Highlights

- Multiple Tax Acts Signed Into Law With Narrow Impact
- Reduction of Return Processing Backlog
- IRS Continues to Tweak K-2/K-3 Rules

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Tax Briefing | 2022 Tax Year-In-Review

Pandemic Recovery Continues As IRS Begins Transition In Leadership

While the world has been steadily returning to something resembling "normal," the Internal Revenue Service spent 2022 working through issues created by the COVID-19 pandemic, namely clearing out the backlog of unprocessed returns.

And as the year drew to a close, the Biden Administration began the transition of leadership from the now retired Charles Rettig with the naming of an acting commissioner, Douglas O'Donnell, and the nomination of Danny Werfel to serve as permanent Commissioner. As of yet, the Senate has not taken any action on the nomination.

The year saw a number of legislative actions, although tax implications were narrowly applicable across the board. Given 2022 was an election year, it was expected that there would be no significant tax changes coming from Congress, and the legislative body met that expectation, with only a few pieces of legislation that had tax implications, including the CHIPS Act, the Inflation Reduction Act and omnibus spending law that will keep the government funded through the end of Fiscal Year 2023. It also issued guidance and other regulatory action across a number of different areas. Here are some of the highlights of 2022.

LEGISLATION

Inflation Reduction Act of 2022

The key legislative action taken in 2022 was the passage of the Inflation Reduction Act in August. The Act promotes investment in clean energy as well as a reduction in carbon emissions, extends Affordable Care Act premium reductions, implements new corporate alternative minimum tax provisions, provides more funding to the

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IRS to close the "tax gap" of taxes owed versus taxes actually collected, and imposes an excise tax on stock repurchases.

On the revenue side, the Inflation Reduction Act put forth two key corporate tax provisions: the corporate alternative minimum tax (AMT) and the excise tax on stock repurchases. The Act reinstates the corporate AMT after it was eliminated by the Tax Cuts and Jobs Act with some changes. The new corporate AMT equals 15 percent of the corporation's "adjusted financial statement income" for the tax year, reduced by a corporate AMT foreign tax credit and would apply to corporations with an adjusted financial statement income in excess of $1 billion for a three-year period. This threshold is reduced to $100 million in cased of certain foreign-parented corporations. Other exceptions also apply.

The other key piece affecting the corporate space is the excise tax on stock repurchases. A repurchase is a redemption, or any specific transaction determined to be economically similar to a redemption. The tax also applies to the purchase of stock of a specified affiliate corporations, which is a corporation more than 50 percent owned (by vote or value) by the purchasing corporation. The tax applies to repurchases beginning in 2023.

In an effort to help clean up the environment, the Inflation Reduction Act includes a number of green energy tax credits, including credits related to the purchase of clean energy vehicles, building more environmentally-friendly residential buildings, credits for investments in clean energy, and credits for electricity produced from renewable resources.

Consolidated Appropriations Act, 2023

Although the Democratic-led Congress opted not to pursue any major tax changes before surrendering the House to Republicans as a result of the mid-term elections, the omnibus spending law does include the bipartisan-supported SECURE 2.0 Act, which builds upon provisions in the original SECURE Act from 2019 and further ensures that more Americans can save for retirement and increases the amount they are able to save.

SECURE 2.0 includes provisions that allow for increased participation in employer-sponsored retirement savings programs through automatic enrollment and increased savings through saver's credits and other small incentives, increased contributions for those over age 50 (the so-called "catch-up limits") and the allowance of employers to make nonelective contributions of a unform percentage to SIMPLE IRA or SIMPLE 401(k) plans up to 10 percent of compensation. Another provision that will help people boost their retirement savings is one that will allow employers to make a matching payment to a qualified retirement savings plan that matches a qualified student loan payment made by the employee.

The section also includes adjustments to the provisions around distributions and withdrawals, including a phasing up of the age at which required minimum distributions must be taken and the ability to take an early withdrawal without incurring a penalty if the primary residence of the individual is in a federally declared disaster area, the individual incurred a financial loss due to the disaster, and the withdrawal happens within 180 days of that declared disaster. Another provision allows for victims of domestic abuse to withdraw funds penalty-free.

The CHIPS Act

One other high-profile bill that was signed into law in 2022 was the Creating Helpful Incentives to Produce Semiconductors for America (CHIPS) Act. The law is designed to spur semiconductor development in the United States. In addition to the more than $54 billion in grants and loans for semiconductor chip manufacturers, the CHIPS Act also includes a 25 percent investment tax credit for investments in semiconductor manufacturing, covering the manufacture of semiconductors as well as manufacture of the specialized equipment needed to produce the chips.

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IRS ADMINISTRATION

Return Processing Backlog

The IRS is still working to break free of the burden caused by the COVID-19 pandemic. In particular, it has seen significant improvement in clearing out the backlog of unprocessed returns and other correspondence. The agency noted on its website that as of December 9, 2022, it had 2.5 million individual returns received during the 2022 calendar year that are still unprocessed, including returns from both the 2021 tax year as well as late returns filed from previous years. An estimated one million of these returns are paper returns that are awaiting review and processing.

This does represent a reduction as the agency's backlog reports as of August 12 was about 7.6 million unprocessed individual returns along with nearly 6.7 million unprocessed business returns.

In early 2022, the IRS suspended a number of collection notices and activities as it worked through the backlog. No announcement has been made of those activities being reinstated as the number of unprocessed returns continued its decline as the year came to a close.

New Leadership

The end of 2022 saw the beginning of the changing of the guard at the Internal Revenue Service. Charles Rettig stepped down as commissioner of the agency on November 12, 2022, leading to the appointment of Douglas O'Donnell as acting commissioner. He is a 36-year veteran of the agency, though his appointment could be short-lived as the Biden administration nominated Danny Werfel to succeed Rettig as the next commissioner. Werfel has previously led the agency in an acting commissioner role from May 22, 2013, to December 23, 2013, under the Obama administration. Werfel, a 15-year veteran of the federal government, still needs to be confirmed by the U.S. Senate before he can take over as commissioner.

KEY IRS GUIDANCE

Schedule K-2 / K-3 Domestic Filing

Throughout the year, the agency took comments on Schedules K-2 and K-3 (Form 1065), leading to the release of the draft partnership instructions and partner's instructions in December. The December drafts expand the scope of the "domestic filing exception" introduced in October 2022 and make it easier for partnerships to take advantage of the exception.

The December draft instructions add two categories of partners that the partnership can have and still fall within the exception: an S corporation with only one shareholder; and a single-member LLC that is a disregarded entity and whose sole member is either a U.S. citizen or resident alien, a domestic decedent's estate with only U.S. citizen or resident alien beneficiaries, a domestic grantor trust with only U.S. citizen or resident alien grantors and beneficiaries or a domestic non-grantor trust with only U.S. citizen or resident alien beneficiaries.

The revised draft instructions also extend the date by which a partnership, to qualify for the exception, must notify the partners that they will not receive Schedules K-3 unless they request the schedules. The December revision states that a partner must receive notification "at the latest when the partnership furnishes the Schedule K-1 to the partner."

Other clarifying instructions were released in the December draft.

No Surprises Act

The IRS took a number of actions on the No Surprises Act, which was passed as part of the Consolidated Appropriations Act, 2021, and is designed to protect against surprise medical bills in certain circumstances.

The agency released guidance that stated if parties are unable to reach an agreement through open negotiation, the No Surprises Act provides for the amount payable to be determined by a certified independent dispute resolution (IDR) entity through a federal IDR process. For an item or service furnished during 2022, a group health plan or group or individual health insurance issuer must calculate the qualifying payment amount by increasing the median contracted rate for the same or similar item or service under such plan or coverage, on January 31, 2019, by the combined percentage increase as published by the Department of the Treasury and the IRS to reflect the percentage increase in the consumer price index for all urban consumers (U.S. city average) (CPI-U) over 2019, such percentage increase over 2020, and such percentage increase over 2021. For items and services provided on or after January 1, 2022, and before January 1, 2023, the combined percentage increase to adjust the median contracted rate is 1.0648523983.

It also released a final rule and an advanced notice of proposed rulemaking related to the No Surprises Act. The final rule includes certain disclosure requirements relating to information that group health plans, and health insurance issuers offering group or individual health insurance coverage, must share about the qualifying payment amount. The advanced NPRM included a request for information on advanced explanation of benefits and good faith estimate requirements of the No Surprises Act. The request for information seeks information and recommendations on transferring data from providers and facilities to plans, issuers, and carriers, other policy approaches, and the economic impacts of implementing these requirements.

Earned Income Tax Credit

The IRS announced early in 2022 that more individuals without children now qualify for the Earned Income Tax Credit. Families can use pre-pandemic income levels to qualify if it results in a larger credit. The agency urged individuals, especially those who may have an income low enough that they are not required to file, to check to see if they qualify for the EITC.

Student Loan Debt

The IRS issued its list of exceptions for the inclusion of cancelled student loan debt in

PROPOSED AND FINAL REGULATIONS

Various regulations, both proposed and final, were issued in 2022. These regulations implemented new rules and finalized proposed rules relating to tax credits, estate taxes, partnerships, and IRS administration.

- **T.D. 9959**, Foreign Tax Credit Issues
- **T.D. 9960; NPRM REG-118250-20**, Gross Income of Their Partners With Respect to Foreign Corporations
- **NPRM REG-105954-20**, Implementing RMD Issues
- **T.D. 9962; NPRM REG-114209-21**, Enrolled Agent Exams and Enrollment Fees
- **NPRM REG-118913-21**, Taxability of Transfers in Gross Estates
- **NPRM REG-106384-20**, Mortality Tables for Defined Plans
- **NPRM REG-122770-18**, Actuarial Tables Used in Annuities, Other Interests
- **NPRM REG-130975-08**, Estate Tax Interest Expense and Guarantees
- **NPRM REG-130675-17**, Foreign Currency Contracts
- **T.D. 9963**, Code Sec. 754 Election Signature
- **T.D. 9964**, Disclosure of Tax-Exempt Organization Information to State Officials
- **NPRM REG-125693-19**, Independent Appeals Office Rules
- **NPRM REG-100719-21**, Enrolled Actuary Fees
- **T.D. 9967; NPRM REG-113068-22**, Low-Income Housing Credit
- **T.D. 9968**, Premium Tax Credit
- **NPRM REG-112096-22**, Foreign Tax Credit Rules
- **T.D. 9969**, Items in the Centralized Partnership Audit Regime
- **NPRM REG-106134-22**, Syndicated Conservation Easement Transactions
- **NPRM REG-113839-22**, Consolidated Groups and Subpart F
- **T.D. 9970**, Affordable Care Act Reporting and Minimum Essential Coverage

income. Generally, had a taxpayer's student loan been cancelled or repaid by someone else, the taxpayer was mandated to include the cancelled or repaid loan amount as part of their gross income, for tax purposes. However, the American Rescue Plan Act of 2021 has modified the treatment of student loan forgiveness for discharges in 2021 through 2025, wherein the taxpayer may be able to exclude the repaid or cancelled loan amount from his gross income, if the loan could be categorized as one of the following: a loan for post-secondary educational expense; a private education loan; a loan from an educational organization described in Code Sec. 170(b)(1)(A)(ii); or a loan from an organization exempt from tax under Code Sec. 501(a) to refinance a student loan.

GLOBAL CORPORATE MINIMUM TAX

The Organisation for Economic Co-operation and Development announced a delay of Pillar One of the landmark agreement on international tax reform to mid-2023. OECD took comments on a progress report on Pillar One, which contained a comprehensive draft of the technical model rules to implement a new taxing right that will allow market jurisdictions to tax profits from large multinational corporations. The plan is to finalize the report in mid-2023 to allow the more than 135 countries and jurisdictions to put the framework into operation in 2024. Technical work on Pillar Two, the introduction of a 15 percent global corporate minimum tax rate is said to be largely complete.