



# Passthrough update

## 2019-2020 Priority Guidance Plan released



The 2019-2020 Priority Guidance Plan (the Plan), which announces guidance priorities for the Treasury Department (Treasury) and Internal Revenue Service (IRS), was released on October 8, 2019. The Plan contains guidance projects that will be the focus of government efforts during the 12-month period between July 1, 2019, and June 30, 2020. Concurrently with the Plan's release, Treasury and the IRS issued a joint statement highlighting their priorities for the coming plan year. As with the prior year's plan, implementation of the 2017 tax law, commonly referred to as the Tax Cuts and Jobs Act, continues to be the main priority and the Plan continues to reflect the deregulation policies and reforms of the current administration.

Although the Plan provides a helpful indication of how efforts will be focused and which items will be prioritized, inclusion in the Plan does not necessarily mean an item will be completed during the plan year. Rather, it is an indication that the item is on Treasury and the IRS's radar and that they intend to devote resources to the project during this plan year. Historically, the Plan often contained aspirational projects that lingered for years on the list without necessarily moving ahead; in recent years (and this year in particular), the government suggested that anything on the plan is being actively developed. The Plan may also be updated and re-released throughout the plan year to reflect additional items that have become priorities and guidance that has been published during the plan year. The joint statement notes that the periodic updates allow Treasury and the IRS to consider comments received from taxpayers and tax practitioners relating to additional guidance priorities and to respond to developments arising during the plan year.

The Plan currently contains 203 guidance projects (down from 239 projects in the prior year). A summary of current guidance projects that have not been completed to date (listed in order of appearance in the Plan) that may be relevant to passthrough entities and their owners is provided on the following pages. Practitioners should be on the lookout for modifications to the Plan in subsequent releases. A project that is added to the top of the priority list in a subsequent release, for example, may be an indication that the project is potentially being fast tracked.

### About KPMG's Washington National Tax Passthroughs group

The Passthroughs group has extensive experience helping clients navigate the complex rules and regulations that govern passthrough entities. Comprised of tax professionals with a diverse set of skills and professional backgrounds, the Passthroughs group can be an excellent resource whether you are dealing with a complex transaction or trying to understand the implications of new tax law.

## Part 1: Implementing the Tax Cuts & Jobs Act<sup>1</sup>

Final regulations and guidance under section 59A concerning the base-erosion and anti-abuse tax

Computational, definitional, and other guidance under section 163(j); Notice 2018-64 was published on August 27, 2018, and Revenue Procedure 2018-59 was published on December 10, 2018; proposed regulations were published on December 28, 2018

Regulations under section 704(d) regarding charitable contributions and foreign taxes in determining limitation on allowance of partner's share of loss

Final regulations under sections 864(c) and 1446(f) regarding gain or loss recognized by foreign persons as a result of the sale or exchange of an interest in a partnership engaged in a U.S. trade or business

Guidance under section 1031 concerning the definition of "real property"

Regulations addressing partnership interests held in connection with the performance of services under section 1061

Guidance under section 1371(f) on the treatment of earnings and profits in the post-termination transition period when an entity converts from an S corporation to a C corporation

Guidance under sections 1400Z-1 and 1400Z-2 concerning Opportunity Zones; proposed regulations were published on October 29, 2018, and May 1, 2019

## Parts 2 and 3: Identifying and reducing regulatory burdens

Guidance concerning the effect of momentary ownership of the stock of an S corporation by another corporation during a transaction described in sections 355 and 368(a)(1)(D)

Final regulations streamlining the section 754 election statement

Guidance regarding application of the cure provisions under section 851(i) for RICs and section 856(c)(7) and (g)(5) for REITs

Guidance under section 1362(f) regarding the validity or continuation of an S corporation election in certain situations

Guidance under section 1031 concerning the definition of "real property"

Final regulations under Chapter 3 (sections 1441-1446) and Chapter 4 (sections 1471-1474), including rules addressing withholding on gross proceeds and foreign passthrough payments under Chapter 4; withholding requirements on insurance premiums under Chapter 4; and certain due diligence requirements of withholding agents under Chapter 3, including issues related to refunds and credits; proposed regulations were published on December 18, 2018

Regulations under subchapter S conforming with statutory changes and providing further guidance on the calculation of certain items of income, loss, and deduction

Regulations on check the box rules for RICs and REITs

## Part 5: Bipartisan Budget Act of 2015—Partnership audit regulations

Regulations under section 6232(f) (i.e., failure to pay imputed underpayment)

Regulations under section 6241 (i.e., definitions and special rules)

Extension of time to file partnership return (i.e., Revenue Procedure 2019-32)

Final regulations addressing adjustments to basis and capital accounts and the tax and book basis of partnership property; proposed regulations were issued in February 2018 and re-proposed in August 2018

<sup>1</sup> It is worth noting that guidance with respect to section 461(l) (i.e., limitation on excess business losses of non-corporate taxpayers) has not been included.

## Part 6: General guidance

Final regulations regarding the stock of a corporate partner under section 337(d); proposed regulations were published on March 25, 2019

Final regulations on the fractions rule under section 514(c)(9)(E); proposed regulations were published on November 23, 2016

Final regulations under sections 704, 734, 743, and 755 arising from the American Jobs Creation Act of 2004, regarding the disallowance of certain partnership loss transfers and no reduction of basis in stock held by a partnership in a corporate partner; proposed regulations were published on January 16, 2014

Guidance under section 707 on disguised sales, including disguised sales of partnership interests

Final regulations under section 752 regarding related person rules

Final regulations under sections 761 and 1234 regarding the tax treatment of non-compensatory partnership options

## Current year plan items for which guidance has been issued

Final regulations and other guidance under section 168(k) (published 9/24/19)

Final regulations removing temporary regulations under section 707 concerning the treatment of partnership liabilities for disguised sale purposes (published 10/19/19)

Final regulations under sections 704 and 752 concerning partnership recourse liabilities, including bottom dollar payment obligations (published 10/19/19)

Final regulations and other guidance under section 951A regarding the inclusion of GILTI by United States shareholders (published 9/9/19)

Regulations and other guidance addressing modifications to subpart F, including coordination with the enactment of section 951A, the repeal of section 958(b)(4), and the modification of section 951(b) (published 9/9/19)

## Notable items appearing in prior year plans not appearing in the 2019-2020 plan

Final regulations under section 469(h)(2) concerning limited partners and material participation; proposed regulations were published on November 28, 2011 (last appeared in 2018-2019 plan)

Regulations to update the securities partnership aggregation rules under section 704(c) (last appeared in 2018-2019 plan)

Guidance on the application of section 1402(a)(13) to limited liability companies (last appeared in 2018-2019 plan)

Final regulations under sections 704, 707, and 721 on management fee waivers (last appeared in 2016-2017 plan)

Guidance on targeted capital accounts under section 704(b) (last appeared in 2016-2017 plan)

Guidance on transfers of property to partnerships with related foreign partners and controlled transactions involving partnerships (last appeared in 2016-2017 plan)

# Contact us

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