2018 Tax Year-In-Review

January 8, 2019

Highlights

- ✔ Federal Shutdown Slows IRS
- ✔ TCJA Guidance
- ✔ Legislation Pending for 2019
- ✔ Rettig Takes the Reins

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SPECIAL REPORT

Tax Reform Implementation Takes Center Stage in 2018; Ongoing IRS Shutdown Adds to Uncertainties in the New Year

In review of the most significant tax-related developments of 2018, most notable is the year-long and ongoing effort toward tax reform implementation. The Tax Cuts and Jobs Act (TCJA), enacted in late December 2017, was the most sweeping overhaul of the tax code in over thirty years. Nearly every taxpayer is impacted by the new tax law, and practitioners are working to understand its varying impact on both their own professional planning as well as client-specific tax planning and return preparation. Although a large volume of TCJA-related guidance was released by the IRS in 2018, additional tax reform guidance is expected to be unveiled and finalized throughout 2019.

COMMENT. *An ongoing partial government shutdown, which includes much of the IRS, is expected on Capitol Hill to likely cause significant setbacks during the 2019 tax filing season. While IRS operations related to TCJA implementation continue amidst the shutdown because of funding not tied to currently expired government appropriations, other critical functions of the IRS are currently inoperative.*

COMMENT. *At this time, there is no end within sight for the partial government shutdown. Congressional Democrats and President Donald Trump have been unable to come to an agreement concerning certain border security issues. The Democratic-majority House is expected to continue to pass appropriations bills that both the Republican-majority Senate and Trump have said will not be supported. A spokesperson for Senate Majority Leader Mitch McConnell, told Wolters Kluwer that the Senate will not consider a bill that the president will not sign.*

IRS SHUTDOWN

"As we understand it, the IRS is operating under a specific TCJA authorization which allows it to continue working on TCJA-related guidance during the shutdown," Mike Dolan, national director of IRS policies and dispute resolution in the

Washington National Tax practice of KPMG LLP, told Wolters Kluwer on January 3. "However, other filing season related preparations, many of which will be interdependent and must ultimately integrate with TCJA-base changes, have not been exempted and are therefore likely behind schedule or risk becoming so if the shut-down persists," he added.

> *"...'less than final' guidance creates uncertainty for taxpayers and their advisors and could cause some to push return preparation to later in the filing season...."*

Dolan, a former IRS deputy commissioner, who also served two extended appointments as acting IRS commissioner, provided Wolters Kluwer direct insight into procedural steps that must be completed by the IRS to prepare for a tax filing season that involves a new tax law—such as the one at hand. Additionally, Dolan conveyed to Wolters Kluwer some particular hurdles that may further complicate this year's filing season.

COMMENT. *The IRS announced on January 7, 2019, that the filing season for the 2018 tax year would begin on January 28, 2019.*

"Under normal circumstances, any filing season that involves new tax law requires the IRS to determine what new data must be captured on a tax return and how that data must interact with other return data or processing protocols. Typically, a new provision may require the addition or revision of one or more line items on a return or the creation or revision of a schedule and/or information report," Dolan outlined.

Additionally, related instructions must be created or revised, and IRS return-processing software requirements must be defined, he added. Further, IRS systems and databases must be programed in order to capture and organize correct data, according to Dolan. Moreover, internal IRS training and instruction on the new tax law must be developed to prepare employees to properly respond to taxpayer and practitioner questions, he noted.

"All of the above steps typically involve an iterative development process with requirements being defined, reviewed, tested and revised—often multiple times—on the way to producing final 'products.' The shorter the time horizon over which to complete this development, the greater the risk of failure," Dolan said.

However, the IRS has currently furloughed approximately 70,000 IRS employees, accounting for 87.5 percent of its workforce, according to House Ways and Means Committee Chairman Richard Neal, D-Mass. In a January 4 letter to IRS Commissioner Rettig, Neal asked for details on the IRS's ability amidst the ongoing shutdown to handle the 2019 tax filing season and tax reform implementation.

IMPACT. *Currently, the IRS has ceased vital taxpayer services, which include but are not limited to answering taxpayer questions and accepting non-disaster relief transcript requests. Moreover, the IRS stated in a Fiscal Year 2019 Lapsed Appropriations Contingency Plan that it will not issue refunds during a government shutdown. However, the White House, on January 7, 2019, issued a directive to the IRS to issue refunds during the shutdown. The IRS and the Office of Management and Budget confirmed that refunds can be issued.*

"Once the filing season begins, any delays in processing and/or continuing uncertainty will likely create abnormal demands on telephone and other assistance sites, which will result in increased wait times and lower overall levels of service. The IRS will likely be required to increase its real-time communication within the entire return processing ecosystem—including, among others: taxpayers, tax professionals, software vendors, the Congress, states, and IRS employees," Dolan told Wolters Kluwer.

TAX REFORM IMPLEMENTATION

Adding to the uncertainties of this years' filing season are the not yet finalized and incomplete packages of proposed regulations on the TCJA. "The current filing-season preparation environment is complicated by the fact that there remain multiple instances in which TCJA proposed guidance is the only reliable articulation/understanding from which to derive the data capture and processing requirements," Dolan said. "This 'less than final' guidance creates uncertainty for taxpayers and their advisors and could cause some to push return preparation to later in the filing season in the hope that at least some additional guidance will be finalized."

Implementation of the TCJA was a primary IRS focus throughout 2018. Originally, the IRS predicted it would have all tax reform-related proposed guidance released before the 2019 filing season. However, Assistant Treasury Secretary David Kautter, while serving as Acting IRS Commissioner, told Congress last year that it could take years to finish the job. "It will take us a couple of years, at least, to get guidance out on the entire bill [TCJA]," Kautter said.

Practitioners have voiced concern with several pieces of TCJA guidance, sometimes criticizing either the interpretation of the law or lack thereof. Indeed, an IRS spokesperson, while speaking to Wolters Kluwer, previously anticipated that the TCJA guidance released on Code Section 199A would not answer every practitioner question regarding the new law. In line with that prediction, many practitioners have expressed the need for additional guidance.

COMMENT. *Several key proposed regulations related to TCJA provisions are anticipated o be released in the coming weeks. Generally, additional guidance on certain TCJA provisions, including but not limited to the Section 199A pass-through deduction and the State and Local Tax (SALT) deduction, are expected early this year.*

NEW IRS COMMISSIONER

Adding to an eventful year at the IRS, the Service's 49th commissioner was officially sworn in on October 1 by Treasury Secretary Steven Mnuchin. IRS Commissioner Charles "Chuck" P. Rettig is currently leading the implementation of tax reform. Rettig is a former tax attorney from California.

While speaking at a recent tax conference in Washington, D.C., Rettig stated that tax reform implementation is at the top of his priority list as head of the IRS. In addition to tax reform-related guidance, the IRS has been working to update new taxpayer forms and instructions for the 2019 tax filing season.

To that end, last month the IRS released the final 2018 Form 1040, Individual Tax Return. For the 2019 tax filing season, taxpayers, practitioners, and return preparers will have to become familiar with the newly organized form, along with six separate schedules. Additionally, the new, "simplified" Form 1040 eliminates the need for previous Forms 1040A and 1040EZ.

TCJA Proposed Regulations

The following tax reform-related proposed regulations were released by the IRS in 2018:

- **REG-113604-18,** Gain or Loss of Foreign Persons from Sale or Exchange of Certain Partnership Interests;
- **REG-104259-18,** Base Erosion and Anti-Abuse Tax;
- **REG-104872-18,** Removal of Regulations on Advance Payments for Goods and Long-Term Contracts;
- **REG-105600-18,** Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the Tax Cuts and Jobs Act;
- **REG-106089-18,** Limitation on Deduction for Business Interest Expense;
- **REG-107163-18,** Regulations to Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and to Update the Abatement Rules for Section 4966 and 4967 Taxes (TCJA added sections 4960 , Tax on excess tax-exempt organization executive compensation and 4968, Excise tax based on investment income of private colleges and universities to the Tax Code);
- **REG-103163-18,** Modification of Discounting Rules for Insurance Companies;
- **REG-115420-18,** Investing in Qualified Opportunity Funds;
- **REG-114540-18**, Amount Determined Under Section 956 for Corporate United States Shareholders;
- **REG-104390-18,** Guidance Related to Section 951A (Global Intangible Low-Taxed Income);
- **REG-112176-18,** Contributions in Exchange for State or Local Tax Credits;
- **REG-107892-18,** Qualified Business Income Deduction (Income tax deduction for passthroughs);
- **REG-104397-18,** Additional First Year Depreciation Deduction (Bonus Depreciation for Certain Property);
- **REG-104226-18,** Guidance Regarding the Transition Tax Under Section 965 and Related Provisions; and
- **REG-103474-18,** Tax Return Preparer Due Diligence Penalty under Section 6695(g) (Expands the scope of the tax return preparer due diligence penalty so that it applies with respect to eligibility to file a return or claim for refund as head of household.)

The new Form 1040 is roughly a half-page in length and double-sided. For taxpayers who need them, the following six schedules are available as an attachment to the form:

- Schedule 1 – Additional Income and Adjustments to Income
- Schedule 2 – Tax
- Schedule 3 – Non-refundable Credits
- Schedule 4 – Other Taxes
- Schedule 5 – Other Payments and Refundable Credit
- Schedule 6 – Foreign Address and Third Party Designee

TAX REFORM EVALUATION AND IMPERMANENCE

Throughout 2018, many individuals and businesses, both on the corporate and individual side of the tax code, have voiced frustration over continuing uncertainty concerning the new tax law's application as well as its longevity. Additionally, taxpayers and small businesses have expressed concern that corporate tax provisions under the TCJA were enacted long-term (although Democrats want to scale back corporate tax cuts), while individual and small business-related provisions were enacted temporarily to allow the Act to satisfy Senate budget rules.

COMMENT. *The TCJA's 20 percent deduction of qualified business income was enacted only temporarily through 2025. Although the House in 2018 passed a GOP-led bill that would make permanent the TCJA's "pass-through deduction," the Senate never took up the measure before the 115th Congress adjourned.*

Currently, several Democratic lawmakers are floating proposals to increase the corporate tax rate from 21 percent. Increasing the corporate tax rate to help offset expenses for other Democratic priorities, such as infrastructure, was a common talking point among lawmakers last year.

Now that Democrats have regained control of the House in the 116th Congress, it is expected on Capitol Hill that many bills will begin to surface proposing repeal of, or at least amendments to, various TCJA provisions. To that end, Neal has stated that the House Ways and Means Committee will hold hearings on the TCJA to examine various provisions and examine the Republican tax law's effectiveness. However, with Republicans still holding the majority in the Senate, any such repeal legislation would be unlikely to make it to the president's desk, where there it, too, would almost certainly fall flat. Additionally, predominantly Republican tax initiatives, such as making permanent certain TCJA provisions, like individual tax rates and the pass-through deduction, are unlikely to garner enough requisite Democratic support in the House.

COMMENT. *A technical corrections bill for the TCJA has already been released this year by former Ways and Means Chair Kevin Brady, R-Tex. However, a senior Democratic staffer has said that Neal intends to hold committee hearings to evaluate Republicans' proposed corrections to the law.*

JCT BLUEBOOK

The nonpartisan Joint Committee on Taxation (JCT) released its much anticipated general explanation of last year's tax reform. The JCT's "bluebook" notes more than 70 possible technical corrections to the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) enacted last December.

The JCT released its 457-page bluebook, officially entitled General Explanation of Public Law 115-97 (JCS-1-18), on December 20, 2018. The bluebook details all legislative changes made to the tax code last year under the TCJA (and one fix in the 2018 Bipartisan Budget Act). The document was prepared by JCT staff in consultation with staff of the House Ways and Means and Senate Finance Committees.

UNFINISHED BUSINESS

Several bipartisan tax bills cleared the House at the end of 2018, and it is expected on Capitol Hill that those measures will resurface in the new Congress. These bills address IRS administrative reform, disaster tax relief, and retirement savings, among other things.

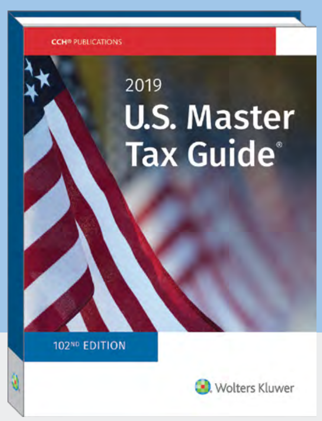
Also left untouched by the 115th Congress are the so-called "tax extenders." These tax breaks, which typically get extended by Congress annually or bi-annually, are temporary by nature but are generally expected to be renewed. There are close to 30 tax extenders that expired at the end of the 2017 tax year. Some of these expired tax breaks included the following:

- the deduction for tuition and fees,
- the deduction for mortgage insurance premiums,
- the exclusion of discharged debt on a principal residence, and
- many energy credits.

COMMENT. *It is expected on Capitol Hill that many of these tax extenders will be addressed by Congress early this year. However, some taxpayers may need to file an amended return to receive the tax benefit depending on if and when Congress addresses tax extenders.*

Top Resources

Covering the Most Significant Developments of 2018



U.S. Master Tax Guide® (2019)

The nation's top federal tax resource reflects all pertinent federal taxation changes that affect 2018 returns and provides fast and reliable answers to tax questions affecting individuals and business income tax.

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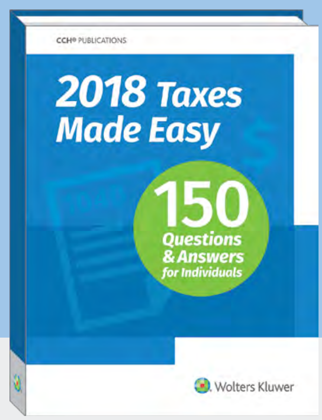

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