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## Tax Gap At $381 Billion– Treasury

The Department of the Treasury estimates that the net tax gap currently stands at $381 billion.

According to the agency's fiscal year 2021 Financial Report of the U.S. Government, released February 17, the agency estimated the gross tax gap – the difference between the amount of tax imposed by law and what taxpayers actually pay on time – to be $441 billion. It is generally composed of three elements: non-filing ($39 billion), underreporting ($352 billion), and underpayment ($50 billion).

Segmented by tax type, the gross tax gap estimate for individual income tax is $314 billion, followed by employment tax ($81 billion), corporation income tax ($42 billion) and estate and excise tax ($4.5 billion).

That gross amount is lowered by what is estimated will be paid through voluntary payment or collected via Internal Revenue Service administrative and enforcement activities: $60 billion to arrive at a net tax gap of $381 billion.

Individual income tax accounts for the majority of the net tax gap ($271 billion), followed by employment tax ($77 billion), and corporation income tax ($32 billion). The balance is made up of estate and excise tax ($1 billion).

## Proposed Required Minimum Distribution Regulations Implementing SECURE Act

*NPRM REG-105954-20*

The IRS issued proposed regulations that would implement the required minimum distribution (RMD) changes made by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) (P.L.116-94). The proposed regulations would generally apply to calendar years beginning on or after January 1, 2022. For 2021 distribution calendar year, taxpayers must apply the existing regulations, but taking into account a reasonable, good faith interpretation of the SECURE Act changes.

### SECURE Act and RMD

The SECURE Act made a number of changes, most notably using a 10-year distribution period instead of a beneficiary's life expectancy as the distribution period for designated beneficiaries unless they are eligible designated beneficiaries. The SECURE Act also changes the RMD required beginning date of April 1 of the calendar year after the individual turns age 70½ to the year after the individuals turns age 72.

Only someone who is an eligible designated beneficiary may use life expectancy as the RMD. The following people qualify: (1) the surviving spouse of the employee; (2) a child of the employee until reaching the age of majority; (3) someone who is disabled or chronically ill; or (5) someone who does not fall under one of these categories, and who is not more than 10 years younger than the employee.

Generally, the SECURE Act changes apply to distributions with respect to employees (including IRA owners) who die after December 31, 2019. If an employee dies before this effective date for a plan, then in applying the changes to the employee's designated beneficiary who dies on or after the effective date: (1) the amendments apply to any beneficiary of the designated beneficiary; and (2) the designated beneficiary is treated as an eligible designated beneficiary.

## IRS Releases 2022 Low Income Taxpayer Clinic List

The IRS' Low Income Taxpayer Clinic (LITC) program office announced that its 2022 Publication 4134, Low Income Taxpayer Clinic List, is now available. Publication 4134 provides information about LITCs by geographic area including contact information and details about the languages in which each LITC offers services. LITCs represent individuals whose incomes are generally at or below 250 percent of the federal poverty guideline and are seeking to resolve tax problems with the IRS. LITCs can also represent taxpayers in court and before the IRS. Further, they can provide information about taxpayer rights and responsibilities in different languages for English as a Second Language (ESL) taxpayers. The LITC program is a federal grant program administered by the Taxpayer Advocate Service, led by National Taxpayer Advocate Erin M. Collins. The IRS awards matching grants of up to $100,000 per year to qualifying organizations through the LITC program. LITCs provide services for free or a small fee. They receive IRS grants but work independently.

Further, the IRS informed that organizations interested in representing low-income and ESL taxpayers can review the most recent application package for applying for an LITC grant. Presently, there are no LITCs in the states of Montana and North Dakota, the territory of Puerto Rico and unserved counties in Arizona, Florida, Idaho, Nevada, North Carolina and Pennsylvania. The IRS encouraged qualifying organizations that will serve taxpayers in these areas to apply. Publication 4134 provides a complete list of organizations that are currently funded along with their location. Individuals who require additional information about the LITC program or the application process can contact Karen Tober via email.

*IR-2022-41*

## Proposed Regulations

The proposed regulations provide that if an employee in a plan who dies before the SECURE Act effective date has more than one designated beneficiary, whether the SECURE Act changes apply turns on the on when the oldest of those beneficiaries dies.

For example, if an employee who died before January 1, 2020, named a see-through trust as the sole beneficiary of the employee's interest in the plan, and the trust has three beneficiaries who are all individuals, then the SECURE Act changes would apply with respect to distributions to the trust upon the death of the oldest trust beneficiary, but only if that beneficiary dies on or after the SECURE Act effective date for that plan. However, if the oldest of the trust beneficiaries died before that effective date, then the SECURE Act changes do not apply with respect to distributions to the trust.

The proposed regulations provide that for ease of administration, the SECURE Act's effective date language applies to an employee who died before attaining age 70½ if the employee would have attained age 70½ on or after January 1, 2020 (that is, the employee's date of birth is on or after July 1, 1949). This interpretation also extends to a surviving spouse who is waiting to begin distributions.

Thus, for example, if an employee who was born on June 1, 1952, died in 2018, and the employee's sole beneficiary is the employee's surviving spouse, then the surviving spouse may wait until 2024 (the calendar year in which the employee would have attained age 72) to begin receiving distributions.

## Beneficiaries

"Minors" are 21. One question many had about the SECURE Act was who counts as a minor. The proposed regulations provide that a child of the employee reaches the age of majority on that child's 21st birthday for purposes of determining eligible designated beneficiary status. Defined benefit plan that have used a prior definition of age of majority may retain that plan provision.

The proposed regulations provide a safe harbor for the determination of whether a beneficiary is disabled. Specifically, if as of the date of the employee's death the Commissioner of Social Security has determined that the individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled for purposes of the RMD rules.

The proposed regulations provide that if an employee has more than one designated beneficiary and one of them is not

**REFERENCE KEY**

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

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an eligible designated beneficiary, then the employee generally is treated as not having an eligible designated beneficiary.

The proposed regulations provide a general rule under which if an employee has more than one designated beneficiary, and at least one of them is not an eligible designated beneficiary, then the employee is treated as not having an eligible designated beneficiary. As a result, the employee's interest must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death.

### Defined Contribution Plans

The proposed regulations retain the rule that permits an employee's interest to be distributed over the designated beneficiary's life or life expectancy. However, in the case of a defined contribution plan, that rule is available only if the designated beneficiary is an eligible designated beneficiary. Thus, if the employee dies before the required beginning date and the employee's designated beneficiary is not an eligible designated beneficiary, the 10-year rule applies.

The proposed regulations also provide that if the employee has a designated beneficiary who is an eligible designated beneficiary, the plan may provide either that the 10-year rule applies or that the life expectancy payments rule applies. Alternatively, the plan may provide the employee or the eligible designated beneficiary an election between the 10-year rule or the life expectancy payments rule. However, if a defined contribution plan does not include either of those optional provisions and the employee has an eligible designated beneficiary, the plan must provide for the life expectancy payments rule.

Comments. Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-105954-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

### IRS Releases Second Quarter Guidance Update

The Treasury and IRS have released their second quarter update to the 2021-2022 Priority Guidance Plan. The 2019-2020 Priority Guidance Plan contained 193 guidance projects, 13 of which had been completed by August 31, 2021.

Further, the second quarter update also includes 11 additional projects that were not on the initial plan. The IRS intends to update the plan during the year to reflect additional items.

*2021-2022 Priority Guidance Plan Third Quarter Update*

## Second Quarter 2022 Interest Rates Increase

*Rev. Rul. 2022-5; IR-2022-42*

The over and underpayment interest rates for the second quarter of 2022 have increased. The second quarter begins on April 1, 2022. The rates will be:

- 4 percent for overpayments
- 3 percent for corporate overpayments
- 4 percent for underpayments, and
- 6 percent for large corporate underpayments

The interest rate for the part of a corporate overpayment exceeding $10,000 is 1.5 percent.

### Computation of Second Quarter 2022 Interest Rates

The IRS computes these interest rates quarterly.

For noncorporate taxpayers:

- the overpayment rate is the short-term rate plus 3 percent, and
- the underpayment rate is the short-term rate plus 3 percent.

For corporate taxpayers:

- the underpayment rate is the short-term rate plus 3 percent
- the overpayment rate is the federal short-term rate plus 2 percent.
- the rate on the part of a corporate overpayment that exceeds $10,000 for a tax period is the short-term rate plus 0.5.
- the underpayment rate for large corporations is 5 percent.

## G20 Commits To 2023 Deadline For International Corporate Minimum Tax Rules

G20 leaders have committed to the implementation of the two-pillar international tax reform plans proposed by the Organisation for Economic Co-operation and Development (OECD) by 2023, the second pillar of which includes the corporate minimum tax.

According to a communique issued after the February 17-18 meeting of the G20 leaders in Jakarta, Indonesia, "we commit to develop the model rules and multilateral instruments according to the timetable provided in the Detailed Implementation Plan, with a view to ensure that the new rules will come into effect at global level in 2023."

Pillar one of the OECD two-pillar plan includes the agreement to bring new tax rules to reallocate to market jurisdictions taxing rights on profits earned by the world's largest multinational enterprises. This is designed to ensure market economies receive revenues even when large digital corporations lack a physical presence. OECD released its Draft Rules for Nexus and Revenue Sourcing document for comment on February 4.

The second pillar will include the implementation of the new global corporate minimum tax rate, currently agreed to at 15 percent on multinational enterprises with revenues about EUR 750 million. The tax is intended to ensure that companies pay a minimum tax on income in each of the jurisdictions in which they operate and adds a "top-up tax" on profits if the effective tax rate in a jurisdiction is below 15 percent.

OECD's draft work thus far has received pushback from the GOP members of the Senate Finance Committee. In a February 16 letter to Treasury Secretary Janet Yellen led by Finance Committee Ranking Member Mike Crapo of Idaho and signed by all the GOP members, the members argue that the agreement would harm U.S. businesses and jobs.

They take specific aim at the "top-up tax," stating that if tax credits designed to incentivize U.S. businesses causes the effective tax rate to dip below 15 percent, "foreign countries could effectively capture the benefit of congressionally-provided tax credits and deductions targeted at domestic innovation, investment, and job creation."

A corporate minimum tax of 15 percent is included in the currently stalled Build Back Better Act. There have been no indications when, or if, the bill, which passed the House of Representatives in November 2021, will move forward in the Senate.

## IRS Updates Frequently Asked Questions for Premium Tax Credit

The IRS has updated its frequently asked questions (FAQs) on the Premium Tax Credit. The FAQs revisions and additions are as follows:

- Updated The Basics FAQs: Q1, Q3, Q4
- Updated Eligibility FAQs: Q5, Q7, Q8, Q9, Q11
- Updated Reporting, Claiming and Reconciling FAQs: Q24, Q26, Q27
- Updated Suspension of Repayment of Excess Advance Payments of the Premium Tax Credit (Excess APTC) for Tax Year 2020 FAQs: Q33, Q36
- New Unemployment Compensation 2020 and 2021 FAQs: Q38 through Q45

These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible.

*FS-2022-13; IR-2022-44*

# Increased Fee for Enrolled Agent Examinations Adopted; Increased Enrollment Fees Proposed

*T.D. 9962; NPRM REG-114209-21*

The IRS has increased the amount of the user fee for each part of the Enrolled Agent special enrollment examination from $81, plus an amount payable to a third-party contractor, to $99, plus an amount payable to a third-party contractor. It also removed the fee for the examination for enrolled retirement plan agents because the IRS no longer offers this exam.

## Increase in Renewal User Fees

At the same time, the IRS issued proposed regulations that would increase the enrollment and renewal user fees for enrolled agent and the renewal user fee for enrolled retirement plan agents from $67 to $140.

Electronic or written comments must be received by June 6. The public hearing is being held by teleconference on June 2 at 10 a.m. EST.

# IRS Announces New Option for Signing Up For Online Accounts

*IRS Statement — New features put in place for IRS Online Account registration; process strengthened to ensure privacy and security*

The IRS has made a new option available in the agency's authentication system for taxpayers to sign up for IRS online accounts without the use of any biometric data, including facial recognition. Taxpayers will now have the option of verifying their identity during a live, virtual interview with agents and no biometric data – including facial recognition – will be required if taxpayers choose to authenticate their identity through a virtual interview. Taxpayers will still have the option to verify their identity automatically through the use of biometric verification through ID.me's self-assistance tool if they choose.

For taxpayers who select this option, new requirements are in place to ensure images provided by taxpayers are deleted for the account being created. Any existing biometric data from taxpayers who previously created an IRS Online Account that has already been collected will also be permanently deleted over the course of the next few weeks. While this short-term solution is in place for this year's filing season, the IRS will work closely with partners across government to roll out Login.Gov as an authentication tool. The General Services Administration is currently working with the IRS to achieve the security standards and scale required of Login.Gov, with the goal of moving toward introducing this option after the 2022 filing deadline.

## IRS Reminds Taxpayers to Conveniently Check Tax Refund Status

*IR-2022-43*

The IRS has reminded taxpayers that the fastest and easiest way to check on tax refunds is by using the"Where's My Refund?" tool (the tool) on IRS.gov or through the IRS2Go mobile app. The IRS encouraged individuals to file a return this year to get child-related tax credits that were expanded by the American Rescue Plan. These include the Child Tax Credit and the Child and Dependent Care Credit. The IRS reminded taxpayers that filing electronically and using direct deposit is the fastest way to file an accurate return and receive a tax refund. Taxpayers can use the tool to check their refund status within 24 hours after an e-filed return is received or four weeks after the taxpayer mails a paper return. The tool's tracker displays progress through three phases:

- Return Received
- Refund Approved
- Refund Sent

Most tax refunds are issued within 21 days. However, the IRS provided a list of reasons why some tax refunds may take longer. The IRS will contact taxpayers by mail if more information is needed to process a return. Further, the IRS informed taxpayers that the agency cannot issue Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) refunds before mid-February. This is due to the changes to the tax law made by the Protecting Americans from Tax Hikes Act. The tool and the IRS2Go app are updated for most early EITC or ACTC filers with an estimated deposit date by February 19, if they file their taxes early. If a filer claimed the EITC or the ACTC, they could expect to get their refund by March 1 if:

- They file their return online
- They choose direct deposit to get their refund
- No issues are found with their return

The IRS informed taxpayers that ordering a tax transcript will not help them get their refund faster or find out when they will get their refund. Further, the information available on the tool is the same information available to IRS telephone assistors. Taxpayers can find answers to questions, forms and instructions and other easy-to-use tools at IRS.gov.

## GAO Issues Report on Employer-Provided Child Care Credit

*GAO Report: Employer-Provided Child Care Credit — Estimated Claims and Factors Limiting Wider Use (GAO-22-105264 )*

The Government Accountability Office (GAO) has issued a report on Employer-Provided Child Care Credit. GAO noted that the Employer-Provided Child Credit Care, established in 2001, can provide a tax incentive for employers to provide child care benefits. The report examined: (1) the tax implications for employer-provided child care for employers and employees; (2) the numbers and common characteristics of employers claiming the credit and the amounts of child care expenses claimed; (3) reported challenges employers face in using the tax credit and how these challenges can be addressed; and (4) reported benefits employees receive from child care services eligible for the credit. GAO reviewed IRS documents on the tax treatment of fringe benefits and IRS estimates of filers claiming the credit and amounts claimed. GAO interviewed IRS and Department of the Treasury officials and reviewed literature and relevant federal laws and regulations. GAO also interviewed eight groups selected to obtain diverse views on employer, worker or family, and child care issues.

### Report Findings

GAO found that the Employer-Provided Child Credit Care Plan can save employers with eligible expenses more in taxes than using a deduction alone and employees can exclude some child care benefits from their wages. In 2016, the IRS estimated 169 to 278 corporate income tax returns claimed an aggregate estimated $15.7 to $18.8 million in Employer-Provided Child Care credits. In 2018, the IRS estimated corporate returns reported $144.7 to $154.8 million in qualified child care facility expenses and fewer child care resource and referral expenses. Further, several factors limit employers' use of the credit. For example, building and operating on-site child care entails substantial costs and planning and administering on-site child care can be complex. Employers are often unaware of the credit and that it may be too small, in relation to the costs, to sufficiently incentivize employers to provide child care. Further, GAO found various benefits of the employer-provided child care services eligible for the credit, including employees' increased productivity and engagement. However, such services may not be accessible to all employees and may not be affordable even when they are employer-subsidized.

## Suggestions Received by GAO

Selected groups interviewed by GAO suggested increasing outreach and education and redesigning the credit to ease the challenges faced by employers. Some groups suggested increasing the portion of expenses that can be offset and the maximum allowable credit. Other groups said that changes to the credit may not increase its use and that employee interest in on-site child care may decrease if remote work becomes more common. In addition, credit changes could result in increased federal costs.

# TAX BRIEFS

### *Award of Costs*

A married couple was denied administrative and litigation costs. The taxpayers' request was untimely, and they were not the prevailing party. No costs were incurred before the commencement date for the relevant administrative proceeding.

*Dang, CA-9, 2022-1 USTC¶50,117*

### *Deferred Compensation*

A tax matters partner (TMP) was not entitled to a deduction for deferred compensation liability in the year a limited liability company substantially purchased all of its assets and assumed all of its liabilities and obligations (the sale) because deferred compensation was not paid to two employees. The amount of the liability was included in the amount realized on the sale because the obligation was discharged. Further, the TMP was not entitled to offset or reduce its amount realized by the amount of the deferred compensation liability assumed by the LLC in computing its Code Sec. 1231 gain arising from the sale..

*Hoops, LP, Heisley Member, Inc., TC, Dec. 62,010(M)*

### *Dependency Exemption*

An individual was allowed to claim dependency exemption deduction and child tax credit for one of his two children for the tax year at issue. The taxpayer and his partner never married and were living separately during the tax year at issue. The children lived with the taxpayer's partner and the taxpayer provided over one-half of the children's support for the tax year at issue. Under a Shared Parenting Plan, the taxpayer and his partner agreed to claim the children alternatively every year for tax purposes, however, the state court issued an order and judgment entitling the taxpayer to claim dependency exemption for both the children each year. The taxpayer failed to attach a Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent and the necessary declaration to his return. Although the children were not the taxpayer's "qualifying children" under Code Sec. 152(c)(1)(B) since they did not have the same principal place of abode as the taxpayer, the court looked at the extenuating circumstances of the state court order and the Shared Parenting Plan. Since, the Shared Parenting Plan satisfied the requirements applicable to written declarations for the purposes of Code Sec. 152(e). Accordingly, the taxpayer was entitled to one dependency exemption deduction for the tax year at issue. Finally, the taxpayer was also entitled to the child tax credit for one child as the taxpayer was treated as having only one qualifying child for the tax year at issue.

*Hicks, Jr., TC, Dec. 62,011(M)*

### *Supreme Court Docket*

A petition for certiorari was denied in the following case:

A district court's dismissal of an individual's substantive due process claim was affirmed. One of the judges ruled that the taxpayer did not brief the intermediate scrutiny standard in a manner adequate to permit resolution on the basis of intermediate scrutiny. The taxpayer did not advocate for intermediate scrutiny; instead, his argument was that international travel was a fundamental right. The judge stated that neither party advocated for what he considered to be the proper standard. Therefore, he left the judgment of the district court undisturbed.

*Maehr, CA-10, 2020-2 USTC ¶50,147*