations to address certain aspects of the BEAT not covered by the final rules.

T.D. 9889/REG-120186-18 - Proposed qualified opportunity zone regulations issued on October 29, 2018, (REG-115420-18) and May 1, 2019, (REG-120186-18) under Code Sec. 1400Z-2 were finalized at the end of 2019 with modifications. The regulations, issued as a combined 550 page package, address issues related to all aspects of the gain deferral rules and also various requirements that must be met for an entity to qualify as a QOF or as a qualified opportunity zone business. The regulations detail which taxpayers are eligible to make the election, the types of capital gains eligible for deferral, and the method of making deferral elections. Revisions are made to the rules applying the statutory 180-period and other requirements with regard to the making of a qualifying investment in a QOF. The IRS is expected to reflect these regulations in updated forms, instructions, and other guidance in January 2020.

REG-125710-18 - Proposed regulations providing guidance on the inclusion of items of income and deductions in the calculation of built-in gains and losses under Code Sec. 382(h). The proposed regulations apply to ownership changes that occur after the date the proposed regulations are published as final regulations in the Federal Register. In 2020, IRS modified the applicability dates for Code Sec. 382 proposed regulations issued with

TCJA Proposed Regulations

The following tax reform-related proposed regulations were released by the IRS in 2019:

- **REG-100956-19,** Source of Income from Certain Sales of Personal Property
- **REG-122180-18,** Certain Employee Remuneration in Excess of $1,000,000 under IRC Section 162(m)
- **REG-107431-19,** Treatment of Payments to Charitable Entities in Return for Consideration
- **REG-105495-19,** Foreign Tax Credit
- **REG-131071-18,** Eligible Terminated S Corporations
- **REG-117062-18,** Electing Small Business Trusts With Nonresident Aliens as Potential Current Beneficiaries
- **REG-128246-18,** Contribution Limits Applicable to ABLE Accounts
- **REG-104223-18,** Ownership attribution under section 958
- **REG-104870-18,** Taxable Year of Income Inclusion under an Accrual Method of Accounting
- **REG-104554-18,** Advance Payments for Goods, Services, and Other Items
- **REG-101378-19,** Determination of the Maximum Value of a Vehicle for Use with the Fleet-average and Vehicle Cents-per-mile Valuation Rules
- **REG-105474-18,** Guidance on Passive Foreign Investment Companies
- **REG-106877-18,** Guidance on the Determination of the Section 4968 Excise Tax Applicable to Certain Private Colleges and Universities
- **REG-105476-18,** Withholding of Tax and Information Reporting with Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business
- **REG-120186-18,** Request for Information on Data Collection and Tracking for Qualified Opportunity Zones
- **REG-103083-18,** Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules
- **REG-106706-18,** Estate and Gift Taxes; Differences in the Basic Exclusion Amount
- **REG-104352-18,** Rules Regarding Certain Hybrid Arrangements

REG-125710-18 in September 2019 by withdrawing the text of the proposed applicability dates and proposing revised applicability dates. The newly issued proposed rules would also provide transition relief.

REG-118425-18 - Proposed regulations on the Code Sec. 199A deduction as it pertains to cooperatives and their patrons, which provide detailed rules for coop patrons and specified cooperatives to calculate the deduction.

REG-104464-18 - Proposed regulations on the Code Sec. 250 deduction, which allows U.S. corporate shareholders a deduction for Foreign-derived intangible income (FDII); Global intangible low-taxed income (GILTI); and the section 78 gross-up attributable to GILTI.

IRS ADMINISTRATION

Taxpayer First ACT

On July 1, 2019, President Donald Trump signed into law the bipartisan Taxpayer First Act of 2019 (P.L. 116-25). The IRS reform legislation is intended to broadly redesign the IRS for the first time in over 20 years.

Generally, the Taxpayer First Act aims to reform the IRS into a more taxpayer-friendly agency. The measure requires the IRS to develop a comprehensive customer service strategy, as well as a plan to redesign the Service's structure, modernize its technology, and enhance its cyber security.

Further, the measure contains instruction for some of the following IRS reforms:

- codify and enhance an independent Office of Appeals within the IRS;
- waive the application fee for an offer in compromise (OIC) by a low-income taxpayer;
- set new electronic filing requirements;
- clarify information available about low-income taxpayer clinics (LITCs);
- codify the Volunteer Income Tax Assistance (VITA) Program;
- require notice regarding the closure of taxpayer assistance centers (TACs);
- improve the IRS whistleblower program;
- modify the private debt collection program;
- clarify procedures for equitable relief from joint liability;
- establish new safeguards on the seizure of funds believed to be structured to avoid the $10,000 financial reporting requirement; and
- modify procedures for the issuance of summons and notice of third party contacts by the IRS.

Tax Filing

All in all, the IRS stated the 2019 tax filing season was timely and successful, considering the year started off with a partial government shutdown as well as added complications of tax reform implementation. According to IRS Commissioner Charles "Chuck" Rettig, the 2019 tax filing season went well in terms of tax return processing and the operation of information technology systems.

The 2020 tax filing season is slated to be begin on January 27.

IRS Forms. The IRS revised several forms during 2019, some of which included Form 8996 for Qualified Opportunity Funds (QOFs), 2019 Form 1040 with fewer schedules, Form 1040-SR, and an updated and newly named 2020 Form W-4. Additionally, the IRS released Form 1065, Schedule K-1, and Form 1120-S, which would require partnerships and S corporations to report more details on their activities than before.

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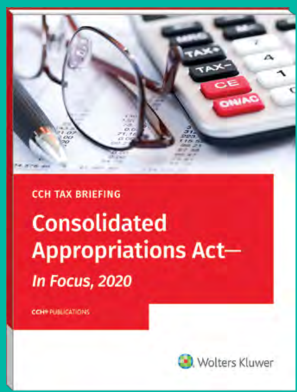

CCH Tax Briefing — Consolidated Appropriations Act — *In Focus (2020)*

Provides a summary of the personal and business tax extenders, with details related to the impact of a retroactive extension to the 2018 tax year.

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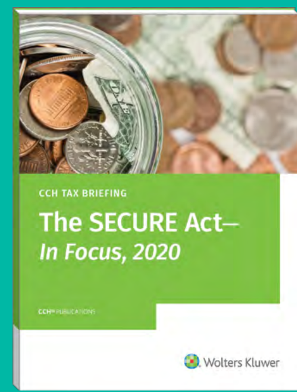

CCH Tax Briefing — The SECURE Act — *In Focus (2020)*

Provision-by-provision summary of all IRC changes, including helpful commentary, insights, and examples.

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