Wolters Kluwer

DECEMBER 3, 2020
ISSUE NUMBER 49

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

Practitioners' Corner: Year-End Charitable Tax Tactics

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As the year-end holiday season approaches, many people intend to support their favorite charities. With savvy planning, they can do well, after-tax, while they support good intentions with donations. That said, advisors can play a key role by helping clients avoid potential pitfalls.

Standard or Itemized?

Generally, clients must itemize deductions in order to get charity-related tax benefits. In turn, itemizing makes sense only if the total for 2020 exceeds $12,400 for single taxpayers, or $24,800 for couples filing jointly.

Just because clients *can* itemize, it doesn't necessarily follow that they *should* make year-end donations in 2020 to boost that deduction. Income tax rates are relatively low this year, and some clients might have seen their income drop because of the pandemic-related economic slowdown. This parlay may make donating this year less appealing than waiting a few weeks until 2021 to make a contribution.

For example, suppose Wendy Taylor, a single filer, expects her taxable income in 2020 to be around $200,000, which is typical for her. Assume she is able to itemize deductions. If Wendy makes $35,000 worth of charitable donations by year end, she'll take them in the 32-percent tax bracket, which starts at $163,301 in 2020. After her tax professional reviews the numbers with her, Wendy agrees that donating that much in late 2020 will provide adequate tax savings.

On the other hand, suppose that Steve and Paula Robinson, who file jointly, also expect their taxable income to be about $200,000, but that's down sharply because of business restrictions imposed to combat COVID-19. If they were to make a similar $35,000 donation in late 2020, most of the deduction would save only 24 cents on the dollar (their 24-percent bracket starts at $171,051) and some contributions would save only 22 cents per dollar in tax.

After consulting with their tax advisor, the Robinsons decide to wait until early 2021 to contribute $35,000 to their favorite causes. If their taxable income rises close to $400,000 next year, as it has in the past, they could save tax at 32 percent—or even more, if income tax rates increase in 2021.

Deciding What to Give

If doing the math with some clients indicates that a 2020 donation makes financial sense, you can help those clients decide whether to contribute cash or other assets. Writing a check is simple to explain to clients and is cost-effective. Moreover, under a temporary change in the law, 2020 is the only year in which taxpayers can deduct cash gifts of up to 100 percent of their adjusted gross income (AGI), as long as the money goes to public charities or community foundations (Act Sec. 2205(a)(1) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)).

In 2021, this tax deduction cap returns to 60 percent of AGI (Code Sec. 170(b)(1)(G)). For other types of donations, the tax deduction limits may be 50 percent, 30 percent , or even 20 percent of AGI, depending on the assets contributed and the recipients (Code Sec. 170(b)). In any case, contributions that exceed these ceilings can be carried forward and deducted up to the relevant limit for up to five years.

The 100-percent-of-adjusted-gross-income deduction requires all cash contributions and cannot be stacked upon non-cash distributions. For example, if a taxpayer makes a donation of appreciated stock based upon 30 percent of adjusted gross income, and also gives cash in the amount of 70 percent, the total deduction will be limited to 50 percent of adjusted gross income, and there will be no carry forward of the additional 50-percent amount.

In addition, although the allowance is for up to 100 percent of adjusted gross income, for clients who do not have sufficient itemized deductions other than charitable that exceed their itemized deduction allowance this year ($24,800 for a married couple filing jointly and $12,400 for an individual), then the excess of the standard deduction amount over the total of the non-charitable itemized deductions amount will be lost in the shuffle of tax calculations. This result, however, does not appear to have been intended by Congress.

For example, a single taxpayer with $300,000 of adjusted gross income may have home mortgage interest, property taxes, and other non-charitable itemized deduction expenses of only $7,400. When this taxpayer donates $300,000 to charity, there will only be a $295,000 income tax deduction.

This qualified charitable distribution rule is further described below.

Qualified Charitable Distributions Not Limited to $100,000 for Many 2020 Taxpayers

The 2020 100-percent-of-adjusted-gross-income-for-cash rule described above causes the standard $100,000 per year allowance for a taxpayer over age 70 ½ to transfer monies directly from his or her IRA to charity to effectively be available to all taxpayers who are over age 59 ½, and/or donate unlimited amounts. This is subject to reduction to the extent that the taxpayer's standard deduction exceeds the non-charitable itemized deductions, as explained above.

For example, Sally Jones, 60-years old, has $100,000 of adjusted gross income. She withdraws $400,000 from her IRA and, therefore, has $500,000 of adjusted gross income. She could then donate the $400,000 in cash to charity and receive a $400,000 charitable deduction (Act Sec. 2205(a)(1) of the CARES Act).

Taxpayers under age 59 ½ will pay a 10-percent excise tax on IRA distributions unless certain exceptions apply (Code Sec. 72(t)). However, up to $100,000 of the distribution might qualify as a Coronavirus-Related Distribution (Act Sec. 2202(a)(4) of the CARES Act). In that case, that portion would avoid any early withdrawal tax. Sally Jones would have to qualify for such relief, however.

Planned Giving

While cash donations are straightforward, various innovative philanthropic techniques can enable clients to make contributions with greater tax benefits. Keep in mind that many of the following strategies take time to execute, so it's best to begin as soon as possible if a charitable deduction for 2020 is desired.

Donation of Appreciated Securities

As long as assets have been held for more than one year, donors can deduct the appreciated value. Suppose Owen Madison bought 100 shares of ABC Corp. stock near the market bottom of 2009 for $50 a share. Currently, the $5,000 invested in those shares has grown to $20,000. Owen can donate his ABC position to charity and take a $20,000 tax deduction.

If Owen would owe 20-percent tax on long-term capital gains plus the 3.8-percent surtax on net investment

Base Period T-Bill Rate for DISC Shareholders Issued

The IRS has released a table outlining the base-period Treasury bill rate for the period that ended on September 30, 2020. The base-period T-bill rate for the covered period is 0.73 percent. The figures in the table are used to determine the amount of interest to be paid each year by a shareholder of a domestic international sales corporation (DISC). That amount is equal to the product of the shareholders' DISC-related deferred tax liability for the year and the base period T-bill rate.

Rev. Rul. 2020-25

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

FEDERAL TAX WEEKLY, 2020 No. 49. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.

income, selling the shares would net him only $16,430, after paying 23.8 percent in tax on his $15,000 gain. By donating the shares, Owen avoids the capital gains tax: he gets a $20,000 tax deduction for parting with assets worth only $16,430 to him, after tax.

IRS Updates ATG on Conservation Easement Contributions

The IRS has updated an Audit Techniques Guide (ATG) for the examination of charitable contributions of conservation easements. Users of this ATG will learn about the general requirements for charitable contributions and additional requirements for contributions of conservation easements. The ATG includes examination techniques, and an overview of the valuation of conservation easements. It also includes a discussion of penalties, which may apply to taxpayers and others involved in the conservation easement transaction.

An ATG focuses on developing highly trained examiners for particular market segments by presenting examination techniques, common and unique industry issues, business practices, industry terminology and other information.

IRS Pub. 5464 (Rev. 11-2020)

Charitable Foundation Trust

High-net worth individuals and families may create private foundations, amply funded, for making charitable donations that can go on for decades. That said, charitable foundation trusts can be established with as little at $10,000. Generally, upfront contributions are tax deductible while charitable contributions follow in the future. Such a trust can allow clients to time their donations and to get maximum tax savings and community recognition, while payouts to selected charities and payments to family members or friends at fair market value for charitable work can follow at a measured pace.

Many families enjoy a nominally funded private foundation in order to have community recognition, to facilitate charitable activities for specific individuals in need who are not related to the foundation donors, and to provide employment at reasonable compensation rates for family members and friends who may work for the foundation. Some taxpayers cause their foundation to be "active" as a private operating foundation, so that the 50-percent-of-adjusted-gross-income-deduction limit and a number of the other rules that are applied more favorably for public charities can be used.

Charitable Lead Annuity Trust (CLAT)

Some planned giving strategies involve donations of six or even seven figures. More upfront advisor effort and client expense might be necessary, but the tax savings can be outstanding.

With a CLAT, for example, assets are donated to the trust and a fixed amount of assets will go to charity for a set number of years (Code Sec. 642(c)). At the end of the annuity term, what is left in the trust will pass to individual beneficiaries, often the trust creator's children, outright or in trust. Not only does a CLAT provide an initial tax deduction, it may pass assets to future generations with little or no gift tax obligation.

A CLAT will be known as being "zeroed out" if the scheduled payments to charity are sufficient to merit a 100-percent tax deduction for the money donated. Nevertheless, if the trust assets enjoy substantial growth, considerable amounts may pass to the individual beneficiaries, untaxed.

CLATs are especially attractive in today's low-interest environment. If the CLAT assets (often, securities or real estate) earn more than the Code Sec. 7520 rate (applicable federal rate (AFR)) published monthly by the IRS (presently 0.6 percent), assets will be left to the individual beneficiaries after the trust term. The lower the 7520 rate, the easier to outpace it and transfer assets to future generations.

Charitable Remainder Unitrust (CRUT)

A CRUT (Code Sec. 662(d)(2)) is the flip side of a CLAT and payments from the trust go first to income recipients—perhaps a lifetime payout to a married couple, as long as either spouse is alive. When the income recipients have passed, whatever is left in the CRUT goes to designated charities. (The "unitrust" label indicates that payouts are set as a percentage of the trust's ongoing value, permitting possible income growth, rather than the flat payouts from an annuity trust.)

With a CRUT, the donors get a partial upfront tax deduction, based on the present value of a donation that may be paid many years in the future. Often, appreciated assets are used to fund a CRUT so that cash flow is based on their full value while tax on selling those assets are effectively spread over the income recipient's lifetime. Such deferral could mean paying tax on the capital gains at 15 percent each year (based on current tax rates) rather than 23.8 percent on a one-time asset sale, as described above.

Note that advisors can help structure the CRUT payout rates to donate more or less to charity. Paying the CRUT minimum of five percent per year would deliver more to charity; a higher payout rate would provide less. As little as 10 percent of a CRUT's initial value can be expected to go to charity, if the CRUT creators prefer ample cash flow and modest benevolence.

Donor Advised Fund (DAF)

Just as CRUTs often receive funding in the form of appreciated assets, the same is true for DAFs, which are offered by many financial firms and community foundations. Minimum initial contributions may be as low as $5,000. Just as with direct contributions of appreciated securities, the upfront tax deduction can be the assets' current market value, if the holding period has been over one year.

Money contributed to a DAF can qualify for an initial tax deduction. Indeed, one popular strategy is to "bunch" or "clump" DAF contributions to allow for itemizing in alternate years.

Suppose Janice and Keith Lawson typically give a total of $10,000 a year to various charities. With the $10,000 SALT deduction limit and no interest payments on their paid-for home, the Lawsons would take the $24,800 standard deduction in 2020 and receive no tax benefit from their donations.

Instead, the Lawsons "double up" in late 2020, giving $20,000 to a local DAF. That amount represents their charitable contributions for 2020 and 2021, enabling them to itemize on their 2020 tax return and get some tax benefit from these outlays. The couple can spread out their "grants" to selected charities during 2021, effectively supporting those causes while taking the standard deduction in 2021. Then, they can start clumping again, in late 2022.

Qualified Charitable Distributions (QCD)

Another couple, Harvey and Fran Grant have found a way to mix the standard deduction and charitable tax benefits effectively. The Grants are in their mid-70s, so they are able to make QCDs, which are available to people age 70 ½ or older. A QCD is a direct transfer of funds—up to $100,000 per donor per year—from an IRA to a qualified charity (Code Sec. 408(d)(8)).

There is no charitable tax deduction for a QCD; the tax benefit comes from not owing tax on an IRA distribution. Thus, seniors making QCDs can fulfill their charitable intentions, reduce future tax on withdrawals from traditional IRAs, and still take the standard deduction or itemize, whichever is larger.

Tax professionals can help clients in this age range to make a key year-end decision. Depending on individual situations, is it better to take QCDs in late 2020, effectively reducing future taxable required minimum distributions (RMDs), which are scheduled to resume in 2021 after being waived for 2020? Or, is it better to delay this year's donation until January and take the QCD then, when they can offset RMDs?

The answer will vary, depending on the client's specific circumstances. Indeed, advisors who focus on each client's goals will be able to find the philanthropic tactics that meet those objectives with satisfactory tax results.

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Final Regs Define "Real Property" for Like-Kind Exchanges

T.D. 9935; IR-2020-262

Final regulations clarify the definition of "real property" that qualifies for a like-kind exchange, including incidental personal property. Under the Tax Cuts and Jobs Act (TCJA, P.L. 115-97), like-kind exchanges occurring after 2017 are limited to real property used in a trade or business or for investment.

The final regulations largely adopt regulations that were proposed in June (NPRM REG-117589-18). However, they also:

- add a" state or local law" test to define real property; and
- reject the "purpose and use" test in the proposed regulations.

In addition, the final regulations classify cooperative housing corporation stock and land development rights as real property. The final regulations also provide that a license, permit, or other similar right is generally real property if it is (i) solely for the use, enjoyment, or occupation of land or an inherently permanent structure; and (ii) in the nature of a leasehold, an easement, or a similar right.

General Definition

Under the final regulations, property is classified as "real property" for like-kind exchange purposes if, on the date it is transferred in the exchange, the property is real property under the law of the state or local jurisdiction in which it is located. The proposed regulations had limited this "state or local law" test to shares in a mutual ditch, reservoir, or irrigation company.

However, the final regulations also clarify that real property that was ineligible for a like-kind exchange before the TCJA remains ineligible. For example, intangible assets that could not be like-kind property before the TCJA (such as stocks, securities, and partnership interests) remain ineligible regardless of how they are characterized under state or local law.

Accordingly, under the final regulations, property is real property if it is:

- classified as real property under state or local law;
- specifically listed as real property in the final regulations; or
- considered real property based on all of the facts and circumstances, under factors provided in the regulations.

These tests mean that property that is not real property under state or local law might still be real property for like-kind exchange purposes if it satisfies the second or third test.

Types of Real Property

Under both the proposed and final regulations, real property for a like-kind exchange is:

- land and improvements to land;
- unsevered crops and other natural products of land; and
- water and air space superjacent to land.

Under both the proposed and final regulations, improvements to land include inherently permanent structures, and the structural components of inherently permanent structures. Each distinct asset must be analyzed separately to determine if it is land, an inherently permanent structure, or a structural component of an inherently permanent structure. The regulations identify several specific items, assets and systems as distinct assets, and provide factors for identifying other distinct assets.

The final regulations also:

- incorporate the language provided in Reg. §1.856-10(d)(2)(i) to provide additional clarity regarding the meaning of "permanently affixed;"
- modify the example in the proposed regulations concerning offshore drilling platforms; and
- clarify that the distinct asset rule applies only to determine whether property is real property, but does not affect the application of the three-property rule for identifying properties in a deferred exchange.

Form 1024-A Revised for Electronic Submission

The IRS has announced that it is revising Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code, to allow electronic filing for the first time, as part of an ongoing effort to improve service for the tax-exempt community. The IRS expects electronic filing to be available early in 2021, at which point applications on Form 1024-A must be submitted electronically online at https://www.pay.gov/public/home. The IRS will provide a grace period during which it will continue to accept paper versions of Form 1024-A. More information will be subsequently released on IRS.gov.

"Purpose or Use" Test

The proposed regulations would have imposed a "purpose or use" test on both tangible and intangible property. Under this test, neither tangible nor intangible property was real property if it contributed to the production of income unrelated to the use or occupancy of space.

The final regulations eliminate the purpose and use test for both tangible and intangible property. Consequently, tangible property is generally an inherently permanent structure—and, thus, real property—if it is permanently affixed to real property and will ordinarily remain affixed for an indefinite period of time. A structural component likewise is real property if it is integrated into an inherently permanent structure. Accordingly, items of machinery and equipment are real property if they comprise an inherently permanent structure or a structural component, or if they are real property under the state or local law test—irrespective of the purpose or use of the items or whether they contribute to the production of income.

Similarly, whether intangible property produces or contributes to the production of income is not considered in determining whether intangible property is real property for like-kind exchange purposes. However, the purpose of the intangible property remains relevant to the determination of whether the property is real property.

Incidental Personal Property

The incidental property rule in the proposed regulations provided that, for exchanges involving a qualified intermediary, personal property that is incidental to replacement real property (incidental personal property) is disregarded in determining whether a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or non-like-kind property held by the qualified intermediary are expressly limited as provided in Reg. §1.1031(k)-1(g)(6).

Personal property is incidental to real property acquired in an exchange if (i) in standard commercial transactions, the personal property is typically transferred together with the real property, and (ii) the aggregate fair market value of the incidental personal property transferred with the real property does not exceed 15 percent of the aggregate fair market value of the replacement real property (15-percent limitation).

This final regulations adopt these rules with some minor modifications to improve clarity and readability. For example, the final regulations clarify that the receipt of incidental personal property results in taxable gain; and the 15-percent limitation compares the value of all of the incidental properties to the value of all of the replacement real properties acquired in the same exchange.

Effective Dates

The final regulations apply to exchanges beginning after the date they are published as final in the Federal Register. However, a taxpayer may also rely on the proposed regulations published in the Federal Register on June 12, 2020, if followed consistently and in their entirety, for exchanges of real property beginning after December 31, 2017, and before the publication date of the final regulations. In addition, conforming changes to the bonus depreciation rules apply to tax years beginning after the final regulations are published.

IRS Extends Term of Gaming Industry Tip Compliance Agreement

Rev. Proc. 2020-47

The IRS has modified Rev. Proc. 2007-32, I.R.B. 2007-22, 1322, to provide that the term of a Gaming Industry Tip Compliance Agreement (GITCA) is generally five years, and the renewal term of a GITCA is extended from three years to a term of up to five years. A GITCA executed under Rev. Proc. 2003-35, 2003-1 CB 919 and Rev. Proc. 2007-32 will remain in effect until the expiration date set forth in that agreement, unless modified by the renewal of a GITCA under section 4.04 of Rev. Proc. 2007-32 (as modified by section 3 of this revenue procedure).

The modified provisions generally provide as follows:

- In general, a GITCA shall be for a term of five years. For new properties and properties that do not have a prior agreement with the IRS, however, the initial term of the agreement may be for a shorter period.
- A GITCA may be renewed for additional terms of up to five years, in accordance with Section IX of the model GITCA. Beginning not later than six months before the termination date of a GITCA, the IRS and the employer must begin discussions as to any appropriate revisions to the agreement, including any appropriate revisions to the tip rates described in Section VIII of the model GITCA. If the IRS and the employer have not reached final agreement on the terms and conditions of a renewal agreement, the parties may mutually agree to extend the existing agreement for an appropriate time to finalize and execute a renewal agreement.

Effective Date

This revenue procedure is effective November 23, 2020.

Adjusted Applicable Dollar Amount for Fee Imposed on Health Insurance Plans Announced

Notice 2020-84

The IRS has announced that the applicable dollar amount used to calculate the fees imposed by Code Secs. 4375 and 4376 for policy and plan years that end on or after October 1, 2020, and before October 1, 2021, is $2.66. This figure is based on the percentage increase in the projected per capita amount of the National Health Expenditures published by the U.S. Department of Health and Human Services (HHS) on March 19, 2020.

The fees are used to fund the Patient-Centered Outcomes Research Trust Fund (PCORTF).

Calculation

The fees are generally calculated by multiplying the average number of lives covered under the health insurance policy or self-insured health plan by the adjusted applicable dollar amount. The adjusted applicable dollar amount is the sum of:

- the applicable dollar amount for the policy year or plan year ending in the previous federal fiscal year; plus
- the amount equal to the product of the applicable dollar amount for the policy year or plan year ending in the previous federal fiscal year; and the percentage increase in the projected per capita amount of the National Health Expenditures most recently released by HHS before the beginning of the federal fiscal year (see Reg. §46.4375-1(c)(4) and Reg. §46.4376-1(c)(3)).

The applicable dollar amount for the previous year was $2.54.

IRS Spotlights Upcoming Tax Filing Season

IR-2020-263

As part of a series of reminders, the IRS has urged taxpayers get ready for the upcoming tax filing season. A special page (https://www.irs.gov/individuals/steps-to-take-now-to-get-a-jump-on-next-years-taxes), updated and available on the IRS website, outlines steps taxpayers can take now to make tax filing easier in 2021.

Taxpayers receiving substantial amounts of non-wage income like self-employment income, investment income, taxable Social Security benefits and, in some instances, pension and annuity income, should make quarterly estimated tax payments. The last payment for 2020 is due on January 15, 2021. Payment options can be found at IRS.gov/payments. For more information, the IRS encourages taxpayers to review Pub. 5348, Get Ready to File, and Pub. 5349, Year-Round Tax Planning is for Everyone.

Income

Most income is taxable, so taxpayers should gather income documents such as Forms W-2 from employers, Forms 1099 from banks and other payers, and records of virtual currencies or other income. Other income includes unemployment income, refund interest and income from the gig economy.

Forms and Notices

Beginning in 2020, individuals may receive Form 1099-NEC, Nonemployee Compensation, rather than Form 1099-MISC, Miscellaneous Income, if they performed certain services for and received payments from a business. The IRS recommends reviewing the Instructions for Form 1099-MISC and Form 1099-NEC, to ensure clients are filing the appropriate form and are aware of this change.

Taxpayers may also need Notice 1444, Economic Impact Payment, which shows how much of a payment they received in 2020. This amount is needed to calculate any Recovery Rebate Credit they may be eligible for when they file their federal income tax return in 2021. People who did not receive an Economic Impact Payment in 2020 may qualify for the Recovery Rebate Credit when they file their 2020 taxes in 2021.

Additional Information

To see information from the most recently filed tax return and recent payments, taxpayers can sign up to view account information online. Taxpayers should notify the IRS of address changes and notify the Social Security Administration of a legal name change to avoid delays in tax return processing.

Special "Above the Line" Charitable Deduction Available for 2020

IR-2020-264

The IRS has reminded taxpayers of a special new provision that will allow more people to easily deduct up to $300 in donations to qualifying charities for 2020. Following tax law changes made by the Coronavirus Aid, Relief and Economic Security (CARES) Act (P.L. 116-136), cash donations of up to $300 made by December 31, 2020, are deductible when people file their 2020 taxes.

"Our nation's charities are struggling to help those suffering from COVID-19, and many deserving organizations can use all the help they can get," said IRS Commissioner Chuck Rettig.

The special $300 deduction is designed especially for people who choose to take the standard deduction rather than itemizing their deductions. According to the IRS, nearly nine in 10 taxpayers take the standard deduction and could potentially qualify for this new tax deduction.

Under this special provision, individual taxpayers can claim an "above-the-line" deduction of up to $300 for cash donations made to charity during 2020. This deduction lowers both adjusted gross income and taxable income, resulting in tax savings for those making donations to qualifying tax-exempt organizations.

Before making a donation, the IRS reminds taxpayers that they can check the special Tax Exempt Organization Search tool on IRS.gov (https://www.irs.gov/charities-non-profits/tax-exempt-organization-search) to make sure the organization is eligible for tax-deductible donations.

Cash donations include those made by check, credit card, or debit card. They do not include securities, household items or other property. Though cash contributions to most charitable organizations qualify, those made to supporting organizations and donor-advised funds do not. The IRS urges taxpayers to check Pub. 526, Charitable Contributions, and the Tax Exempt Organization Search tool for more information.

The IRS also reminds taxpayers that special recordkeeping rules apply to anyone claiming a charitable contribution deduction. This usually includes obtaining a receipt or acknowledgement letter from the charity before filing a return, and retaining a cancelled check or credit card receipt.

The CARES Act also includes other temporary provisions designed to help charities. These include: higher charitable contribution limits for corporations, individuals who itemize their deductions, and businesses that give food inventory to food banks and other eligible charities.

GAO Reviews Plan to Reform IRS Organizational Structure

GAO-21-18

The Government Accountability Office (GAO) has reviewed the IRS's organizational structure and its plans to reform the structure. The Taxpayer First Act (P.L. 116-25) required that a comprehensive written plan to redesign IRS be submitted to Congress by September 30, 2020. GAO's report examined: (1) reported advantages of, challenges related to, and options for potentially improving IRS's organizational structure; and (2) the extent to which IRS's reorganization planning process is consistent with selected leading practices.

Current Structure

GAO identified advantages of, challenges related to, and options for improving the IRS's current organizational structure, based on GAO's review of prior work and interviews with IRS officials and stakeholders. For example, one advantage of the current structure, according to several interviewees, was that IRS's divisions have developed specialized expertise on different types of taxpayers with similar needs, such as small businesses. Several interviewees also believed that addressing some of IRS's challenges might not require significant changes to IRS's organizational structure. GAO has identified challenges and options to improve IRS's structure, processes, and operations in the following areas: (1) customer service; (2) communication and coordination within IRS; (3) technology; and (4) strategic human capital management and training.

Although the IRS has developed preliminary goals for the plan, it has not yet finalized and communicated the goals and performance measures for the plan. Moreover, the IRS has also researched potential actions it could take to address long-standing management challenges, such as those related to areas of fragmentation, overlap, duplication, and high risk that GAO has identified. However, the IRS has not yet decided on specific actions to address those areas in its plan.

Recommendations

The GAO has recommended that the IRS commissioner should: (1) finalize specific, identifiable, and outcome-oriented goals and performance measures for the IRS's reorganization plan, and communicate those goals and measures; (2) identify specific actions to address issues of fragmentation, overlap, and duplication, as the IRS finalizes its reorganization plan; and (3) identify specific actions to address high-risk areas and long-standing management challenges, as the IRS finalizes its reorganization plan.

The IRS has responded that it plans to implement GAO's recommendations when it submits its final reorganization plan to Congress in December 2020.

TAX BRIEFS

Depreciation

The solar photovoltaic generation system of a publicly-traded holding company that provided energy services from renewable energy sources was not public utility property under Code Sec. 168(i)(10). The taxpayer's solar services program in a particular state was not subject to the regulatory jurisdiction of a specific commission, or to rate regulation by any other state or federal regulatory body. Further, the monthly fee under the solar energy service agreement was not to be determined on a rate-of-return basis. Instead, the taxpayer was to establish a market-based price for solar energy services, determined through arm's-length negotiations with customers, and individual rates under the agreement were not to be set by, or subject to the approval of, any governmental or other regulatory body.

IRS Letter Ruling 202046007

Long-Term Contracts

An entity's contract with a corporation was determined to be a long-term manufacturing contract under Code Sec. 460(f)(2). The contract required the taxpayer to provide a completed project, consisting of products composed of raw materials, parts and components. The average production period of all products was reasonably expected to exceed 12 months based on the production, installation and turnover dates established in the contract. The taxpayer incurred at least five percent of the contract costs by prepaying a certain sum to ensure an adequate supply of the goods necessary to fulfill its contractual obligations under the contract. The taxpayer was also required to treat the prepayment sum made to a subsidiary as contract costs incurred in the contracting year for purposes of computing the completion factor under the percentage of completion method of accounting.

IRS Letter Ruling 202046001

Private Activity Bonds

A service area comprising of electric customers was determined to be a qualified service area. A city's public utilities commission wanted to substantially purchase all of a utility company's electric distribution and transmission assets needed to provide retail electric service to all electricity customers in said service area. The city proposed to pay the purchase price of its acquisition of the project with proceeds from bonds. The acquired assets would become part of the project. The commission satisfied the requirement of providing output of the same type as the output to be provided by the project at all times for the preceding 10 years, and also provided electricity throughout service area at all times for the preceding 10 years.

IRS Letter Ruling 202046004