

Options to Broaden the US Tax Base

The Tax Law Center at
NYU Law's "Tealbook"

PURPOSE

This resource brings together options for policy-makers to broaden and strengthen the US tax base—the foundation for the federal tax system—that the Tax Law Center has designed or analyzed to date.

The current tax base allows too many opportunities for especially sophisticated taxpayers to avoid and even evade taxes. This shifts the tax burden onto those without such opportunities and wastes resources as taxpayers expend effort that could go into more productive economic activity.

Whatever one's view of the appropriate size of the federal tax system, the tax base should be strengthened. Whether the tax system is smaller or larger, it yields worse outcomes for the American people when the base leads to greater avoidance and evasion.

However, strengthening the tax base is especially urgent given the current fiscal context. Two decades of tax cuts have reduced federal revenue, and left the government with a tax system that is insufficient to finance the government we have. Strengthening the tax base should be a part of the solution.

Beginning to address the revenue shortfall will be especially important as lawmakers look towards 2025, which will be a major year for US tax policy. Individual provisions of the 2017 tax law—which enacted a series of tax cuts estimated to cost about \$2 trillion over ten years at the time—are set to expire. Some lawmakers argue the tax cuts should all be extended, without offsetting the cost. Such a course would lower revenues, add to deficits, and increase inequality. Given the fiscal and economic challenges that the nation will face, lawmakers should at least fully pay for any extension. Measures to strengthen the tax base should be a key part of that discussion.

PURPOSE

We bring unique perspectives and expertise to this work. The Tax Law Center at NYU Law was created to bring deep tax law expertise to bear in the public interest—of the quality that well-resourced filers regularly use to seek preferential treatment. The Tax Law Center’s tax attorneys have expertise across the tax system, including in the administration, private practice, and legislative branches. This includes staff who have held roles at: the IRS Chief Counsel’s office (which drafts new guidance and represents the IRS in legal disputes); the Department of Treasury Office of Tax Policy (which leads in policy decisions affecting the tax system for the executive branch); the House Ways and Means Committee (which drafts major pieces of tax legislation); and private law and accounting firms that represent high-net worth individuals and large businesses seeking top-flight legal advice to navigate the tax system to their best advantage.

Our staff also use their expertise to seek and evaluate the perspectives of practitioners and experts who can point to holes in the tax system based on years of experience practicing, drafting, and implementing tax law. These include practitioners at law and accounting firms, former IRS and

Treasury officials ranging from career staff to Senate-confirmed leadership, and tax academics and researchers at the cutting edge in the study of tax law and administration in the US and globally. The Tax Law Center also benefits from our Advisory Board, which provides guidance in our work to bring a public interest perspective and strong legal expertise to consequential tax policy decisions.¹

We will update this resource regularly as our work continues.

What’s in this resource

In the course of our work commenting on pending tax regulations, informing tax legislation, and addressing emerging issues in the courts, the Tax Law Center has developed or analyzed several dozen options to broaden the tax base. This compilation includes: (1) proposals that the Tax Law Center has developed or refined (whether in published analysis or where our analysis is ongoing and published work is forthcoming); and (2) proposals put forth by policymakers or experts on which the Tax Law Center has published analysis.

1. As of this publication, members are: Nadiya Beckwith-Stanley, currently an associate at Skadden and former special assistant to the president for budget and tax at the National Economic Council; Jason Furman, currently the Aetna professor of the practice of economic policy at Harvard University and former chairman of the Council of Economic Advisers; William G. Gale and Tracy Gordon, co-directors of the Urban-Brookings Tax Policy Center; Fred Goldberg, currently of counsel at Skadden and former IRS commissioner; Robert Greenstein, currently a visiting fellow in economic studies for the Hamilton Project at the Brookings Institution and founder and president emeritus of the Center on Budget and Policy Priorities; Susan Morse, professor at University of Texas at Austin School of Law; Jose E. Murillo, currently co-leader of the national tax department at Ernst & Young LLP and former deputy assistant Treasury secretary for tax policy; Pam Olson, currently a consultant for tax policy services at PwC US and former assistant Treasury secretary for tax policy; Arvind Ravichandran, currently a partner at Cravath and former attorney at the IRS Office of Chief Counsel; and Leslie B. Samuels, currently senior counsel at Cleary Gottlieb and former assistant Treasury secretary for tax policy. Note: The Advisory Board does not determine the positions of the Tax Law Center nor is it responsible for work products from the Tax Law Center, including this one. The Tax Law Center’s positions and work products may not reflect the views of Advisory Board members.

PURPOSE

Many of the options to broaden the tax base in this compilation are well known, but some have received less attention or are new approaches that we have crafted. For example, we propose ways to strengthen recently enacted reporting regimes such as the bipartisan Corporate Transparency Act and the 1099-K reporting requirements for third-party settlement organizations. We also suggest implementing new reporting regimes focused on increasing compliance among high-net-worth individuals by requiring reporting in the dealing of high-value art and antiquities and reporting when foreign trusts are bought onshore. We further recommend adjusting or clarifying the tax treatment of items like non-business usage of company-owned jets and large categories of stock buybacks to be more consistent with their economic value and tax principles elsewhere in the Code.

Even for well-known ideas, we have drawn upon our distinctive expertise to add depth and nuance, or to update existing work for an evolving market and policy climate. Examples include our ongoing analyses of thorny issues like state-level SALT cap workarounds and the treatment of Qualified Small Business Stock.

The options discussed here include initiatives that can be pursued via regulation or legislation. In some cases, the change could be made by either the Treasury Department changing relevant regulations or Congress writing new legislation; in other cases, the change could be done only via legislation since the Treasury Department does not have sufficient discretion to effect the policy change. Here, we note the context in which we analyzed the option—whether as a regulatory or legislative option—but do not make any recommendations about the best approach.

In some cases we note where we have work in progress that is not yet published as a detailed analysis, but where we have developed expertise and are happy to discuss or learn about relevant possibilities.

To give an approximate sense of scale, we have classified proposals using the following categories based on our sense of potential revenue raised over ten years: “small” (less than \$1 billion); “moderate” (\$1 billion–\$10 billion); substantial (\$10 billion–\$50 billion); large (more than \$50 billion). These categories are applied with low confidence unless indicated otherwise by government estimate.

TABLE OF CONTENTS

Taxable Distribution Rules for Generation-Skipping Transfers	7
Foreign Oil and Gas Extraction Income (FOGEI) & Foreign Oil Related Income (FORI)	8
Corporate Basis-Shifting	9
Non-Qualified Preferred Stock (NQPS)	10
Section 355 Active Trade or Business (ATB) Requirement	11
Stock Buybacks	12
Section 162(m) Deduction for Executive Salaries	13
Corporate Transparency Act (CTA)	15
Qualified Small Business Stock (QSBS)	16
Corporate International Tax Regime	18
Cross-border Transactions for “F” Reorganization	19
Section 1297 Assets Measurement	20
Check-the-Box Elections	21
Base Erosion and Anti-Abuse Tax (BEAT) in Section 59(e) Elections	22
Cash as Passive Asset for Passive Foreign Investment Companies (PFICs)	23
Dividends Received Deduction	24
Excess Distribution Rules Under Section 1291	25
Foreign-Derived Intangible Income (FDII)	26
Section 959 E&P and Dividend Rules	27
Repeal of the General Utilities Doctrine	28
Section 368(c) and 1504(a) Corporate Ownership Standards	29
Tobacco Excise Tax	30
Non-Business Usage of Company-Owned Jets	31
Section 409A Deferred Compensation	32
Exchange-Traded Funds (ETFs)	33
“Mega” Retirement Accounts	34
Untaxed Income from Wealth	35
Foreign Account Tax Compliance (FATCA) Information Reporting	36
Art Information Reporting	37
General Information Reporting for Trusts	38

TABLE OF CONTENTS

Offshore Trust Reporting	39
Carried Interest	40
Inconsistent Application of Net Investment Income Tax/Self-Employed Contributions Act/Federal Insurance Contributions Act (NIIT/SECA/FICA) to Pass-Through Business Income	41
State and Local Tax (SALT) Workarounds	43
Disguised Fee for Services in Partnerships	44
Bona Fide Sale Exception for Asset Sales to Trusts	45
Liens on Estate Tax Deferral for Closely Held Businesses	46
Valuation of Gift Loans and Promissory Notes	47
Deemed Realization for Trusts	48
Gift Tax Exclusion	49
Grantor Trust Rules	50
Fiduciary Accounting Income and Principal	51
Qualified Small Business Stock (QSBS) Planning with Multiple Trusts	52
Rules for Establishing Grantor Retained Annuity Trusts (GRATs)	53
Section 1014 Recognition and Basis Upon Death for Grantor Trusts	54
Third-Party Settlement Organization Reporting	55
Uncertain Tax Position (Schedule UTP) Reporting	56
Digital Assets	57
Section 961 vs. 958 Subpart F Inclusion Basis	58
Section 958 Stock Ownership by Partnerships and Partners	59
Debt Allocation	60
Section 199A Deduction for Pass-Through Income	61
Valuation Assumptions for Family Limited Partnership Interests	62
Valuation Discounts for Non-Business Assets	63
Partnership Omnibus Technical Corrections and Updates	64
Deduction Limitation for Heavy Luxury Vehicles—§280F	65
Private Placement Life Insurance (PPLI) and Private Placement Annuities (PPAs)	66

Taxable Distribution Rules for Generation-Skipping Transfers

PROBLEM

Generation-skipping transfer (“GST”) tax is imposed on gifts and bequests to transferees who are two or more generations younger than the transferor. Each person has a lifetime GST tax exemption (\$13.61 million in 2024) that can be allocated to transfers made, whether directly or indirectly via trust, by that person to a grandchild or other “skip person.” A GST tax is imposed on every “taxable termination” and “taxable distribution.” Assets in dynastic GST exempt trusts are rarely distributed to beneficiaries and therefore rarely subject to GST tax as taxable distributions. Further, taxable terminations can be avoided by including a charitable organization in the beneficial class, since charitable organizations are non-skip persons.

PROPOSAL

Add deemed distribution rules, like those found in section 679(c)(6) for US beneficiaries of foreign trusts, to section 2612(b). These rules would treat uncompensated use of trust property by a skip person as a taxable distribution for GST purposes. Further, section 2612(a) should be revised so that a taxable termination is determined without reference to charitable beneficiaries. This would allow for a GST tax to be collected every generation.

TYPE OF TAX

Charitable donations, High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

Because the GST has a long-term focus, reforms’ revenue effects are often scored as negligible.

Foreign Oil and Gas Extraction Income (FOGEI) & Foreign Oil Related Income (FORI)

PROBLEM

Current international tax provisions contain a number of preferences for income from oil and gas and other activities that undermine efforts to address climate change, including the Tax Cuts and Jobs Act's ("TCJA") elimination of subpart F that previously included foreign oil related income ("FORI") and exemption from Global Intangible Low-Taxed Income ("GILTI") for foreign oil and gas extraction income ("FOGEI"). In addition, FORI and FOGEI definitions exclude oil shale and tar sands. Finally, a number of foreign countries have special tax regimes applicable to oil and gas companies that nominally impose taxes but carry extraction rights—existing "dual capacity" taxpayer rules seek to limit those taxes creditable against US tax to those not in exchange for economic benefit, but existing regulations provide safe harbor formulas based on a country's generally applicable tax rate and a facts and circumstances determination that taxpayers may apply to inappropriately inflate the amount treated as creditable foreign tax.

PROPOSAL

Reform FOGEI and codify the dual capacity taxpayer rule. Eliminate the GILTI FOGEI exemption; change the definition of FOGEI and FORI to include income related to oil shale and tar sands; and codify the dual capacity rule that (1) limits the amount of creditable foreign taxes to those imposed under a generally applicable income tax and (2) eliminates foreign tax credits in the case of a country without a generally applicable income tax. This approach would be consistent with previous proposals in the Build Back Better Act and has appeared most recently in the FY2025 Greenbook.

TYPE OF TAX Climate, Corporate tax, International tax

TYPE OF PROPOSAL Legislative

APPROXIMATE REVENUE Large (over \$50 billion) over 10 years

FY2025 Greenbook estimate: \$74 million between 2025–2034.

Corporate Basis-Shifting

PROBLEM

Regulations under section 302 provide that, when a redemption distribution described in section 302(d) is treated as a dividend, “proper adjustments” are made to the basis of the remaining stock with respect to the stock redeemed. An example in Treas. Reg. § 1.302-2(c) illustrates the case of a husband and wife who each own half of the shares of stock in a corporation. When the husband is completely redeemed, the basis that would otherwise remain in his redeemed shares shifts to the wife’s shares. Based on this regulation and example, corporate groups commonly use redemption distributions that are treated as dividends to shift basis from the redeemed shareholder to the surviving shareholder(s). This technique is facilitated by section 304, which makes it relatively easy for a corporate group to create a deemed redemption distribution. The enactment of TCJA changed, but did not eliminate, the incentives motivating this planning.

PROPOSAL

Republish proposed regulations to prevent corporate basis shifting. On multiple occasions, Treasury and the IRS have proposed to address this issue with regulations that were subsequently withdrawn. Treasury and the IRS should consider issuing this guidance as a standalone proposal instead of waiting to develop a more comprehensive set of rules for a wider array of basis issues. One way of addressing this issue could be by recognizing a capital loss that is suspended until the occurrence of future events.

TYPE OF TAX

Corporate tax

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Non-Qualified Preferred Stock (NQPS)

PROBLEM

Non-qualified preferred stock (“NQPS”) is preferred stock with certain debt-like features. Since 1997, NQPS has been treated as taxable “boot” for some purposes and as stock for other purposes. The NQPS provisions were enacted in response to concerns that certain types of preferred stock used in tax-free transactions more closely resemble taxable consideration. The problems the provisions create are twofold: the hybrid treatment of NQPS has made it a staple of affirmative corporate tax planning and the NQPS provisions add complexity to the Code.

PROPOSAL

Repeal the provisions that treat NQPS as boot as well as all cross-referencing provisions. These include, for example, sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). This proposal was included in the FY2017 Greenbook, and incorporated as part of a larger package of reforms to divisive reorganizations in the FY2025 Greenbook.

TYPE OF TAX

Corporate tax

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2024 Greenbook](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

*JCT estimate: \$146 million between 2016-2026 (pre-TCJA context).
2017 Greenbook estimate: \$430 million between 2017-2026.*

Section 355 Active Trade or Business (ATB) Requirement

PROBLEM

Historically, the IRS generally allowed a trade or business of de minimis size to satisfy the active trade or business (“ATB”) requirement of section 355(a)(1)(C) and (b), regardless of the amount of other assets involved in the transaction, as a practical accommodation of mechanical difficulties imposed under prior law. This was greatly expanded with the enactment of section 355(b)(3), which provides additional flexibility in satisfying the ATB requirement. Proposed regulations published in 2016 would replace the prior de minimis standard with a requirement that the fair market value (“FMV”) of a trade or business represent at least 5% of the FMV of a corporation’s total assets.

PROPOSAL

Raise the ATB threshold and consolidate outstanding regulations. The ATB threshold should be raised by legislation to 33 1/3% to better reflect legislative intent that a nontaxable divisive transaction “involve only the separation of assets attributable to the carrying on of an active business.” Consideration should also be given to concurrently finalizing the 5% standard of the proposed regulations, which are not effective until finalized, because taxpayers continue to rely on de minimis trades or businesses to satisfy the ATB requirement. Finally, the outstanding regulatory and subregulatory guidance addressing the ATB requirement should be consolidated in one updated notice of proposed rulemaking in order to simplify compliance and administration. Among other modifications, the new proposed regulations should also (i) streamline the rules addressing section 355(b)(2)(C) and (D), with greater reliance on the regulatory authority of section 355(b)(3)(D), and (ii) limit the expansion rules in Prop. Treas. Reg. § 1.355-3(b)(3)(ii).

TYPE OF TAX

Corporate tax

TYPE OF PROPOSAL

Administrative, legislative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

Stock Buybacks

PROBLEM

Corporations transfer profits to shareholders by either redeeming outstanding shares (i.e., a buyback) or making a pro rata distribution. A pro rata distribution typically results in dividend treatment to the distributee shareholder, while a redemption may result in either capital gains or dividend treatment to the redeemed shareholder. Many redemptions by publicly traded corporations result in capital gains for the redeemed shareholders under a mix of judicial and administrative interpretations of section 302(b)(1). The trend among publicly traded corporations to transfer profits to shareholders by redemptions (which typically result in capital gain) instead of pro rata distributions (which typically result in dividend treatment) has the potential to erode the US tax base because: whereas foreign shareholders' dividend income is generally subject to a 30% withholding, foreign shareholders' capital gains are not subject to federal income tax; capital gains allow the redeemed shareholder to recover adjusted basis; and capital gains may be offset by capital losses without limit.

PROPOSAL

Treasury should consider (i) revoking Rev. Rul. 76-385, (ii) revoking or clarifying Rev. Rul. 81-289, and (iii) publishing regulatory guidance that requires public corporation redemptions that are not described in paragraphs (b)(2) through (b)(5) of section 302 to be treated as dividend-equivalent.

Such guidance may take one of the following approaches:

Option 1: Distinguish publicly traded corporation buybacks from Davis, which addressed a redemption by a closely-held corporation;

Option 2: Re-interpret the Davis concept of a "meaningful reduction" for purposes of publicly traded corporation redemptions; or

Option 3: Re-interpret the Davis concept of a "meaningful reduction" for purposes of all redemptions (i.e., by both closely-held and publicly traded corporations).

TYPE OF TAX

Corporate tax, Excise tax

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Section 162(m) Deduction for Executive Salaries

PROBLEM

Section 162(m) limits the ability of a public company to deduct remuneration paid to a “covered employee” (a category including a company’s CEO, CFO, and next three highest-compensated employees, to be expanded to the next 5 highest-compensated employees beginning in 2026) to the extent remuneration exceeds \$1 million. These limits do not apply to businesses that are not public companies, or in cases where remuneration in excess of \$1 million is paid to a non-covered employee.

Irrespective of the merits of the various potential policy goals of capping deductions for executive compensation, if lawmakers are going to choose to have such a cap in the Code, it should be designed in such a way that treats similarly situated taxpayers similarly — and thereby minimizes wasteful tax planning and applies as fairly as possible. The current cap does not do so and is limited in its application in three key ways that generate distortions:

- First, within a particular public corporation, generally only five employees are covered (ten starting in 2026). So, if Corporation A has five employees receiving \$2 million each, and Corporation B has 100 employees receiving \$2 million each, both corporations will likely have \$5 million in deductions denied, even though Corporation B pays twenty times the amount of the executive compensation over the \$1 million threshold.
- Second, section 162(m) does not currently apply to privately-held corporations. This leads to very different treatment of similar businesses, or even to the same business when it decides to go public or go private.
- Third, the cap does not apply to any business that is not structured as a corporation. Partnerships now control more than \$30 trillion in assets and vastly outnumber public firms. These businesses are fully out of scope of section 162(m).

If there is to be any 162(m) cap at all, there is no clear tax policy rationale to have these limits apply to public companies, but not private companies, or to be limited to a subset of employees.

Section 162(m) Deduction for Executive Salaries

PROPOSAL

Expand section 162(m) to cover all employees of all corporations and consider expanding to all businesses. Our recommendation has been that if lawmakers choose to have a cap, it should be applied as consistently with the principle of horizontal equity as possible, treating similarly situated taxpayers similarly. That would mean covering all employees of all corporations (public and private), and ideally, would also require consideration of expanding it to all businesses (including pass-through businesses).

The 2025 Greenbook contained a proposal that would cover all employees of C corporations and included other changes like adding an aggregation rule, clarifying that otherwise deductible compensation paid to an employee constitutes “applicable employee remuneration” whether or not paid directly by the corporation, and expanding regulatory authority for remuneration paid through a pass-through entity. This proposal expands on prior legislative proposals (such as H.R. 697 and S. 178), the Stop Subsidizing Multimillion Dollar Corporate Bonuses Act (2021), which applied section 162(m) to cover all employees of publicly-traded corporations.

Applying section 162(m) to pass-through businesses should also be considered if the cap is retained and expanded, though this involves some challenges.

TYPE OF TAX Corporate tax, Executive compensation, High-net-worth individuals

TYPE OF PROPOSAL Legislative

TAX LAW CENTER PUBLICATIONS [Memo on FY2024 Greenbook](#)
[The Million Dollar Question — How Section 162\(m\) limits executive compensation deductions and how the President’s Budget proposal would change it](#)

APPROXIMATE REVENUE Large (over \$50 billion) over 10 years

2025 Greenbook estimate: \$271.85 billion between 2025-2034 for a similar policy covering all C corporations only, in addition to several other changes. Note that this estimate assumes a corporate rate of 28 percent, which the Biden administration proposed in its 2025 budget. This assumption affects the estimate because if the corporate tax rate is increased, the savings from denying a deduction that would otherwise reduce the amount of income subject to that tax rate are larger.

Corporate Transparency Act (CTA)

PROBLEM

The Corporate Transparency Act (“CTA”) was enacted on a bipartisan basis in 2019 to give regulators, including the IRS, tools to allow them to discern who owns entities that are often layered in ways that obscure the ultimate owner(s) of assets and income. However, the CTA does not cover trusts, partnerships, or other entities that have no state law filing requirement. This hole is not a marginal issue, since the activities that are most corrosive to tax compliance and the rule of law are likely to flow over time towards these entities. Pass-through entities are a major source of the tax gap, and trusts formed elsewhere and later brought onshore could also avoid reporting requirements. States may also alter their rules for forming other entities to circumvent the CTA. The database has only limited usefulness for IRS tax compliance efforts given that the CTA’s relevant implementing rule does not require reporting of taxpayer identification numbers (TINs) for beneficial owners, which presents a major practical barrier to the IRS’s ability to use the information efficiently.

PROPOSAL

Corporate Transparency Act implementation and legislative improvements.

The CTA registry of “beneficial ownership” could become an important tool for ensuring tax compliance. We recommend both sound Financial Crimes Enforcement Network (FinCEN) implementation and options for legislators to plug holes in the CTA, including implementing reporting requirements for partnerships, trusts, and other entities with no state law filing requirement.

TYPE OF TAX

Corporate tax, High-net-worth individuals, Information reporting, Partnerships & pass-throughs, State tax law, Transparency

TYPE OF PROPOSAL

Administrative, legislative

TAX LAW CENTER PUBLICATIONS

2022–2023 PGP Comment
Comment on Proposed Regulations
“Minding the Gaps?: Corporate Transparency Act Rules Highlight Need for Legislative Improvements”
“How Strengthening the Corporate Transparency Act Can Help the IRS Follow the Money”

APPROXIMATE REVENUE

Dependent on options pursued, but likely Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Revenue amount depends on scope of option pursued and strength of implementation.

Qualified Small Business Stock (QSBS)

PROBLEM

Section 1202 provides that a taxpayer (other than a corporation) can exclude a percentage of gain from the sale of qualified small business stock ("QSBS"), defined as stock in a domestic corporation with under \$50 million in assets (before and after stock issuance), among other qualifications. The seller must have acquired the QSBS at original issue and held the stock for at least five years. The total amount of excluded gain is limited to the greater of (i) \$10 million (reduced by any exclusion on a previous sale of stock in such corporation) or (ii) 10 times the basis in the stock. The problem is that section 1202 was intended to provide an incentive for long-term equity investments in small businesses, but there are no indications that it has increased the flow of equity capital to eligible small firms. Instead, section 1202 has served as a windfall to investors in corporations that already have a very large market value and easy access to equity capital, primarily in the technology sector.

PROPOSAL

Repeal or amend section 1202. Repealing section 1202 entirely is one option, but an alternative would be to cap benefits by adopting the proposals in the Build Back Better Act to reduce the 100% exclusion to 50% for individuals with incomes in excess of a certain threshold.

If section 1202 is not repealed or the benefits capped, the section should be amended to eliminate some of the more egregious problems caused by the current statute. Most of these problems arise from the statutory definition of a qualified small business and the operation of the \$10 million gain limitation. The best approach would be to narrow the definition of small business by basing the \$50 million test on the fair market value at the time of investment, or to define it by reference to gross annual revenue or receipts. In addition, eliminating the \$10 million gain exclusion resolves stacking problems created by the shareholder's ability to gift unlimited appreciated stock to others, enabling them to also take advantage of individual \$10 million gain exclusions without regard to basis.

At a minimum, if the \$10 million gain exclusion is retained, the section could be amended to eliminate the step-into-the-shoes rule for transferees and limit the exclusion to the original holder of the QSBS. In addition to this stacking problem, section 1202 applies on a per-issuer basis and thereby provides an exclusion of up to \$10 million for each corporation sold by an investor, advantaging diversified investors over founders. This result could be avoided by applying the \$10 million exclusion on a per-taxpayer basis and not a per-issuer basis, limiting an individual taxpayer to one \$10 million lifetime exclusion for all sales of QSBS.

Qualified Small Business Stock (QSBS)

TYPE OF TAX	Corporate tax, High-net-worth individuals, Transfer tax
TYPE OF PROPOSAL	Legislative
TAX LAW CENTER PUBLICATIONS	From Bad to Worse: Section 1202 and the House Package
APPROXIMATE REVENUE	Dependent on options pursued, but likely Substantial (\$10 billion–\$50 billion) over 10 years

JCT estimate: \$11.7 billion between 2023–2032.

Corporate International Tax Regime

PROBLEM

Current law allows US multinationals to substantially lower their effective worldwide tax rates by shifting their profits abroad, and regimes like Global Intangible Low-Taxed Income (“GILTI”), Base Erosion and Anti-Abuse Tax (“BEAT”), and Foreign-Derived Intangible Income (“FDII”) offer mixed incentives for US multinationals to move or keep profits and assets on- or off-shore. US multinationals paid an effective worldwide tax rate of 8.8% in 2018 despite headline corporate rates of 21% domestically and 10.5% under GILTI, utilizing the variation in tax rates across countries to lower their tax rate and prompting a corporate tax rate race to the bottom for countries competing for revenue.

PROPOSAL

Reform GILTI, BEAT, and FDII. Adjust GILTI to address exempt classes of profits, profit-shifting incentives created by aggregation, and the fact that its rate on foreign profits is too far below the US corporate tax rate. Address BEAT incentives for US multinationals to invert and standardize exclusions for payments related to foreign parties. Address FDII tax breaks on profits from old investments and those that leave open vulnerabilities for WTO challenges, in addition to incentives for certain multinationals to sell or locate tangible assets offshore. Address highly questionable regulations implementing TCJA, including the foreign bank exception to BEAT, the GILTI high-tax exception election, failure to allocate R&D to GILTI, and a weakened statutory interest expense limit on the 10 percent return exempt from GILTI.

TYPE OF TAX

Corporate tax, International tax

TYPE OF PROPOSAL

Administrative, legislative

TAX LAW CENTER PUBLICATIONS

[Testimony of Chye-Ching Huang, Senate Finance Committee \(3/25/21\)](#)
[“Six Economic Facts on International Corporate Taxation”](#)

APPROXIMATE REVENUE

Dependent on options pursued, but likely Large (over \$50 billion) over 10 years

Cross-border Transactions for “F” Reorganization

PROBLEM

Subchapter C has long permitted cross-border transactions to qualify as “mere changes” described in section 368(a)(1)(F). However, the significant differences in the federal income tax treatment of domestic and foreign corporations appear inconsistent with the principle that an “F” reorganization involves “only the simplest and least significant of corporate changes” and the “surviving corporation is the same corporation... except for minor or technical differences.” A recent case involving an outbound “F” reorganization highlighted this inconsistency. The taxpayer argued that the foreign resulting corporation should be allowed to pay itself a deemed section 367(d) royalty under the theory that the resulting corporation is the same as the transferor corporation. The court rejected this argument, finding that the foreign resulting corporation was “essentially different” from the domestic transferor.

PROPOSAL

Revise the regulations under section 368(a)(1)(F) to provide that neither an inbound nor an outbound transaction can qualify as an “F” reorganization. If this recommendation is pursued, various conforming changes beyond section 368 will be required.

TYPE OF TAX

Corporate tax, International tax

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) to Large (over \$50 billion) over 10 years

Section 1297 Assets Measurement

PROBLEM

To determine passive foreign investment company (“PFIC”) status, for foreign corporations that are controlled foreign corporations (“CFCs”) or any other non-publicly traded corporations that elect section 1297(e)(2), assets are measured using adjusted basis. Regulations promulgated in 2021 provide that if the corporation was a CFC during the year, assets are measured by adjusted basis only for the periods during which it was a CFC, potentially allowing measurement by value for other periods. In addition, lower-tier subsidiaries generally use their upper-tier parent’s method for measuring assets for the determination of the upper-tier parent’s PFIC status and for the determination of the lower-tier subsidiaries’ PFIC status. As noted in 2019 proposed regulations, the problem is that using a combination of methods for measuring assets of a corporation within a single year can be distortionary.

PROPOSAL

(1) Return to the “one method per year rule” contained in the 2019 proposed regulations. **(2) Reverse the rules binding lower-tier subsidiaries** to their upper-tier parent’s asset measurement method for the lower-tier subsidiaries’ PFIC determination.

TYPE OF TAX

Corporate tax, International tax

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Check-the-Box Elections

PROBLEM

So-called check-the-box (“CTB”) regulations—which allow eligible entities to choose whether they are taxed as a corporation or pass-through entity for federal purposes—facilitate tax-motivated planning. Most prominently, taxpayers may use a CTB election before a disposition to elect into or out of subpart F income or otherwise alter the consequences of the disposition. The optionality facilitated by CTB elections also allows taxpayers to claim stock losses that can offset income at the general US corporate rate while ensuring that any gains are subject to the reduced global intangible low-taxed income (“GILTI”) rate. In addition, taxpayers may use a CTB election to minimize a US shareholder’s GILTI inclusion or increase the amount of foreign tax credits that may be claimed as a result of a GILTI inclusion. In the domestic context, taxpayers may combine a CTB election with a state law conversion statute to “strip” assets out of a lower-tier corporation while avoiding rules relevant to the repeal of the General Utilities doctrine.

PROPOSAL

Revise the CTB regulations to provide that (i) a foreign entity is not eligible to make a CTB election, and (ii) state law conversions and similar techniques are treated as CTB elections for purposes of the 60-month rule. Given the centrality of entity classification to the taxation of business activities, it is axiomatic that the CTB Regulations affect many other rules and regimes, creating potential for planning opportunities, complexity, and administrative burden.

TYPE OF TAX

Corporate tax, International tax, Partnerships & pass-throughs, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Large (over \$50 billion) over 10 years

Base Erosion and Anti-Abuse Tax (BEAT) in Section 59(e) Elections

PROBLEM

The amount of the Base Erosion and Anti-Abuse Tax (“BEAT”) imposed under section 59A is determined based on base erosion tax benefits with respect to base erosion payments. Base erosion payments include payments to foreign related parties if they are deductible or are for property that gives rise to depreciation or amortization deductions. In determining the BEAT base, the Build Back Better Act (“BBBA”) would take into account the cost of goods sold and certain other payments to a foreign related party that are capitalized into inventory or required to be capitalized under section 263A. The problem is, under section 59(e), a taxpayer can make an election to capitalize certain such payments and deduct them over 10 years. Such an election could therefore transform payments to a foreign related party that would normally be included in BEAT into payments not subject to BEAT.

PROPOSAL

Expand section 59A(c)(2)(B) and (d)(2)(B), as revised by the BBBA, to treat amounts subject to a section 59(e) election as base erosion payments giving rise to a base erosion benefit.

TYPE OF TAX

Corporate tax, International tax, Tax administration

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2023 Greenbook](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Cash as Passive Asset for Passive Foreign Investment Companies (PFICs)

PROBLEM

A foreign corporation is a passive foreign investment company (“PFIC”) if the average percentage of assets held by the corporation during the taxable year that produce passive income or that are held for the production of passive income (“passive assets”) is at least 50 percent. Longstanding guidance and proposed regulations indicate that, subject to a narrow exception in the proposed regulations, cash is a de jure passive asset. The problem is that taxpayers may take the position that cash held for potential investment in activities that would generate non-passive income is not a passive asset, notwithstanding the guidance, and that the regulations, if finalized, are invalid. The government can, and presumably will, contest any such argument.

PROPOSAL

Amend the PFIC rules to confirm that cash is a passive asset, potentially subject to a working capital exception.

TYPE OF TAX

Corporate tax, International tax, Tax administration

TYPE OF PROPOSAL

Administrative, legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2023 Greenbook](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Expected to raise revenue, but the amount is unclear. We are also uncertain how the Office of Tax Analysis or JCT might account for the existence of proposed regulations. Note, however, the recent [significant press](#) about special purpose acquisition companies, which are often foreign corporations, and the considerable amounts of cash they hold in anticipation of an acquisition.

Dividends Received Deduction

PROBLEM

Section 245A grants dividends received deductions (“DRDs”) for the foreign-source portion of dividends received by a domestic corporation from certain foreign corporations. The foreign-source portion appears to be based on all of the foreign corporation’s earnings and profits (“E&P”), but no additional guidance exists. It is currently unclear how the determination of the foreign-source portion accounts for (i) the application of section 316(a), (ii) the possibility of undistributed foreign earnings in excess of undistributed earnings, or (iii) the interaction with a DRD under section 245. If section 316(a) applies, non-“foreign-source” E&P earned in early years could affect the determination of the foreign-source portion in subsequent years, preventing a shareholder from claiming the full amount of section 245A DRDs to which it appears to be entitled. By contrast, losses in non-“foreign-source” E&P could result in undistributed foreign earnings exceeding undistributed earnings, potentially allowing section 245A DRDs to exceed the amount of dividends.

PROPOSAL

Publish proposed regulations under section 245A, addressing some or all of the aforementioned issues, including rules for accounting for the E&P treated as distributed for purposes of section 245A and limitations on the amount of the DRD.

TYPE OF TAX

Corporate tax, International tax, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) to Large (over \$50 billion) over 10 years

Excess Distribution Rules Under Section 1291

PROBLEM

A US person owning shares of a passive foreign investment company (“PFIC”) is generally subject to the “excess distribution” rules of section 1291 when it receives certain distributions from or disposes of the stock of the PFIC. Under proposed regulations in 1992, excess distributions allocated to prior PFIC years are explicitly excluded from gross income in the year of an “excess distribution” (i.e., the current year). However, this treatment is not required by the statute. Although section 1291(a)(1)(B) might be read to suggest that it describes “only” the amounts included in gross income for the current year, it could be read more narrowly to simply limit the amounts included as ordinary income for such year. This interpretation is consistent with section 1291(a)(1)(C) and (c), and is pursuant to the default rule of section 61, thus making it more likely that the statute of limitations for the year are extended under section 6501(e)(1)(A).

PROPOSAL

Republish proposed regulations under section 1291 and expediently finalize them, with modifications to Prop. Treas. Reg. § 1.1291-2 to make clear that prior PFIC year amounts that are subject to the “excess distribution” rules are nevertheless included in gross income under section 61 in the current year for purposes of the statute of limitations.

TYPE OF TAX

Corporate tax, International tax, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

Foreign-Derived Intangible Income (FDII)

PROBLEM

For purposes of the section 250 deduction, the amount of a domestic corporation's foreign-derived intangible income ("FDII") for a taxable year equals the product of its deemed intangible income for the year and the ratio of its foreign-derived deduction eligible income ("FDDEI") to its deduction eligible income ("DEI") for the year (the foreign-derived ratio). The problem is that, by assuming a certain amount of FDDEI and DEI over a period of multiple years, taxpayers can increase their amount of FDII by causing the FDDEI to be accrued in a single year.

PROPOSAL

Revise section 250. If the section 250 deduction for FDII is not eliminated, revise section 250 to prevent manipulation through income "bunching." This can be done by disregarding, for FDII computation purposes only, amounts that are received or accrued in advance of the period to which they are attributable. The disallowance can be limited to amounts accelerated with a principal purpose of increasing an FDII deduction or from a related party.

TYPE OF TAX

Corporate tax, International tax, Tax administration

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2024 Greenbook](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

A reported surge in tax benefits (over \$3B from year-to-year) could potentially be attributable, in part, to income "bunching" and suggest significant revenue from disregarding income acceleration for FDII purposes.

Section 959 E&P and Dividend Rules

PROBLEM

The previously taxed earnings and profits (“PTEP”) rules of a controlled foreign corporation (“CFC”) under section 959 and the general rules governing corporate distributions in subchapter C raise several coordination issues. For example, section 959(c) provides that to determine whether a distribution is made out of PTEP, section 316(a)(2) (current year earnings and profits (“E&P”)) and then section 316(a)(1) (accumulated E&P) are applied to three categories of a foreign corporation’s earnings—two related to PTEP, and one related to non-PTEP E&P.

This rule could be interpreted in multiple ways and is not clear whether section 959(c) requires each category be further divided between current and accumulated subcategories. In addition, Notice 2019-1 suggests a limited role for section 316 in determining PTEP distributions. Separately, Notice 2019-1 provides that a CFC’s current-year deficit in E&P does not affect the amount of PTEP. This rule is consistent with Rev. Rul. 86-131, but the notice does not reference it.

PROPOSAL

Clarify the interaction of section 959 with general E&P and dividend rules.

Publish the proposed regulations announced in Notice 2019-1 expeditiously and explicitly address the interaction of section 959 with subchapter C.

Specifically, Treasury and the IRS should clearly address the coordination of section 959(c) and section 316 on which interpretations are rejected, how the interpretation that is adopted aligns with section 959(c), and how that interpretation relates to the “PTEP-first” approach in the notice. In addition, the proposed regulations should confirm the point in Rev. Rul. 86-131.

Finally, the proposed regulations should clarify that (i) the interaction of sections 959(a) and (b) with section 316 means PTEP can be distributed before the PTEP-generating earnings have been earned; and (ii) reductions to E&P under section 312(a)(3) are made to accumulated, not current, E&P and do not affect current-year PTEP. Rev. Rul. 86-131 should be withdrawn upon finalization.

TYPE OF TAX

Corporate tax, International tax, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) to Large (over \$50 billion) over 10 years

Repeal of the General Utilities Doctrine

PROBLEM

In Notice 2015-59, Treasury and the IRS announced a study of issues under sections 337(d) and 355 relating to divisive transactions with certain characteristics including the ownership of substantial amounts of investment assets and the disproportionate allocations of investment assets between the distributing and controlled corporation. The notice emphasized that these transactions raised concerns under section 355 requirements as well as Code provisions intended to implement repeal of the so-called General Utilities doctrine (“GU Repeal”). However, proposed regulations published in 2016 focused solely on the device prohibition of section 355(a)(1)(B) (“Device Prohibition”), the active trade or business requirement, and the business purpose requirement of Treas. Reg. § 1.355-2(b)(1). The proposed regulations did not directly address GU Repeal. While the 2016 proposed regulations (along with Rev. Proc. 2015-43) discouraged at least some of the transactions that prompted Notice 2015-59, the rules addressing the Device Prohibition have created significant doctrinal and technical confusion.

PROPOSAL

Treasury and the IRS should propose regulations under section 337(d) that more narrowly target the use of divisive transactions to avoid GU Repeal. These regulations would allow Treasury and the IRS to significantly simplify the section 355 regulatory regime by withdrawing the rules addressing the Device Prohibition in the 2016 proposed regulations. Concurrently, Treasury and the IRS could also revise the final regulations under Treas. Reg. § 1.355-2(d) to more precisely focus on the stated policy concerns of the Device Prohibition—that is, preventing the use of section 355 distributions to avoid the dividend provisions of the Code (or to facilitate basis recovery). Such revisions could include providing that when the distributing corporation is widely-held and publicly-traded, the distribution is ordinarily considered not to violate the Device Prohibition.

TYPE OF TAX

Corporate tax, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) to Moderate (\$1 billion–\$10 billion) over 10 years

Section 368(c) and 1504(a) Corporate Ownership Standards

PROBLEM

There are multiple standards of corporate ownership used in subchapter C and throughout the Code. For some purposes (e.g., tax-free reorganizations), the relevant ownership threshold is defined in section 368(c) as the ownership of 80% of the voting stock and 80% of the number of shares of all other classes of stock of the corporation. For other purposes (e.g., consolidated returns, tax-free liquidations), the relevant ownership threshold is defined in section 1504(a) as the ownership of at least 80% of the total voting power and at least 80% of the total value of the corporation's stock. The ability to allocate voting power among the shares of a corporation along with the absence of a value component in section 368(c) creates opportunities for inappropriate planning. In addition, the inconsistent ownership thresholds result in significant complexity.

PROPOSAL

Conform section 368(c) with section 1504(a) so that section 368(c) also requires at least 80% of the voting power and at least 80% of the total value of a corporation's stock. This proposal was most recently included in the FY2025 Greenbook.

TYPE OF TAX

Corporate tax, Tax administration

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2023 Greenbook](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

2025 Greenbook estimate: \$6.77 billion

Tobacco Excise Tax

PROBLEM	Tobacco pricing is an effective public health tool. Every 10% increase in the real price of cigarettes reduces childhood smoking by approximately 7%. Federal tobacco taxes have not been increased since 2009. There are numerous different tax bases for different types of tobacco products, resulting in very different tax rates across products.
PROPOSAL	Consider including a proposal similar to section 138504 of the September 27, 2021 Ways and Means draft of the Build Back Better Act which is also similar to a proposal included in several Greenbooks through and including FY2017. The idea is to harmonize tax rates across different tobacco products and increase tax rates. The inclusion of tobacco tax increases in the September 27, 2021 Ways and Means draft drew support from a wide range of health equity advocates.
TYPE OF TAX	Excise tax, Healthcare
TYPE OF PROPOSAL	Legislative
TAX LAW CENTER PUBLICATIONS	Memo on FY2024 Greenbook
APPROXIMATE REVENUE	Substantial (\$10 billion–\$50 billion) over 10 years

JCT estimate: \$96.8 billion between 2022–2031 (when combined with narrower nicotine tax).

Non-Business Usage of Company-Owned Jets

PROBLEM

When an executive or other employee uses a company-owned aircraft for a non-business flight, the employee must either pay the employer for their usage or have an income inclusion for the value of the flight. In many cases, federal regulation prohibits the employee from paying the employer, lest the employer become regulated as an airline. Current tax law effectively subsidizes personal use of corporate jets by executives by undervaluing the value of this benefit to the executive. This is reflected in the growing usage of personal usage of corporate jets, which has increased about 50% from pre-pandemic levels [per the WSJ](#), with companies in the S&P 500 spending approximately \$65 million on executives' personal flights in 2022.

Although the IRS has increased [focus](#) on personal use of corporate jets as of early 2024, regulations generally allow the income inclusion for personal use to be calculated using (1) the arm's-length price for a charter flight or (2) the Standard Industry Fare Level ("SIFL") method. The SIFL method is commonly used. While highly administrable, the income inclusions are far below the market rate. Currently, the SIFL rates range between 18 cents and 25 cents per mile, far lower than charter rates which can be in the \$8 to \$23 per mile range.

PROPOSAL

Repeal or modify the use of the SIFL method under 26 CFR § 1.61-21(g). This can be done either legislatively or administratively – either through eliminating the use of SIFL rules entirely or increasing the "aircraft multiples" listed in 26 CFR § 1.61-21(g)(7) and instituting processes to make sure that they are regularly reviewing and updating the simplified method so that it keeps track with market values of private jet flights. A number of bills address taxation of corporate aircraft more completely by requiring straight-line depreciation, including the Jets for Vets Act of 2012, The American Jobs Act of 2011, and the Jobs! Jobs! Jobs! Act of 2015.

TYPE OF TAX

Executive compensation, High-net-worth individuals

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[How Treasury and the IRS have the authority to eliminate a little-known tax subsidy for executives' personal use of corporate jets](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

Section 409A Deferred Compensation

PROBLEM

Section 409A allows for certain deferred compensation arrangements as long as they meet section 409A requirements, including limitations on distributions, timing of elections, etc. This allows highly compensated individuals to defer income tax, and for a higher percentage of their compensation as compared to qualified plans.

PROPOSAL

Enact and implement section 409B for individuals earning income above a certain threshold. Section 409B was included in the House Republicans' initial TCJA proposal, requiring that all nonqualified deferred compensation ("NQDC") become includable in gross income once a substantial risk of forfeiture no longer exists (when required services for compensation have been performed). Stock options would be taxable in the year vested, deferred salary would be taxable in the year it is earned, and continuing severance payments would be taxable in the year of separation.

TYPE OF TAX

Executive compensation, High-net-worth individuals

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) over 10 years

JCT estimate: \$16.2 billion from 2022–2031.

Exchange-Traded Funds (ETFs)

PROBLEM

Under section 852(b)(6), if an exchange-traded fund (“ETF”) or other regulated investment company distributes appreciated securities or other property, no gain recognition is required. Section 852(b)(6) allows deferral and even complete avoidance of tax on gains in ways that investors investing independently and even through mutual funds cannot achieve. This causes multiple negative consequences, including extreme forms of tax avoidance such as “heartbeat trades,” in which investment banks partner with ETFs to cycle large stock portfolios into funds and then quickly out of them using in-kind redemptions. The sole purpose of these transactions—often worth billions of dollars—is to avoid capital gains taxes. The flow of funds into ETFs is driven disproportionately by high-net-worth individuals.

PROPOSAL

Repeal the exemption in section 852(b)(6) for regulated investment companies that allows them to distribute appreciated property “in-kind” to a redeeming shareholder without realizing capital gains. This measure, implemented at the entity level, would close a true loophole (i.e., unintended use of a statutory provision for tax avoidance). It would bring into the capital gains tax base substantial gains that are not currently realized due to ETFs’ unintended use of section 852(b)(6) for in-kind redemptions.

TYPE OF TAX

High-net-worth individuals, Partnerships & pass-throughs

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2023 Greenbook](#)

APPROXIMATE REVENUE

Large (over \$50 billion) over 10 years

Reported JCT preliminary estimates: \$205 billion between 2022–2031.

“Mega” Retirement Accounts

PROBLEM

Retirement accounts are intended to assist low- and middle-income taxpayers in saving for retirement, but the problem is that wealthy taxpayers are increasingly using retirement accounts as tax shelters. The JCT found that in 2019 there were nearly 29,000 individuals with retirement accounts valued over \$5 million, nearly double the US Government Accountability Office (GAO) estimate from 2011. Individual Retirement Accounts (“IRAs”) in particular are the most easily manipulated retirement account vehicle, since IRAs can be directly managed by the account holder and there are few limitations on the types of assets that can be held by an IRA. Taxpayers can contribute pre-tax or post-tax income to traditional IRAs and defer their taxes on investment growth until distribution, while Roth IRAs are taxed upon contribution, grow tax-free, and are distributed tax-free in retirement. A ProPublica article on Peter Thiel’s \$5 billion Roth IRA drew attention to the issue of “stuffing”—putting undervalued nonpublicly traded assets, like early “founders’ shares” of PayPal, into a Roth IRA. Section 408A also allows for one-time conversions of traditional IRAs to Roth IRAs with a one-time payment, with no income limitation for conversion.

PROPOSAL

Limit the amount and types of assets that can be held and accumulated in retirement accounts. For individuals with income above a threshold amount and/or for aggregate retirement account balances above a threshold amount, contributions should be limited and distribution of excess amounts should be required. Conversions should be limited for those with income above a threshold amount. Holding nonpublicly traded assets in IRAs should be limited or banned, and self-dealing rules should be strengthened. The Ways and Means draft of the Build Back Better Act included contribution limits and required distributions, while eliminating Roth conversion for individuals making over \$400k, among other changes. A Wyden discussion draft of the Retirement Improvements and Savings Enhancement Act in 2016 was more narrowly tailored to target Roth IRAs exclusively.

TYPE OF TAX

High-net-worth individuals

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2024 Greenbook](#)

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) over 10 years

JCT estimate: \$10.08 billion between 2022–2031. A similar proposal in the [2025 Greenbook](#) that did not include a limitation on nonpublicly traded assets would raise an estimated \$23.66 billion between 2025–2034.

Untaxed Income from Wealth

PROBLEM

Much of the income generated by wealth is currently carved out of the US tax base. Income from wealth can entirely disappear from the federal income tax base if it comes from assets (such as stocks and bonds) that have grown in value but have not been realized (e.g., sold) during the lifetime of the owner. Combined with exclusions and other holes in the estate and gift taxes, this can allow income from extraordinary fortunes to not be included in the US tax base over decades, lifetimes, and generations. Other carve-outs for income from wealth include tax rates as low as zero percent. This array of tax benefits for income from wealth goes overwhelmingly (and sometimes exclusively) to the already very wealthy and entrenches and exacerbates racial wealth disparities.

PROPOSAL

Ensure income from extraordinarily large fortunes faces at least some tax and reduce preferences for income from wealth over work. There are many ways to bring more income from wealth into the US tax base. A key priority should be ensuring that income from the gain in assets faces at least some income tax, and various proposals to address this problem are superior to current law.

TYPE OF TAX

High-net-worth individuals

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Testimony of Chye-Ching Huang, Joint Economic Committee \(10/6/21\)](#)
[Testimony of Chye-Ching Huang, US Senate Committee on Finance \(11/9/23\)](#)

APPROXIMATE REVENUE

Dependent on options pursued, but likely Large (over \$50 billion) over 10 years

For example, the [FY2025 Greenbook](#) proposal to treat unrealized capital gains as taxable income for the wealthiest people in the country would raise an estimated \$503 billion over 2025–2034.

Foreign Account Tax Compliance (FATCA) Information Reporting

PROBLEM

The Foreign Account Tax Compliance Act ("FATCA") generally requires foreign financial institutions to report comprehensive information about certain assets held by US taxpayers to the IRS to avoid the imposition of a US withholding tax. The US has a broad network of information exchange relationships with other jurisdictions based on international standards and the information obtained as a result has been central to successful enforcement against offshore tax evasion. However, the strength of these information exchange relationships hinges on cooperation and reciprocity. Financial institutions in the US are not required to report to the IRS certain information that is required to be exchanged by the IRS. And for a variety of reasons, the Corporate Transparency Act ("CTA") is not structured to satisfy information exchange obligations under the Reciprocal Model 1 intergovernmental agreements ("IGAs") often used to implement FATCA.

PROPOSAL

Implement reciprocal reporting requirements under FATCA. Requiring financial institutions in the US to report comprehensive information required under FATCA to the IRS with respect to accounts held by foreign persons or certain passive entities with substantial foreign owners would facilitate intergovernmental cooperation contemplated by IGAs. It would enable the IRS to provide equivalent levels of information to cooperative foreign governments as appropriate to support their efforts to address tax evasion by their residents. The proposal could also require financial institutions to provide a copy of such information to account holders in order to promote transparency, increase voluntary compliance, and address the fact that the CTA was not developed to ensure the ability of the US to meet its information exchange obligations. This proposal was most recently included in the FY2025 Greenbook, which also proposed requiring digital asset brokers to report information relating to the substantial foreign owners of passive entities holding digital assets.

TYPE OF TAX

High-net-worth individuals, Information reporting, International tax, Transparency

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2023 Greenbook](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years to Moderate (\$1 billion to \$10 billion) over 10 years.

Previous Greenbooks scored this provision as having no revenue effect; however, there may be indirect revenue effects associated with maintaining and improving bilateral information exchange partnerships. A proposal in the [FY2025 Greenbook](#), which also proposed requiring digital asset brokers to report information relating to substantial foreign owners of passive entities holding digital assets would raise an estimated \$3.49 billion between 2025-2034.

Art Information Reporting

PROBLEM

Individuals and groups use transactions in high-value art and antiquities to evade taxes and sanctions, and to launder money. A recent [New York Times](#) article highlighted lax legal regimes governing art ownership and transactions around the world, with a single family of art collectors accused of hundreds of millions of dollars in tax evasion. In a 2022 report on money laundering through art, Treasury has concluded that “[i]n schemes to defraud the IRS by means of fraudulent expenses or deductions, the art is typically purposefully overvalued to improperly maximize the deduction.” Compliance rates for income subject to some third-party reporting like broker reporting exceed 80%, compared with compliance rates below 50% for income without third-party reporting.

PROPOSAL

Require broker reporting on certain transactions involving art or antiquities.

Lawmakers could draw on definitions of “art” and “artist” in existing tax statutes and guidance and other areas of law to craft a definition of “art” for the art and antiquities broker reporting regulations. Lawmakers could consider using an illustrative list, similar to the structure of the “art” definition in Rev. Proc. 96-15, with a goal of ensuring that all transactions that implicate similar tax evasion and money laundering risks are subject to similar reporting. For this reason, consider whether it is appropriate to require broker reporting on other collectibles as well.

TYPE OF TAX

High-net-worth individuals, Information reporting, Transparency

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

Revenue amount depends on compliance effects, enforcement, and strength of implementation.

General Information Reporting for Trusts

PROBLEM

Generally, a trust must obtain a Taxpayer Identification Number (“TIN”) if it has \$600 or more of annual income or a non-resident/non-citizen (“NRNC”) beneficiary. While trusts must typically file a return using Form 1041, this requirement is optional for many grantor trusts, making it difficult to track assets in grantor trusts during the grantor’s lifetime. Further, section 6048 requires robust information reporting for foreign trusts created by or established for the benefit of US persons but there is no such reporting requirement for domestic trusts, whether created by NRNCs or US persons. And while the IRS’s Statistics of Income program provides data on the income of trusts, that information is incomplete because not all trusts file returns. Thus, the lack of a reporting requirement across all trusts presents income tax enforcement obstacles, particularly for domestic grantor trusts and foreign trusts that are later brought onshore.

PROPOSAL

Impose a reporting requirement across all trusts. The Sensible Taxation and Equity Promotion Act of 2021 includes an information reporting requirement for trusts that could be enacted independently. This proposal would, if enacted, require information reporting for all trusts except charitable trusts and trusts subject to the reporting requirements of section 6048(b). Lawmakers could consider not requiring information reporting for trusts that are wholly revocable by the grantor (since they are often used for non-tax purposes and the assets are includable in the grantor’s estate). Such a reporting requirement would resemble Form 3520 and would give insight into the amount of wealth in dynasty trusts and also capture trust-to-trust transactions like decantings and sales between grantor trusts, which are rarely reported on a return. This proposal was included as part of a larger package of transfer tax-related reforms in the FY2025 Greenbook.

TYPE OF TAX

High-net-worth individuals, Information reporting, Transparency, Trusts

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2023 Greenbook](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

A proposal in the [FY2025 Greenbook](#) incorporating a package of additional transfer tax-related reforms would raise an estimated \$1.26 billion between 2025-2034.

Offshore Trust Reporting

PROBLEM

Filers must report information to the US when a foreign trust distributes assets to a US person. However, there is confusion and a hole in this information reporting: currently there is no consensus among tax practitioners on whether a Form 3520 must be filed when a foreign trust is brought into a US jurisdiction because domesticating a foreign trust is not technically a distribution from a foreign trust to a US person. Some practitioners will choose to file a “protective” Form 3520 to report the domestication of a foreign trust, though this is not a uniform practice.

PROPOSAL

Impose Form 3520 reporting requirement for offshore trusts brought on shore.

This will provide clarity to practitioners and filers on the need to complete this form when onshoring foreign trusts, and provide the IRS and lawmakers with a better understanding of how much money is being brought onshore, how often, and the extent to which these newly domesticated trusts may be underreporting their federal income tax liability.

TYPE OF TAX

High-net-worth individuals, Information reporting, Trusts

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

Revenue amount could be larger with continued IRS funding for use of information, and any estimate initially produced will be limited by the lack of information reporting for onshored foreign trusts, so may be adjusted over time based on new information.

Carried Interest

PROBLEM Managers of private investment funds (including hedge funds, venture capital funds, and private equity funds) are often compensated through a combination of “management fees” taxed at ordinary income rates and “carried interest” taxed at low capital gains rates under section 702. Many argue that carried interest should instead be taxed as ordinary income, similar to most other service income.

PROPOSAL **Apply ordinary income treatment to income received with respect to an “investment services partnership interest” and repeal section 1061 for taxpayers with taxable income above a certain threshold** as proposed in the FY2025 Greenbook. Apply self-employment tax to service providers’ share of carried interest because such income is derived from the performance of services.

TYPE OF TAX High-net-worth individuals, Partnerships & pass-throughs

TYPE OF PROPOSAL Administrative, legislative

APPROXIMATE REVENUE Moderate (\$1 billion–\$10 billion) to Large (over \$50 billion) over 10 years

2025 Greenbook estimate: \$6.56 billion from 2025-2034. In 2015, the JCT scored the Carried Interest Fairness Act of 2015 at \$15.6 billion over 10 years. The CBO estimated \$14 billion over 10 years in 2018. Other experts claim a significantly higher score—perhaps as much as \$180 billion over 10 years.

Inconsistent Application of Net Investment Income Tax/ Self-Employed Contributions Act/Federal Insurance Contributions Act (NIIT/SECA/FICA) to Pass-Through Business Income

PROBLEM

Inconsistency in the taxation of income earned by owners of pass-through businesses, including S corporations (“S corps”) and partnerships, particularly those with high incomes, allows some business owners to avoid taxation based solely on formalistic (rather than substantive) differences.

Active business income is generally subject to one of the payroll taxes funding the Medicare Trust fund – either the Self-Employed Contributions Act (“SECA”) tax or the Federal Insurance Contributions Act (“FICA”) tax, while investment income for individuals, estates, and trusts with income above a threshold amount is subject to the Net Investment Income Tax (“NIIT”).

But there are inconsistencies and [gaps in the bases](#) of these taxes. For example, while general partners and sole proprietors pay SECA tax on earnings from their businesses, active limited partners often pay little or no SECA tax by taking the position that they qualify for a blanket exemption under existing law for “limited partners” (the “LP exception”). S corp owner-employees, meanwhile, pay FICA tax on a portion of their earnings, but the rest is not subject to either FICA or SECA tax.

The NIIT was originally intended to address some of these gaps in the payroll tax base by imposing the 3.8% Medicare tax (a component of SECA and FICA taxes) on all forms of income not covered by SECA or FICA taxes, but its application was ultimately limited to passive income. This means filers that are active owners of their businesses can generally avoid the NIIT (since it applies to passive income) while simultaneously taking the position that they do not owe SECA tax on a substantial portion of their business income (under the LP or S corp exceptions above).

These gaps and inconsistencies result in reduced revenues for both the general fund and the Medicare Trust fund.

Inconsistent Application of Net Investment Income Tax/Self-Employed Contributions Act/Federal Insurance Contributions Act (NIIT/SECA/FICA) to Pass-Through Business Income

PROPOSAL

There are multiple legislative options for closing these gaps, including in FY2017, FY2022, and the FY2024/5 President's Budgets. These proposals vary in how comprehensively they close gaps in the bases of the relevant taxes.

Some but not all of the gaps could also likely be closed through regulation. For instance, regulation could clarify that the LP exception to SECA tax does not apply to limited partners who are active in the partnership's business. Treasury and the IRS have [previously issued proposed regulations](#) to that effect, but they were halted by a temporary moratorium and were never finalized or withdrawn. Recently, the IRS has [raised](#) the possibility of re-issuing guidance clarifying that active limited partners cannot claim the LP exception to escape NIIT as well as SECA and FICA taxes on their business income. However, this option would not address the treatment of an S corp owner-employee's distributive share, which would require a separate (likely legislative) fix.

TYPE OF TAX	High-net-worth individuals, Partnerships & pass-throughs
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TYPE OF PROPOSAL	Administrative, legislative
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TAX LAW CENTER PUBLICATIONS	Written Testimony for Hearing, "Medicare Forever: Protecting Seniors by Making the Wealthy Pay Their Fair Share"
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APPROXIMATE REVENUE	Large (over \$50 billion) over 10 years
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FY2017 Greenbook estimate (SECA clarification): \$271.7 billion between 2017-2026
FY2022 Greenbook estimate (SECA clarification): \$236.5 billion between 2022-2031
FY2025 Greenbook estimate (NIIT expansion): \$393.2 billion between 2025-2034

State and Local Tax (SALT) Workarounds

PROBLEM

In response to the \$10K state and local tax (“SALT”) deduction limitation that was included in the Tax Cuts and Jobs Act (“TCJA”), certain states have created workarounds, including 1) allowing charitable contributions to states in exchange for a tax credit and 2) allowing partnerships and S corporations to pay state income taxes on behalf of partners or owners. The IRS has largely disallowed the charitable contribution workaround, while largely permitting the partnership and S corporation workaround. The problem is that SALT workarounds are a trifecta of bad policy in that they are regressive, violate horizontal equity, and increase system complexity. Taxpayers affected by the SALT deduction limitation are more likely to be taxed at higher rates and to own more high-value property compared to other taxpayers, but those utilizing these workarounds in particular must earn business or investment income through a pass-through business entity—a type of income more highly concentrated among high net-worth individuals than those earning income from wages. These workarounds are also horizontally inequitable due to differing treatments in different states and the fact that sophisticated filers are more likely to understand how to utilize these workarounds. Finally, they add to the complexity of state tax systems since they are generally elective and require additional resources to track elections and credits.

PROPOSAL

Regulatory: Revoke Notice 2020-75 with directive to issue new guidance disallowing partnerships or S corporation deductions for SALT for which the partner/owner receives a deduction, credit, exclusion, or similar benefit at the state level. This may require changes to sections 702 and 1366, but regulatory authority likely exists already. Complex alternative: if the SALT cap remains a deduction limit (rather than an Adjusted Gross Income), issue regulations to count any deduction, credit, exclusion, or similar benefit allowed by the state against the SALT cap.

Legislative: Treat trade or business taxes that would be subject to the cap under section 164(b)(6) if incurred by the owner/partner as separately stated items of the partnership or S corporation, but only to the extent that they result in a deduction, credit, exclusion, or similar benefit to an owner/partner. Taxes paid at the partnership or S corporation level would be allowable to the partner or owner under the same rules as if paid directly by the partner or owner. Modified Adjusted Gross Income (“MAGI”) or industry-specific limitations could be applied to narrow impact.

TYPE OF TAX

High-net-worth individuals, Partnerships & pass-throughs, State tax law

TYPE OF PROPOSAL

Administrative, legislative

APPROXIMATE REVENUE

Large (over \$50 billion) over 10 years

Tax Policy Center estimate: \$20 billion annually.

Disguised Fee for Services in Partnerships

PROBLEM

Section 707(a)(2) provides Treasury broad authority to recharacterize transactions involving disguised fee for service arrangements based on concerns from Congress that partnerships and service providers were inappropriately treating payments as allocations and distributions to a partner, even when services were outside the service provider's capacity as a partner. Pursuant to this authority, Treasury and the IRS published proposed regulations in 2015 addressing "fee waivers," a planning technique used by private equity firms that purport to convert partners' annual management fees (otherwise taxed as ordinary income) into allocations of long-term capital gain without meaningfully altering the economics of the deal between managers and investors. The proposed regulations provide a framework and operating rules for determining whether a fee waiver should be treated as a disguised payment and clarified that the administrative safe harbor in Rev. Proc. 93-27 does not apply to fee waivers. Unfortunately, the proposed regulations were never finalized.

PROPOSAL

Republish or finalize proposed regulations and publish related subregulatory guidance addressing fee waivers under section 707. Treasury and the IRS should republish or finalize the proposed regulations (if it is determined that no significant changes are needed) and publish a new revenue procedure that includes clarification of the administrative safe harbor. This will help curb the ongoing improper use of fee waiver arrangements and would also publicly confirm the IRS's understanding of current law.

TYPE OF TAX

High-net-worth individuals, Partnerships & pass-throughs, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

In a [comment](#) on 2015 proposed Disguised Fee for Service regulations, Eileen Appelbaum (Center for Economic and Policy Research) wrote, "[A] single PE firm (Bain Capital) claimed approximately \$250 million of tax savings from abusive fee waivers over a 10-year period. With management fee waivers for at least the past 15 years used by an estimated third to a half of all US-based private equity firms, the revenue loss to the IRS from taxpayer neglect of section 707(a)(2)(A) is likely to be in the billions of dollars."

Bona Fide Sale Exception for Asset Sales to Trusts

PROBLEM

Many taxpayers minimize estate tax by selling assets at a valuation discount to their grantor trusts in exchange for an installment note. A decedent's gross estate includes any property transferred by the decedent in which the decedent retained possession, right, or enjoyment, unless the property transferred in a "bona fide sale." There is an informal standard that a sale to a grantor trust will be viewed as a bona fide sale made in good faith if, outside of the sale transaction, the trust owns assets with a value equal to at least 10% of the value of the assets sold (the "10% rule"). The problem is that because this standard is not reflected in formal guidance, taxpayers can structure their sales by selling assets to an empty trust or guarantee (or have others guarantee) a portion of the note used in the sale. The use of guarantees allows a transferor to avoid making a taxable gift while superficially following the 10% rule.

PROPOSAL

Revise Treas. Reg. § 20.2043-1 to apply, at a minimum, the 10% rule for intra-family sale transactions. Additionally, Treasury and the IRS should limit the use of specific parties as guarantors for purposes of determining whether a sale was bona fide.

By requiring that a purchasing trust has sufficient assets to issue a promissory note to the grantor, this revision would minimize situations where the purchasing trust's assets decline significantly in value and, mimicking the flexibility of a Grantor Retained Annuity Trust, the grantor and the grantor trust simply unwind the transaction with no income tax or gift tax consequences because the trust has no other assets from which to pay.

TYPE OF TAX

High-net-worth individuals, Tax administration, Transfer tax, Trusts

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

Liens on Estate Tax Deferral for Closely Held Businesses

PROBLEM

Section 6166 allows the deferral of estate tax on certain closely held business interests for up to fourteen years from the (unextended) due date of the estate tax payment (up to fourteen years and nine months from date of death). This provision was enacted to reduce the possibility that the payment of the estate tax liability could force the sale or failure of the business. Section 6324(a)(1) imposes a lien on estate assets generally for the ten-year period immediately following the decedent's death to secure the full payment of the estate tax. The problem is, the estate tax lien under section 6324(a)(1) expires almost five years before the due date of the final payment of the deferred estate tax under section 6166. Historically, this has made it difficult to collect deferred estate tax due to business failure during the deferral period.

PROPOSAL

Extend the estate tax lien under section 6324(a)(1) throughout the section 6166 deferral period.

TYPE OF TAX

High-net-worth individuals, Transfer tax

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

FY2016 Greenbook estimate: \$0.3 billion between 2016–2027, but could have additional effects if there are changes in realization at death or other provisions that adopt these rules.

Valuation of Gift Loans and Promissory Notes

PROBLEM

Under section 7872, if a promissory note bears interest at a rate at least equal to the applicable federal rate (“AFR”), the lender will not be considered to have made a gift as a result of the loan that gave rise to the promissory note. The AFR is generally well below the prevailing market interest rate for arm’s length loans. Under estate tax regulations, the value of a note includable in a decedent’s estate is the unpaid principal plus accrued interest, unless the evidence shows that the note is worth less (e.g., due to a low interest rate or inability to collect). When a decedent dies holding a promissory note bearing interest at the AFR, the executor of the decedent’s estate may take a valuation discount on the value of the note because the note bears a below market interest rate. As a result, while the note bears sufficient interest during the taxpayer’s life to not cause gift tax implications, under estate tax valuation rules, the note can be discounted for bearing interest at a rate well below market norms. A long-outstanding proposed regulation under section 7872 addresses the valuation of a term loan made with donative intent by providing that it equals the lesser of (i) the unpaid principal and accrued interest; or (ii) the sum of the present value of all payments due under the note using the AFR in effect on the decedent’s death.

PROPOSAL

Treasury and the IRS should republish the proposed rule and consider broadening its application to demand and term loans regardless of donative intent. These revised rules could resemble the FY2023 Greenbook proposal to limit the discount rate on notes for estate tax valuation purposes to the greater of the note’s actual interest rate and the AFR in effect on the date of the decedent’s death. Such regulations could be promulgated under the authority of sections 2031, 7872, and 7805(a) as necessary for appropriately determining the FMV mandated for estate tax purposes consistent with the standards for valuation reflected under section 7872.

TYPE OF TAX

High-net-worth individuals, Transfer tax

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

FY2023 Greenbook estimate (legislative proposal): \$6.4 billion between 2023–2032.

FY2024 Greenbook estimate (legislative proposal, in combination with preceding proposal regarding fractional interests): \$12.3 billion between 2024–2033.

Deemed Realization for Trusts

PROBLEM

The generation-skipping transfer (“GST”) tax is intended to apply to transfers that skip a generation. The GST tax is imposed on generation-skipping transfers by a donor in excess of an exemption amount, which may be allocated to a trust. The GST tax is equal to the highest estate tax rate multiplied by the trust’s “inclusion ratio,” determined by subtracting the “applicable fraction” from one. The fraction’s numerator is generally the amount of GST exemption allocated to the trust and the denominator is the fair market value of property transferred to the trust. If the inclusion ratio is zero, a trust will be considered fully exempt from the GST tax. The problem is that a trust can remain exempt from the GST tax indefinitely, regardless of how much the trust assets appreciate above the GST exemption amount, since many states have eliminated their applicable rules against perpetuities or lengthened durations of permitted trusts. This has led to the rise of perpetual trusts that avoid estate, gift, and GST tax on trust assets for multiple generations.

PROPOSAL

Impose a deemed realization event for trusts every term of years or due to a particular event. The FY2022-5 Greenbooks propose a deemed realization event for trusts at least every 90 years, as well as generally treating transfers by gift or on death as realization events. Similarly, legislation introduced by Sen. Chris Van Hollen and Rep. Bill Pascrell, the Sensible Taxation and Equity Promotion (STEP) Act of 2021, would also tax appreciation in the value of assets held in non-grantor trusts every 21 years or 30 years, respectively, by treating those assets as having been sold for their fair market value. Alternatively, deemed realization could be tied to GST transfers.

TYPE OF TAX

High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Small (less than \$1 billion) to Moderate (\$1 billion–\$10 billion) over 10 years

This proposal has generally been bundled with other capital income reforms in the Greenbook, making revenues difficult to estimate. Additionally, revenues in a 10-year window are likely dependent on interval lengths and the types of events that qualify as realization events, but also do not fully reflect total revenues over a long period of years, which are particularly relevant for generational transfers.

Gift Tax Exclusion

PROBLEM

The first \$15,000 of gifts made to each donee in 2021 is excluded from the donor's taxable gifts. There is no limit to the number of donees to whom such gifts are made in any one year. To qualify for this exclusion, each gift must be of a present interest rather than a future interest in the donated property. The Ninth Circuit has held that a transfer to a trust can qualify as a present interest if the beneficiary has a right to withdraw the gift, even if the withdrawal right only lasts for a limited period (referred to as *Crummey* powers). There is no limit on the number of beneficiaries to whom *Crummey* powers are given. Often, *Crummey* powers are given to multiple discretionary beneficiaries, most of whom would never receive a distribution from the trust. As a result, transfers to these types of trusts inappropriately exclude from gift tax a large total amount of the contributions made to these trusts.

PROPOSAL

Revise section 2503(b), similar to the 2016 proposals, to eliminate the present interest requirement for annual exclusion gifts and define a new category of transfers (without regard to the existence of any withdrawal or put rights). An annual limit of \$50,000 per donor on the donor's transfers of property within this new category would be imposed. A donor's transfers in the new category in a single year in excess of a total amount of \$50,000 would be taxable, even if the total gifts to each individual donee did not exceed \$15,000. The new category would include transfers in trust (other than to a trust described in section 2642(c)(2)), transfers of interests in passthrough entities, transfers of interests subject to a prohibition on sale, and other transfers of property that, without regard to withdrawal, put, or other such rights in the donee, cannot immediately be liquidated by the donee.

TYPE OF TAX High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL Legislative

APPROXIMATE REVENUE Moderate (\$1 billion–\$10 billion) over 10 years

FY2016 Greenbook: \$3.4 billion from 2016-25. Note that these estimates assume a lower basic exclusion amount and higher rates.

Grantor Trust Rules

PROBLEM

The income tax grantor trust rules are substantially different from the estate, gift, and generation-skipping transfer tax trust rules in sections 2036 through 2038, 2511, and 2642(f). An irrevocable transfer in trust can be treated as complete for transfer tax purposes but the trust property can be owned by the grantor for income tax purposes, and vice versa. The problem is that completed gift trusts that are also grantor trusts for income tax purposes (often called “Intentionally Defective Grantor Trusts” or “IDGTs”) enable grantors to achieve two advantages that are used in much of transfer tax planning for high-net-worth individuals: (i) the grantor essentially makes tax-free gifts to the IDGTs by paying the income tax attributable to the trusts’ taxable income and (ii) the grantor avoids realization of income and recognition of gain or loss with respect to transactions between grantors and their grantor trusts. Sale transactions between grantors and their grantor trusts often “freeze” the value of an asset in their estate, allowing future appreciation on such asset to escape the transfer tax base.

PROPOSAL

Repeal sections 673-675, 677(a)(3), and 678 to significantly curtail the grantor trust rules. This would mean that grantor trust treatment would only be retained for revocable trusts, irrevocable trusts included in the grantor’s estate, unit investment trusts, retirement accounts treated as trusts for income tax purposes, and some or all trusts holding S corporation stock.

TYPE OF TAX

High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) over 10 years

Fiduciary Accounting Income and Principal

PROBLEM

Section 643(b) provides that income means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Treas. Reg. § 1.643(b)-1 provides that local law will be respected if it provides for a “reasonable apportionment between the income and remainder beneficiaries.” In states that have adopted the Uniform Principal and Income Act (“UPIA”), cash receipts from entities are income unless they are deemed to be in liquidation, which occurs if distributions total more than 20% of their gross assets (as of year-end). The problem: where trust assets would be subject to tax if principal were distributed, the trustee can ensure that the trust is in a jurisdiction that has adopted the UPIA; in this case, the trust’s assets can be wrapped in an LLC, which can make distributions to the trust up to 20% of the full value of its assets each year without those distributions being treated as principal. The trustee can then distribute that amount to beneficiaries.

PROPOSAL

Issue regulations that limit the conversion of trust principal into trust income through entity distributions in excess of a certain percentage of the value of the entity (5% instead of 20% under local rules). This can be done under 643(b) or be limited to the qualified domestic trust (“QDOT”) regulations. Specifically, Treas. Reg. § 1.643(b)-1 provides that applicable local law will be respected if it provides for a “reasonable apportionment between the income and remainder beneficiaries.” The rationale would be that such large distributions from an underlying entity, even if they are not liquidating distributions under local law, do not result in a reasonable apportionment to remainder beneficiaries. For QDOT regulations, there is a broad grant of authority to issue regulations under the QDOT rules.

TYPE OF TAX

High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Administrative

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

Qualified Small Business Stock (QSBS) Planning with Multiple Trusts

PROBLEM

Section 1202 provides that a taxpayer (other than a corporation) can exclude a percentage of gain from the sale of qualified small business stock (“QSBS”)—defined as stock in a domestic corporation with gross assets under \$50 million. Currently, multiple trusts are able to transfer assets to multiple Incomplete Gift Non-Grantor Trusts (“INGs”) and to stack QSBS gain exclusion among multiple non-grantor trusts. This creates opportunities for QSBS planning resulting in abusive gain exclusion that does not relate to QSBS’s original purpose of supporting small business.

PROPOSAL

Create a lookback rule that collapses multiple trusts under section 643(f). This lookback rule would address transactions involving multiple trusts and would presume tax avoidance. For example, tax avoidance would be presumed when a taxpayer transfers QSBS to multiple ING’s and the ING’s subsequently distribute the assets to taxpayers after the QSBS is sold. Such a solution would limit stacking of QSBS gain exclusion among multiple nongrantor trusts by treating multiple trusts as a single trust where assets are transferred to multiple ING’s and then distributed out of the ING after the sale of QSBS.

TYPE OF TAX

High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Administrative

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

For context, JCT has estimated that the total cost of section 1202 (not exclusive to trusts) from 2018–2022 would be \$1.3 billion.

Rules for Establishing Grantor Retained Annuity Trusts (GRATs)

PROBLEM

Section 2702 provides that if an interest in a trust is transferred to a family member, the value of any interest retained by the grantor is zero for purposes of determining the transfer tax value of the gift. This rule does not apply if the retained interest is a “qualified interest,” such as the fixed annuity interest retained by the grantor of a Grantor Retained Annuity Trust (“GRAT”), so the gift of the remainder interest in the GRAT is determined by deducting the present value of the interest during the GRAT term from the fair market value of the property contributed to the trust. The problem is that GRATs are a popular technique for transferring wealth virtually free of transfer tax by minimizing the term of the GRAT and retaining interests significant enough to zero out the gift tax value of the remainder. Further, grantors manage the volatility of their GRATs by exchanging GRAT assets for assets of equivalent value (including promissory notes).

PROPOSAL

Revise section 2702(b) to provide additional requirements for GRATs per the Obama administration’s 2016 proposal. This would include (1) requiring a minimum term of 10 years, (2) requiring a maximum term of the life expectancy of the annuitant plus ten years, (3) prohibiting declining annuity payments, and (4) requiring the remainder interest to have a value greater than or equal to the greater of 25% of the fair market value of the property contributed to the GRAT or \$500,000 (but not to exceed the fair market value of the contributed property). Further, similar to the prohibition on sales and exchanges for Qualified Personal Resident Trusts found in Treas. Reg. § 25.2702-5(c)(9), GRATs would be prohibited from selling or exchanging assets with the grantor.

TYPE OF TAX

High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

FY2015 Greenbook estimate: \$5.7 billion between 2015–2024 for a minimum GRAT term only.

FY2016 Greenbook estimate: \$18.35 between 2016–2025 for these reforms in addition to reforming grantor trust rules.

Section 1014 Recognition and Basis Upon Death for Grantor Trusts

PROBLEM

The termination of grantor trust status during a grantor's lifetime is treated as a transfer by the grantor of trust assets to the trust, in exchange for any consideration provided by the trust to the grantor (i.e., a recognition event). As a result, when grantor trust status is terminated, the trust becomes a separate taxpayer and taxable income to the grantor could potentially be generated if certain liabilities of (or deemed to be of) the trust exceed the basis of the trust's assets. There is no guidance concerning the income tax treatment of the termination of grantor trust status at the grantor's death.

PROPOSAL

Propose regulations stating that assets in a grantor trust do not receive a tax-free basis step up when the grantor dies. Alternatively, if Rev. Rul. 85-13 is not revoked, these proposed regulations could apply the same rules for termination of grantor status during the grantor's lifetime to the termination of grantor status on account of the grantor's death. In effect, this would treat the termination of grantor trust status at the grantor's death as a recognition event if certain liabilities of (or deemed to be of) the trust exceed the basis in the trust assets. Consistent with Treas. Reg. § 1.684-2(e)(2), Example 2, regulations could provide that the grantor is treated as having transferred assets to the trust the moment before their death. Alternatively, the regulations could provide that a transfer occurs on the moment after the grantor's death. This proposal was included in a package of larger reforms to the taxation of capital income in the [FY2025 Greenbook](#).

TYPE OF TAX

High-net-worth individuals, Transfer tax, Trusts

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

Third-Party Settlement Organization Reporting

PROBLEM

Third party settlement organizations (“TPSOs”) are platforms that facilitate transactions between buyers and sellers of goods and services, and include online marketplaces, payment processing apps, and gig service platforms. After the passage of the American Rescue Plan, TPSOs must send the IRS and customers who receive payments on their platforms a Form 1099-K documenting business transactions over \$600. The swath of economic activity that occurs via TPSOs makes the Form 1099-Ks they file important for the integrity of the tax system. The problem is that information reporting is not required for platforms not currently considered TPSOs under the law, including platforms that move funds directly from one bank account to another (e.g., Zelle) rather than holding money in accounts or settling payments. Such platforms may become attractive for filers seeking to hide income and evade tax if not included in information reporting requirements.

PROPOSAL

Extend Form 1099-K reporting requirements for business transactions over \$600 to bank account direct transfer platforms and other platforms that serve similar functions to TPSOs.

TYPE OF TAX

Information reporting

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Tax Law Center Blog: Undermining Information Reporting Requirements For Gig Companies and Other Online Platforms Would Hurt Honest Filers, Cost Revenue, and Reward Tax Evaders](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

For context, full repeal of the existing TSPO reporting provisions (as proposed in the Saving Gig Economy Taxpayers Act and incorporated in the Small Business Jobs Act for markup in the House Ways and Means committee) would cost approximately \$9.7 billion in revenue, according to the [JCT estimate](#).

Uncertain Tax Position (Schedule UTP) Reporting

PROBLEM

Schedule UTP is a form that certain corporations are required to use to report federal income tax positions for which the corporation or related party has either (i) recorded a reserve for federal income tax in audited financial statements, or (ii) not recorded a reserve because the corporation expects to litigate the position. Pass-through entities are not required to file a Schedule UTP or equivalent. The problem with this approach is that there is substantial non-compliance with federal income tax law among partnerships and other pass-through entities.

PROPOSAL

Adopt UTP reporting requirements for pass-through entities. A requirement similar to Schedule UTP can be applied to certain partnerships to better target partnership (and, potentially, S corporation) audits. This would likely require a grant of authority allowing the IRS to develop different rules than for the existing Schedule UTP, because currently Schedule UTP relies on financial accounting rules that do not generally apply to pass-throughs. This proposal could supplement the FY2023 Greenbook proposal to impose an affirmative requirement to disclose a position contrary to a regulation.

TYPE OF TAX

Information reporting, Partnerships & pass-throughs

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2024 Greenbook](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

Restored IRS funding may improve chances of a non-negligible score.

Digital Assets

PROBLEM

Under section 6038D(a) and Treas. Reg. § 1.6038D-2(a)(1), a “specified person” that has any interest in a “specified foreign financial asset” during the taxable year must disclose certain information about each specified foreign financial asset on Form 8938 if the aggregate value of all such assets exceeds the relevant threshold amount. Some practitioners believe certain digital assets could qualify as “specified foreign financial assets” and have requested guidance in the past. Although Treasury and the IRS asked for comments on the proper treatment of virtual currency under section 6038D back in 2014, they have yet to release any guidance on applying section 6038D to digital assets.

PROPOSAL

Clarify treatment of digital assets as “specified foreign financial assets” under section 6038D. Treasury and the IRS should issue guidance under the grant of regulatory authority in section 6038D(h) describing the circumstances in which a digital asset would qualify as a “specified foreign financial asset.” Recognizing that “[t]he global nature of the digital asset market offers opportunities for US taxpayers to conceal assets and taxable income by using offshore digital asset exchanges and wallet providers,” the FY2023 Greenbook made the sound proposal to add certain digital assets to the section 6038D reporting regime. Under sections 7805 and 6038D(h), Treasury and the IRS have clear authority to provide clarifying guidance on the treatment of digital assets without additional legislation. Issuing such guidance will help to tackle tax evasion and offer clarity to taxpayers.

TYPE OF TAX Information reporting, Tax administration, Transparency

TYPE OF PROPOSAL Administrative

TAX LAW CENTER PUBLICATIONS [2022–2023 PGP Comment](#)

APPROXIMATE REVENUE Moderate (\$1 billion–\$10 billion) over 10 years

The FY2025 Greenbook provided a revenue estimate of roughly \$5.5 billion across FY2025–2034 for “requir[ing] reporting by certain taxpayers of foreign digital asset accounts,” which may provide some sense of the revenue impact.

Section 961 vs. 958 Subpart F Inclusion Basis

PROBLEM

Under section 961(a) and (b), adjustments are required to be made to the basis of a US shareholder of stock in a controlled foreign corporation (“CFC”) or property. Pursuant to the regulations under section 961(c), if a US shareholder is treated under section 958(a)(2) as owning stock of a CFC (“CFC2”) owned by another CFC (“CFC1”), similar adjustments are required to the basis of the CFC2 stock and the basis of any other CFC stock. However, the basis adjustments under section 961(c) apply only for purposes of determining inclusions under section 951.

PROPOSAL

Require a notional accounting of basis adjustments separate and apart from CFC stock. Basis in a notional account with respect to specific CFC stock would only attach to that CFC’s stock at the time that the basis is relevant (e.g., upon a distribution with respect to the stock or disposition of the stock), based on the holding of the CFC at such time.

TYPE OF TAX

International tax

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) to Substantial (\$10 billion–\$50 billion) over 10 years

Section 958 Stock Ownership by Partnerships and Partners

PROBLEM

Section 958 provides stock ownership rules for implementing the subpart F regime. However, the section 958 regulations provide insufficient guidance for determining ownership in fact patterns involving partnerships, and particularly limited partnerships and those where there is variation in interests in profit, loss, and capital. In the absence of guidance, taxpayers may take positions inconsistent with the purpose of section 958 in an effort to exclude foreign corporations from subpart F or minimize amounts included with respect to CFCs. Such positions could be facilitated by the fact that section 958(b) incorporates principles from section 318, which attributes stock ownership by a partnership to its partners proportionately without specifying whether attribution is based on legal control or economic interests or both, and how economic interests would be measured. These issues are longstanding, but extension of the aggregate treatment of partnerships from foreign partnerships to domestic partnerships has increased their importance.

PROPOSAL

Provide detailed guidance addressing partnerships under section 958 and provide interim guidance if detailed guidance will be delayed. If Treasury and the IRS expect a significant delay in the issuance of detailed guidance, consideration should be given to interim, more limited guidance that would address potential inappropriate taxpayer planning. Such guidance could address the treatment of general partners' voting rights and the possibility of inconsistent positions being taken over time, along with any more substantive issues on which Treasury and the IRS have a developed view or could use additional input.

TYPE OF TAX

International tax, Partnerships & pass-throughs, Tax administration

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Small (less than \$1 billion) over 10 years

Debt Allocation

PROBLEM

The tax consequences of a disguised sale depend in part on a partner's basis in its partnership interest, which depends in part on the partner's share of the partnership's liabilities. The rules for allocating partnership debt for purposes of the disguised sale rules differ depending on whether a liability is recourse or nonrecourse. Because such rules provide for the allocation of recourse liabilities to partners based on their economic risk of loss, taxpayers can engage in transactions with a partnership without triggering gain under the disguised sale rules by assuming the risk of loss with respect to partnership liabilities (for example, by guaranteeing them).

PROPOSAL

Republish the proposed regulations under section 707. For disguised sale purposes, these would treat all liabilities as nonrecourse liabilities that must be allocated among all partners in accordance with their respective interests in partnership profits.

TYPE OF TAX

Partnerships & pass-throughs

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Moderate (\$1 billion–\$10 billion) over 10 years

Section 199A Deduction for Pass-Through Income

PROBLEM

Section 199A allows individual owners of sole proprietorships, S Corporations, or partnerships to deduct up to 20% of their qualified business income (“QBI”), plus up to 20% of real estate investment trust dividends and qualified publicly traded partnership income. Certain types of industries (primarily white-collar service providers) are subject to income-based phase-outs beginning at \$207,000 for single filers. Section 199A benefits certain industries and not others, with no logical rationale, and creates regulatory complexity for small businesses. The vast majority of the tax benefit (JCT estimates 61% in 2024) goes to the top 1% of income earners.

PROPOSAL

Eliminate the section 199A deduction for filers with incomes above a threshold amount.

TYPE OF TAX

Partnerships & pass-throughs

TYPE OF PROPOSAL

Legislative

TAX LAW CENTER PUBLICATIONS

[Memo on FY2024 Greenbook](#)

APPROXIMATE REVENUE

Large (over \$50 billion) over 10 years

Tax Policy Center estimate in 2020: \$143.4 billion over ten years.

Valuation Assumptions for Family Limited Partnership Interests

PROBLEM

The fair market value standard for transfer tax purposes that applies to valuations of Family Limited Partnership (“FLP”) interests is based on parties that are dealing at arm’s length. As a result, the standard is difficult to apply to transfers among related parties (intra-family transfers), and this difficulty creates opportunities for inappropriate valuations and places a significant burden on Treasury and the IRS.

PROPOSAL

Revise the definition of “value” for transfer tax purposes to incorporate certain valuation “assumptions” for intra-family transfers. Providing these rebuttable assumptions for intra-family transfers could either be an alternative or in addition to other new regulations under section 2704: (1) when determining fair market value for gift tax purposes, any discretionary liquidation, conversion, dividend, or put rights retained by the donor will in general not be exercised in a manner adverse to the donee if they are both members of a family; (2) the “willing buyer” and “willing seller” will be limited to designated transferees in governing documents (when transfers are restricted to family); or (3) the “non-tax benefits” of forming an FLP will confer real economic benefits and should be accounted for in valuation—in effect, a valuation premium would be required on FLP interests before any discount for lack of marketability or control is imposed.

TYPE OF TAX

Partnerships & pass-throughs, Transfer tax, Valuation

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) over 10 years

A legislative proposal included in the [2013 Greenbook](#) that would create certain disregarded restrictions and substitute for the disregarded restrictions specified assumptions for the purposes of valuing an interest in a family-controlled entity was estimated to raise \$18 billion over 10 years, which may provide a ballpark estimate for a regulatory fix addressing similar issues.

Valuation Discounts for Non-Business Assets

PROBLEM

Currently, Treasury regulations provide that the applicable standard for determining the value of transferred property is fair market value (“FMV”), defined as the price at which the property would change hands between a willing buyer and willing seller where both have knowledge of relevant facts and neither are under a compulsion to buy or sell. For various reasons—including lack of control or lack of marketability—interests in an entity may be worth less than the owner’s proportionate share of the value of the entity’s assets. The typical result is valuation discounts that reflect a FMV for interests in the entity that is lower than the FMV of the entity’s underlying assets. High-net-worth individuals can decrease their transfer tax liability by using abusive valuation discounts to deflate the value of their assets when calculating estate, gift, and generation-skipping transfer taxes, eroding the US transfer tax base. In particular, the application of valuation discounts in the context of valuing closely held operating businesses has motivated taxpayers to create and fund limited liability companies or partnerships not engaged in operating businesses (sometimes referred to as “family limited partnerships” or FLPs) solely to reduce the value of property for transfer tax purposes.

PROPOSAL

A regulatory fix could make several technical corrections to the 2016 proposed regulations under section 2704. These include clarifying how to value interests in family-controlled entities with a “disregarded restriction,” clarifying the meaning of “member of the family” and the scope of impacted entities for purposes of section 2704(b), removing the regulatory exception that allows donors to convert their controlling interest into minority interests without consequences, and revising language describing the role of default state law restrictions. **A legislative fix would limit valuation discounts on non-business assets.** Congress could pass legislation similar to section 138210 of H.R. 5376 (as reported in the House, September 27, 2021) to statutorily limit valuation discounts on non-business assets in entities (defined to include certain passive assets, including those beyond the reasonable needs of working capital for the business). Valuation discounts would be applicable to operating businesses and high-net-worth taxpayers would lose the ability to stuff passive assets into an operating business for the sole purpose of gaining discounts on those assets.

TYPE OF TAX

Partnerships & pass-throughs, Transfer tax, Valuation

TYPE OF PROPOSAL

Administrative, Legislative

TAX LAW CENTER PUBLICATIONS

[“Limit the Use of Abusive Valuation Discounts in the Transfer Tax System” 2022–2023 PGP Comment](#)

APPROXIMATE REVENUE

Substantial (\$10 billion–\$50 billion) over 10 years

JCT estimate: \$19.9 billion between 2022–2031

Partnership Omnibus Technical Corrections and Updates

PROBLEM

The need for reform of Subchapter K—the portion of the Internal Revenue Code that applies to partnerships—is increasingly important given the growth in the size and scope of partnerships (which now hold more than [\\$30 trillion in assets](#) and vastly outnumber public firms) and given that partnerships and other pass-throughs are a key source of tax non-compliance. While comprehensive reform of partnership taxation would be a significant undertaking and would require both statutory and regulatory changes, the IRS and Treasury can take relatively simple steps now to minimize confusion and ensure appropriate technical application of certain partnership tax rules.

PROPOSAL

Issue an “omnibus” package of regulations consisting of important technical corrections and updates to select existing partnership tax regulations.

This package should include:

- Updating the outdated recapture regulations in Treas. Reg. § 1.1245-1(e)(3) to remove any uncertainty as to allocation of section 1245 recapture gain after a nonrecognition transfer of a partnership interest.
- Finalizing Prop. Treas. Reg. § 1.751-1(a)(2) on a stand-alone basis to eliminate any ambiguity regarding the amount of ordinary income recognized on the sale of a partnership interest under section 751(a).
- Finalizing Prop. Treas. Reg. § 1.755-1(b)(5) to address the unintended consequences that can occur in certain substituted basis transactions and finalize Prop. Treas. Reg. § 1.755-1(e)(1)(A), which clarifies that the section 755(c) allocation rules apply in a broader set of circumstances.
- Issuing a simple proposed regulation and example to confirm that section 707(a)(2)(B)—which addresses treatment of payments to partners for transfers of property—applies to the disguised sale of a partnership interest.
- Eliminate or significantly restrict the exception from disguised sale treatment for the reimbursement of capital expenditures in Treas. Reg. § 1.707-4(d).
- Issue a proposed regulation (modeled after the 2016 temporary regulations issued under section 707) to treat all partnership liabilities as nonrecourse liabilities for purposes of the debt-financed distribution exception from disguised sale treatment in Treas. Reg. § 1.707-5(b)(1).

TYPE OF TAX

Partnership & Pass-throughs

TYPE OF PROPOSAL

Administrative

TAX LAW CENTER PUBLICATIONS

[Now holding 30 trillion dollars in assets, partnerships require increased scrutiny and broad reforms](#)
[Suggestions for Partnership Regulations](#)

APPROXIMATE REVENUE

Small (\$1 billion or less) to Moderate (\$1 billion to \$10 billion) over 10 years

Deduction Limitation for Heavy Luxury Vehicles—§280F

PROBLEM

Section 280F caps the amount a taxpayer can claim for depreciating luxury passenger cars that weigh up to 6,000 pounds used in a trade or business, while allowing full depreciation deductions for vehicles above that weight limit. The section 280F limitation is designed to avoid “subsidiz[ing] the element of personal consumption associated with the use of very expensive automobiles,” according to the Joint Committee on Taxation. When lawmakers enacted the limitation in 1984, they presumably thought that vehicles above the 6,000 pound weight limit were more likely to be vans, trucks, and other heavy vehicle types used for business rather than personal uses. But there are now many vehicles such as heavy sport utility vehicles designed for personal use that weigh more than 6,000 pounds. As a result, the deduction limitation for lighter cars means that purchases of heavier cars receive a greater tax preference, benefitting more from accelerated depreciation under section 168 and expensing under section 179. Indeed, some car dealerships for luxury brands such as Rolls Royce [advertise](#) the tax benefits associated with buying a car that weighs more than 6,000 pounds.

PROPOSAL

Apply the section 280F limitation to passenger cars weighing more than 6,000 pounds. Lawmakers could use the 14,000 pound weight limit in the definition of “sport utility vehicle” in section 179 as the new upper limit for the section 280F limitation on luxury passenger vehicles. This would apply the 280F limitation to most cars currently on the market except for the very heaviest trucks. It would also align the deduction cap with the EPA’s definition of what constitutes a light or medium-duty vehicle in its latest emissions standards rule. More complicated approaches to more effectively delineating between personal and business use vehicles are another alternative, but would involve additional administrative and compliance burden.

TYPE OF TAX

Partnerships & pass-throughs, Individual, Corporate tax

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Small (\$1 billion or less)

Private Placement Life Insurance (PPLI) and Private Placement Annuities (PPAs)

PROBLEM

Private Placement Life Insurance (PPLI) and private placement annuities (PPAs) leverage the favorable tax treatment of life insurance and annuities to allow individuals to defer or escape taxes on income from assets that would otherwise be subject to high income tax rates. Investment earnings on the cash value of a life insurance or annuity contract are generally not subject to income tax unless the income is deemed distributed to the policyholder. When the insured individual dies, the beneficiaries of the life insurance contract receive the death benefit tax-free under section 101. The general tax preferences for life insurance and annuities aim to [encourage](#) “the purchase of insurance for the support of individuals who lose their source of income due to a death” and to “provide...insurance protection against outliving income available from one’s investment assets” respectively.

By contrast, PPLI and PPAs are primarily investment oriented. Certain contracts’ premiums or annuity funds are held in a separate account to be invested in a portfolio that may include alternative asset classes. Individuals can thus use PPLI and PPAs to invest in hedge funds, private equity funds, and other assets that generate income typically subject to high tax rates and defer taxes until there is a deemed distribution (and in some cases escape income taxation altogether). Only the very wealthiest Americans can access the tax benefits of PPLI and PPAs because PPLI policies “typically require minimum premium commitments of \$1 to \$2 million or greater (not including fees and other administrative costs),” according to a Senate Finance [investigation](#). As a result, high-net-worth individuals can exploit the life insurance tax preferences to generate income that is tax-free or at minimum tax-deferred.

PROPOSAL

Make several legislative changes to curtail the tax benefits of PPLI and PPA contracts that are primarily investment oriented. These legislative changes should, at a minimum, include the following items from the FY2025 Greenbook proposal (which are also aligned with the broader policy recommendations made by Senate Finance):

- Addressing the tax treatment of both PPLI and PPAs in order to prevent high-net-worth individuals from merely shifting their assets from one to the other
- Defining a group of “covered contracts” that are subject to the new limitations for PPLI and PPAs
- Taxing amounts paid to a beneficiary by a life insurance contract due to the insured’s death as ordinary income to the extent of their share of the contract’s investment gains

Private Placement Life Insurance (PPLI) and Private Placement Annuities (PPAs)

PROPOSAL

- Applying an additional tax on any taxable distribution from a covered contract to account for tax deferral (10% in the FY2025 Greenbook proposal)
- Providing specific authority for the Treasury Secretary to develop anti-abuse and information reporting rules to ensure compliance with these new requirements.

TYPE OF TAX

High-net-worth individuals, Transfer tax

TYPE OF PROPOSAL

Legislative

APPROXIMATE REVENUE

Moderate (\$1–\$10 billion)

2025 Greenbook estimate: \$6.9 billion over 10 years