TAX & IRS Updates 2019

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If you are a tax professional you know that **New Year** means **new tax laws**, this presentation is intended to discuss the items affecting tax returns file in 2020 for the tax year 2019, that I find of greater interest to must practitioners with an emphasis on IRS practice and procedures.

No Individual Mandate penalty;

Most of the tax code changes form the Tax Cuts and Jobs Act of 2017 took effect in 2018. One exception is the change to the share responsibility payment, which takes effect this year.

The *share responsibility payment*, commonly referred to as the *individual mandate penalty*, applied to individuals who were required to have health insurance under the Affordable Care Act but didn't get coverage and didn't qualify for an exemption.

No Alimony Deduction;

- Alimony payments will no longer be tax-deductible and alimony received will no longer be taxable income.
- Elimination of the alimony deduction is another Tax Cuts and Jobs Act change that took effect in tax year 2019 rather than 2018.

Other misc. issues;

- The standard deduction rises;
  - MFJ up $400.00 to $24,800.00;
  - HOH up $300.00 to $18,650.00
  - Single, up $200.00 to $12,400.00.
- Personal Exemption remains at 0.
- The Marginal rates remain the same but with a small increase in the threshold.

- **The Alternative Minimum Tax Exemption amount for 2020 is:**

	Single	Married, filing jointly
The AMT exemption amount for certain individuals under 24 equals their earned income plus $7,900.		
Exemption amount	$72,900	$113,400
Income at which exemption begins to phase out	$518,400	$1,036,800

Other misc. issues;

- Estates and gift tax;

The Tax Cuts and Jobs Act also nearly doubled the amount that decedents could bequeath in death — or gift over their lifetime — and shield it from federal estate and gift taxes, which are 40%.

before the tax overhaul, this so-called gift and estate tax exemption was $5.49 million per person.

- **Other misc. issues;**

<u>For 2020, the lifetime gift and estate tax exemption will be $11.58 million per individual, up from $11.4 million in 2019.</u>

Finally, the annual gift exclusion — the amount you can give to any other person without it counting against your lifetime exemption — will hold steady at $15,000 for 2020.

Capital Gains Tax

Filing Status	0% rate applies when taxable income is	15% rate applies when taxable income is	20% rate applies when taxable income is
Single	Less than $40,000	$40,000 to $441,450	More than $441,450
Married Filing Jointly	Less than $80,000	$80,000 to $496,600	More than $496,600
Head of Household	Less than $53,600	$53,600 to $469,050	More than $469,050
Married Filing Separately	Less than $40,000	$40,000 to $248,300	More than $248,300

High-income taxpayers are subject to a 3.8% surtax on net investment income. Long-term capital gains are included in the definition of such income and are therefore subject to that tax.

What Is the Excess Business Loss Limitation?

- The TCJA now limits the business loss deduction that a non-corporate taxpayer may claim in the current year. It is referred to as the excess business loss limitation.

- An *excess business loss* is the amount by which total business deductions exceed total business income and gains plus $250,000 ($500,000 for joint filers).

IRC Section 461(l)

The provision is effective for taxable years beginning after December 31, 2017, and before January 1, 2026.

	NEW LAW	**OLD LAW**
Example:		
Investment Inc,	\$1,000,000.	1,000,000.
H S Corp	(750,000)	(750,000)
W Sched C	100,000	100,000
Net Business loss	(650,000)	(650,000)
Allowed bus loss	500,000	650,000
Disallowed bus loss	(150,000)	0
AGI	\$500,000	\$350,000

For partnerships, S corporations, and other “pass-thru” business entities, the loss limitation is applied at the shareholder/partner level and not the entity level.

What about Net Operating Losses (NOLs)?

Prior Net Operating Loss Rules: Before tax reform, taxpayers could generally carry an NOL back two years to offset income and potentially claim a refund. If the NOL wasn't completely absorbed, the taxpayer could carry it forward up to 20 years.

<u>New Law:</u> There are two new changes:

1 – Most taxpayers no longer have the carryback option. However, NOLs may be carried forward indefinitely.

2 – The NOL deduction in carry-forward years is limited to 80% of the taxpayer's taxable income, without regard to the NOL itself. Note that any excess business loss is included in the NOL, as explained earlier. (Form 461).

Both provisions are effective for tax years ending after December 31, 2017 (for the calendar year taxpayers, starting January 1, 2018).

Effects of tax delinquency on U.S. Passport;

Since 2015, the Department of State (DOS) is required and authorized to deny, revoke or limit passports to taxpayers with certified seriously delinquent tax debt.

- Only taxpayers with a seriously delinquent tax bill greater than $52,000 (adjusted for inflation) could face a passport denial or revocation. Passports

Effects of tax delinquency on U.S. Passport;

- DOS has sole authority to issue, limit, deny or revoke a passport
- IRS may ask DOS to revoke passports of certified taxpayers
- IRS sends letter advising taxpayer of certification
- IRS notifies DOS within 30 days or as soon as practicable of reversal of seriously delinquent status

- When the IRS certifies a taxpayer to the State Department as owing a seriously delinquent tax debt, they receive a Notice CP508C from the IRS. The notice explains what steps a taxpayer needs to take to resolve the debt**. Please note, the IRS doesn’t send copies of the notice to powers of attorney.** IRS telephone assistors can help taxpayers resolve the debt, for example, they can help taxpayers set up a payment plan or make them aware of other payment alternatives. Taxpayers shouldn’t delay because some resolutions take longer than others, such as adjusting a prior tax assessment.

- **Expedited decertification for those with imminent travel plans or living abroad**
- Applies only to those with pending applications or renewals

Form 508c:

The **IRS** filed a **Notice** of Federal **Tax** Lien and/or issued a levy against your wages or bank account. **CP508C** was sent to notify you that your account has been certified as seriously delinquent to the U.S. State Department

Form 508R:

The IRS has reversed the certification of your tax debt as seriously delinquent, and notified the State Department of that reversal. You do not need to respond to this notice.

Private Debt Collection

- IRS is required to use private collection agencies (PCAs) for the collection of inactive, outstanding tax receivables
- Certain accounts are excluded from assignment to PCAs
- IRS began assigning individual taxpayer accounts to PCAs in April 2017
- CBE Group– ConServe– Performant– Pioneer

New Controlled Foreign Corporation Constructive Ownership Rule

- The Tax Cuts and Jobs Act enacted in December 2017 changed a constructive ownership rule that determines whether a foreign corporation is a controlled foreign corporation (CFC) for U.S. federal tax purposes. **A controlled foreign corporation is any foreign corporation of which more than 50% of the vote or value is owned by U.S. shareholders that own at least 10%.**

New Controlled Foreign Corporation Constructive Ownership Rule

- U.S. shareholders of CFCs are subject to certain anti-deferral rules under the U.S. federal tax laws. <u>The anti-deferral rules may require a U.S. shareholder of a CFC to report and pay U.S. tax on undistributed earnings of the foreign corporation.</u>

New Controlled Foreign Corporation Constructive Ownership Rule

- Prior to the new law, the former rules in effect provided that there was not downward attribution and constructive ownership of foreign corporation stock from a foreign person to a U.S. corporation, U.S. partnership, or U.S. trust. The stock of a foreign corporation owned directly by a foreign person was not considered as being owned by a U.S. corporation, a U.S. partnership, or U.S. trust of which the foreign person was a shareholder, partner, or beneficiary.

The new law repealed this prior rule, which was under Section 958(b)(4) and incorporated Section 318(a)(3) of the U.S. Internal Revenue Code. With the new law, a U.S. corporation, U.S. partnership, or U.S. trusts in which a foreign person is a shareholder, partner, or beneficiary is now considered to own the stock in a foreign corporation that the foreign person owns directly. The foreign person must own more than 50% of the U.S. Corporation before the U.S. Corporation is considered to own the foreign corporation's stock.

For example, if a foreign corporation is owned 49% by a U.S. shareholder and 51% by a foreign shareholder, the foreign corporation would not be a CFC under the prior rule. However, under the new rule, if the foreign person also owns more than 50% of a U.S. corporation then the U.S. Corporation is considered to own the 51% of the foreign corporation stock that the foreign person owns. Under the new rule, the foreign corporation is considered to be owned 49% directly by the U.S. shareholder and also 51% constructively by the U.S. Corporation. Under the new rule, the foreign corporation is a controlled foreign corporation (CFC) when taking into account the U.S. corporation's constructive ownership of the foreign corporation's stock from the foreign person.

The new CFC constructive ownership rule in the recent U.S. tax legislation will have a significant impact on U.S. shareholders of foreign corporations. As a result, U.S. shareholders may need to comply with additional U.S. international tax reporting requirements. Other possible U.S. federal tax consequences may include additional taxable income and corresponding U.S. federal tax liability for U.S. shareholders of CFCs.

GILTI

The Global Intangible Low Taxes Income (GILTI) is a new provision, enacted as a part of tax reform legislation mechanically; it functions as a global minimum tax and introduces a lot of issues for all U.S. shareholders of **controlled foreign corporations (CFCs)-** especially individuals and partnerships.

GILTI

<u>**A controlled foreign corporation is any foreign corporation of which more than 50% of the vote or value is owned by U.S. shareholders that own at least 10%.**</u>

Q. What is global intangible low-taxed income and how is it taxed under the TCJA?

A. GILTI is the income earned by foreign affiliates of US companies from intangible assets such as patents, trademarks, and copyrights. The Tax Cuts and Jobs Act imposes a new minimum tax on GILTI.

Before the 2017 Tax Cuts and Jobs Act (TCJA), the United States generally taxed its firms and residents on their worldwide income. However, US firms could defer the tax on foreign subsidiaries' active business earnings until those earnings were repatriated to the United States as dividends. After the TCJA, the United States generally exempts earnings from active businesses of US firms' foreign subsidiaries, even if the earnings are repatriated. (The United States still taxes the income from passive investments of foreign subsidiaries.)

But Congress worried that completely exempting US multinationals’ foreign earnings might exacerbate the incentive to shift profits to low-tax jurisdictions abroad. So, Congress added a new 10.5 percent minimum tax on global intangible low-taxed income (GILTI) to discourage such profit shifting. GILTI is intended to approximate the income from intangible assets (such as patents, trademarks, and copyrights) held abroad. Congress considered intangible assets highly mobile—and sought to discourage US firms from shifting these assets offshore.

More specifically, a US business must include GILTI in its gross income annually. GILTI is calculated as the total active income earned by a US firm's foreign affiliates that exceeds 10 percent of the firm's depreciable tangible property. A corporation (but not other businesses) can generally deduct 50 percent of the GILTI and claim a foreign tax credit for 80 percent of foreign taxes paid or accrued on GILTI. Thus, if the foreign tax rate is zero, the effective US tax rate on GILTI will be 10.5 percent (half of the regular 21 percent corporate rate because of the 50 percent deduction). If the foreign tax rate is 13.125 percent or higher, there will be no US tax after the 80 percent credit for foreign taxes.

For example, suppose a US corporation is the sole shareholder of a foreign corporation with a manufacturing plant in Ireland, which has a 12.5 percent tax rate. Suppose the plant cost $100 million to construct, and the foreign income is $30 million (after properly allocating expenses). The corporation would calculate GILTI of $20 million (total foreign income minus 10 percent of $100 million of depreciable assets). The US tax on GILTI would be $2.1 million before credits for foreign taxes (half of the $20 million of GILTI times the 21 percent corporate tax rate), and the net US tax after credits would be $0.1 million ($2.1 million−$2 million credit for Irish taxes). In practice, the calculations are much more complicated, as US corporations may have multiple operations abroad—and how to properly allocate expenses among them is unclear.

a. Section 951A Income

Section 951A income includes any amount included in gross income under section 951A (other than passive category income). Section 951A income is otherwise referred to as global intangible low-taxed income (GILTI) and is included by U.S. shareholders of certain controlled foreign corporations. See Pub. 514 for additional details.

Streamlined Procedures to Get Current with Your Filing Obligation

If you are a non-resident U.S. taxpayer who wishes to come into compliance with your U.S. filing obligations, you may be eligible for special IRS procedures. On June 26, 2012, the IRS announced new streamlined filing compliance procedures for non-resident U.S. taxpayers.

Streamlined Procedures to Get Current with Your Filing Obligation

These procedures recognize that some U.S. taxpayers living abroad have failed to timely file U.S. federal income tax returns or FBARs, but have recently become aware of their filing obligations and now seek to come into compliance with the law. These new procedures are for non-residents including, but not limited to, dual citizens who have not filed U.S. income tax and information returns. See irs.gov for information concerning the Streamlined Filing Procedures.

The IRS has announced that they are terminating the Offshore Voluntary Disclosure Program on September 28, 2018. Luckily for you, **<u>they are not yet closing the Streamlined Filing Compliance Program, but there is a rumor that may be closing it soon, so don’t let this window of opportunity pass you by.</u>**

Failure to file Form 5472

Internal Revenue Code, Section 6038A (d) – states that if a reporting corporation fails to furnish (within the time prescribed by regulation) any information described in subsection (b), or fails to maintain (or cause another to maintain) records as required by subsection (a), such corporation shall pay a penalty of $10,000.00 for each taxable year with respect to which such failure occurs.

Failure to file Form 5472

Treasury Regulation Section 1.6038A-4(b) – Reasonable Cause – Certain failures may be excused for reasonable cause, including not timely filing of the Form 5472, if an affirmative showing is made that the taxpayer acted in good faith and there is reasonable cause for a failure that results in the assessment of the monetary penalty.

Failure to file Form 5472

Treasury Regulation Section 1.6038A-4(b)(2)(ii) – Small Corporations – The District Director shall apply reasonable cause exception liberally in the case of a small corporation that had no knowledge of the requirements imposed by Section 6038A; has limited presence in and contact with the United States; and promptly and fully complies with all requests by the District Director to file Form 5472, and furnish books, records, or other materials relevant to the reportable transaction. A small corporation is a corporation whose gross receipts for a taxable year are $20,000,000.00 or less.

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1. Coal Property Holdings, LLC, Coal Land Manager, LLC, Tax Matters Partner v. Commissioner, 153 T.C. No. 7 (October 28, 2019) Conservation Easement.

2. U.S. Auto Sales, Inc. v. Commissioner, 153 T.C. No. 5 (October 28, 2019) Validity of Statutory Notice of Deficiency.

3. Northern California Small Business Assistants, Inc. v. Commissioner, 153 T.C. No. 4 (October 23, 2019) IRC Section 280E.

4. Gwendolyn L. Kestin v. Commissioner, 153 T.C. No. 2 (August 29, 2019) Frivolous 1040X filings and Notice of Federal Tax Lien.

5. Atlantic Pacific Management Group, LLC v. Commissioner, 152 T.C. No. 17 (June 20, 2019) Collection Due Process and Tax Court Jurisdiction.

6. Linda J. Romano-Murphy v. Commissioner, 152 T.C. No. 16 (May 21, 2019), 816 F.3d at 717 (11th Circuit), T.C. Memo 2012-330 Trust Fund Recovery penalty, Collection-Review Hearing, Due Process and Proper Issuance of Paperwork.

7. ATL & Sons Holdings, Inc. v. Commissioner, 152 T.C. No. 8 (March 13, 2019) Failure to file extension on S-Corporation Return. No written supervisory approval needed for IRC Section 6699 Penalty.

8. Damian K. and Shayla A. Gregory v. Commissioner, 152 T.C. No. 7 (March 13, 2019) Address to send statutory notice of deficiency. Last known address. Must be changed with the filing of a return or with clear and concise notification.
9. Craig S. and Maria L. Walquist v. Commissioner, 152 T.C. No. 3 (February 25, 2019) Automated Correspondence Exam assessed IRC Section 6662 Penalty. No written managerial approval required. Frivolous argument penalty of $12,500 applied by Court.

10. Charles E. Bercy, Deceased, Elaine Bercy, Successor in Interest, and Elaine Bersy v. Commissioner, T.C. Memo 2019-118 (September 11, 2019) Business Bad Debt. Non-Business Bad Debt, Penalties. Requirements to qualify for a bad debt.
11. Taryn L. Dodd v. Commissioner, T.C. Memo 2019-107 (August 22, 2019) CDP Hearing, following the rules, and being reasonable.
12. Maria M. Faust v. Commissioner, T.C. Memo 2019-105 (August 20, 2019) Alimony requirements and the accuracy related penalty.

13. Ronnie Hairston and Gloria Cruz Hairston v. Commissioner, T.C. Memo 2019-104 Real Estate Professional – IRC Section 469(c)(7).

14. Robert G. Taylor, II v. Commissioner, T.C. Memo 2019-102 Casualty Loss due to Hurricane Ike in Houston, TX.

15. Todd Myron Moore v. Commissioner, T.C. Memo 2019-100 Interest Expense on alleged loans, Commissions, and Penalties (Fraud and Substantial Understatement).