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## Five-Minute Tax Briefing<sup>®</sup>

**January 28, 2020**

**No. 2020-02**

### Highlights

**Extended Tax Relief for Certain Students Whose Education Loans Were Discharged:** In Rev. Procs. 2015-57, 2017-24 , and 2018-39 , the IRS announced that taxpayers, who took out federal and private student loans to finance attendance at schools owned by Corinthian College, Inc. (CCI) and American Career Institutes, Inc. (ACI) and whose loans were discharged, didn't have to recognize gross income as a result of the debt discharge. In a recent Revenue Procedure, the IRS has extended this relief to all taxpayers who took out federal or private student loans to attend nonprofit or for-profit schools and whose federal loans were discharged under the Department of Education's Defense to Repayment or Closed School discharge processes or where private loans were discharged based on settlements of certain types of legal causes of action. These taxpayers will not be required to increase taxes for prior claimed credits or deductions attributable to the loans, and creditors will not be required to file information returns for the discharged debt. Rev. Proc. 2020-11 .

**IRS May Provide Relief from Double Taxation Related to Repatriation:** The IRS has announced that it is willing to consider requests for relief from double taxation resulting from application of the Section 965 repatriation tax, which was added by the Tax Cuts and Jobs Act (TCJA). Such relief may be appropriate if a corporation paid an unusual dividend for business reasons unrelated to the TCJA. When the same earnings and profits of a foreign corporation are taxed as dividends and under IRC Sec. 965, double taxation could result. The IRS also is open to

providing relief when there is no significant reduction in the resulting tax by application of foreign tax credits, such that the taxpayer would be required to pay more tax than it would have if the dividend had not been paid. Taxpayers that fit within these limited circumstances may contact the IRS's Office of Associate Chief Counsel (International) at (202) 317-3800. News Release IR 2020-16.

**New FAQs Address Charitable Donations of Virtual Currency:** The IRS has added two Frequently Asked Questions (FAQs) to its website addressing charitable donations of virtual currency (such as Bitcoin). According to the IRS, a charitable organization that receives virtual currency should treat the donation as a noncash contribution. Such contributions must be reported on a Form 990-series annual return and its associated Schedule M, if applicable. In addition, charities must file Form 8282 (Donee Information Return) if they sell, exchange, or otherwise dispose of the virtual currency within three years of the donation date. Charities also must give the original donor a copy of the form. The IRS also has advised charities to assist donors by providing contemporaneous written acknowledgments of virtual currency donations (for deductions of \$250 or more) and signing Form 8283 (Noncash Charitable Contributions) for deductions of more than \$5,000. The FAQs are available at [www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions](http://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions) .

## Other Current Releases

**Applicable Federal Rates for February:** The Section 7520 rate for February 2020 is 2.2%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2020-3):

	Annual	Semiannual	Quarterly	Monthly
Short-term ( $\leq 3$ years)	1.59%	1.58%	1.58%	1.57%
Mid-term ( $> 3$ years but $\leq 9$ years)	1.75%	1.74%	1.74%	1.73%
Long-term ( $> 9$ years)	2.15%	2.14%	2.13%	2.13%

**Income Tax—Final Regulations on Transfers to Partnerships with Related Foreign Partners Issued:** The IRS has issued final regulations that address transfers of appreciated property by U.S. persons to partnerships that have partners that are *related foreign persons* ; i.e., foreign persons who are related to the transferor. The regulations generally override the rules providing for nonrecognition of gain on a contribution of property to a partnership in exchange for an interest in the partnership under IRC Sec. 721(a). Contributions to partnerships of property with a built-in gain are generally not taxable events to partners under IRC Sec. 721(a) . However, under IRC Sec. 721(c) , the IRS can issue regulations to provide that IRC Sec. 721(a) will not apply to gain realized on the transfer of property to a domestic or foreign partnership if the gain, when recognized, would be includible in the gross income of a person other than a U.S. person. TD 9891.

**Income Tax—IRS Delays Applicability Date of Section 382 Regulations:** In September 2019, the IRS released proposed regulations (REG-125710-18) that would require loss corporations to

use a modified Section 1374 approach when identifying items of built-in gain and loss under IRC Sec. 382(h). Initially, the regulations were proposed to be effective for ownership changes occurring after the adoption date of the final regulations. After receiving comments from taxpayers and practitioners, the IRS has delayed the applicability date of the regulations to 30 days after the date they are published as final in the Federal Register (subject to limited exceptions). According to the IRS, Notice 2003-65 (which outlines two alternative approaches on identifying built-in items) will continue to apply to ownership changes to which the final regulations don't apply. The revised proposed regulations also provide transition relief to eligible taxpayers. Prop. Regs. 1.382-2 and 1.382-7.

**Penalties—Trust Fund Recovery Penalty Subject to Supervisory Approval:** The taxpayer was the sole member of two LLCs that failed to pay employment taxes for several calendar quarters. After determining that the taxpayer was a *responsible person* for each LLC, the IRS assessed Trust Fund Recovery Penalties (TFRPs) under IRC Sec. 6672. The IRS argued that the supervisory approval requirements of IRC Sec. 6751(b)(1) don't apply to TFRPs because they are, in substance, a tax rather than a penalty. The Tax Court disagreed, holding that a TFRP is a penalty that requires written supervisory approval. However, the Court found that the IRS satisfied the requirements of IRC Sec. 6751(b)(1) because written supervisory approval of the TFRPs was secured on each Form 4183 (Recommendation re: Trust Fund Recovery Penalty Assessment) on the same date Letter 1153 (Trust Fund Recovery Penalty Letter) was mailed to the taxpayer. Therefore, the TFRPs were sustained. *David J. Chadwick*, 154 TC No. 5 (Tax Ct.).

**Taxpayer Advocate Delivers Annual Report:** Acting National Taxpayer Advocate (NTA) Bridget Roberts released her 2019 Annual Report to Congress. Key challenges summarized in the report include implementation of the Taxpayer First Act, inadequate taxpayer service, and limited funding of the IRS. The report highlights that the Taxpayer First Act, enacted into law on 7/1/19, has made the most comprehensive revisions to IRS procedures since the IRS Restructuring and Reform Act of 1998, including some 23 provisions previously recommended by the NTA. "By passing the Taxpayer First Act, Congress has sent the IRS a clear message that it needs to rethink the way it operates—the services it provides, its organizational structure, the way it trains employees, and the technology it uses," Roberts wrote in the preface to the report. Roberts also released the third edition of the NTA's "Purple Book," which presents 58 legislative recommendations designed to strengthen taxpayer rights and improve tax administration. The full report, including the Purple Book, can be accessed at [www.taxpayeradvocate.irs.gov/2019AnnualReport](http://www.taxpayeradvocate.irs.gov/2019AnnualReport).

**Tax-exempt Organizations—IRS Provides Guidance on UBIT Refunds for Qualified Transportation:** The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (the Disaster Act) retroactively repealed IRC Sec. 512(a)(7), which increased Unrelated Business Taxable Income (UBTI) by amounts paid or incurred for qualified transportation fringes. The IRS has announced that tax-exempt organizations may claim a refund or credit of the Unrelated Business Income Tax (UBIT) attributable to IRC Sec. 512(a)(7) by filing an amended Form 990-T with the phrase "Amended Return" written at the top of the form. If the amended return is being filed only to claim a

refund or credit due to the repeal of IRC Sec. 512(a)(7), nonprofits should write "Amended Return —Section 512(a)(7) Repeal" at the top of the form. There are other requirements as well, depending on whether a refund is being claimed for 2017 or 2018. More information is available at [www.irs.gov/forms-pubs/how-to-claim-a-refund-or-credit-of-unrelated-business-income-tax-ubit-or-adjust-form-990-t-for-qualified-transportation-fringe-amounts](http://www.irs.gov/forms-pubs/how-to-claim-a-refund-or-credit-of-unrelated-business-income-tax-ubit-or-adjust-form-990-t-for-qualified-transportation-fringe-amounts)

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