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Some progress on tax deal, government funding pact, but challenges remain

As Congress returned this week from its holiday recess, there were some signs of progress on separate negotiations for a deal on a modest tax-relief package and on funding of federal government operations for fiscal year 2024, although by week's end both efforts still faced challenges from some rank-and-file lawmakers.

Familiar proposals—and some new details—on tax relief

Following months of negotiations on a potential tax deal that would reverse certain taxpayer-unfriendly business provisions in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) and make the child tax credit more

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generous, House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., on January 10 briefed their respective panels' majorities on the contours of their emerging agreement.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Although specific details of the potential deal have not been officially released, press reports indicate that Smith and Wyden are homing in on an approximately $70 billion accord that would retroactively renew expensing of some research expenditures and a more generous limitation on business interest deductibility (both of which lapsed after 2021), reinstate 100 percent expensing of certain capital investments (which phased down to 80 percent in 2023 and 60 percent in 2024), and make assorted enhancements to the child tax credit. All of these changes would apply through 2025, when a host of provisions under the Republican-drafted TCJA—including the vast majority of those on the individual side of the tax code—are scheduled to expire. (A complete list of those provisions—and all the other temporary tax provisions that will sunset between 2024 and 2034—was released by the Joint Committee on Taxation staff on January 11.)
URL: https://www.jct.gov/publications/2024/jcx-1-24/

These general contours came as little surprise to most tax observers, as they have been the primary levers in tax talks for many months now. But some additional policy details under discussion also emerged this week, including the possibility that, under the deal, retroactive research expensing would apply to domestic research costs but not to foreign expenditures. (Under the TCJA, beginning in 2022, research expenditures not otherwise applied toward the R&D tax credit cannot be deducted currently, but must be amortized over either five or 15 years, depending upon whether the research was conducted in the US or abroad.)

With respect to the child tax credit, reports this week suggested that the potential deal would boost the credit's value for families with multiple children, gradually increase the refundable portion of the credit, allow parents to use prior-year income to qualify for the credit, and index the maximum credit amount for inflation.

It is anticipated that the expanded child tax credit would apply to tax year 2023 and run through 2025. Chairman Wyden has repeatedly suggested that he would like to see any tax deal signed into law prior to the January 29 kick-off of the 2023 tax filing season so that, in theory, eligible taxpayers could claim the benefit on their upcoming tax returns. (See discussion below for why that timeline may be ambitious, even if a final deal is inked. See separate coverage in this issue for more on the IRS's announcement about the upcoming tax filing season.)

Wyden eyes ERTC as a (partial) offset: Also reportedly under discussion as a possible revenue offset for the package is an accelerated deadline for claiming the pandemic-era Employee Retention Tax Credit (ERTC), which critics say has been plagued with fraudulent claims since its enactment as part of the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136). (The current deadline for claiming the ERTC is April 14, 2024 for tax year 2020, and April 15, 2025 for tax year 2021.)
URL: https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf

"There is a good argument for using some of those dollars from cleaning up the [ERTC] abuses," Chairman Wyden said January 9.

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The next day, at Wyden's invitation, IRS Commissioner Danny Werfel met with Finance Committee members to discuss ways to tamp down on fraud in the program. Coming out of that meeting, Werfel told reporters that he suggested lawmakers take steps to prohibit promoters from charging contingency fees with respect to ERTC claims and to penalize preparers who file fraudulent claims.

For his part, Senate GOP taxwriter Thom Tillis of North Carolina, disputed the logic of counting ERTC changes as budgetary savings (though, to be clear, it is not yet known how much money the ERTC modifications under discussion would raise in the eyes of congressional budget scorekeepers).

"People up here should not be viewing that money that was allocated in the CARES Act as some pay-for for something else," Tillis said. "Most of the money that we associated with the CARES Act we knew was debt. We were in a crisis, so it feels fake to consider that 'found' money."

Progressives want more on the child credit: Though substantial, the emerging deal's proposed changes to the child tax credit would be relatively small compared to the enhancements Democrats made as part of the pandemic-era American Rescue Plan (P.L. 117-2), which applied only for tax year 2021. Under that law, the credit was increased from $2,000 per child to $3,600 per child up to age 5 and $3,000 for children up to age 17. For that year only, the credit was also made fully refundable (rather than partially refundable, depending in part on an individual's earnings, as under current law); moreover, many taxpayers could elect to receive the benefits as advanceable monthly payments rather than waiting to claim them when filing a tax return in the following year.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf

As a result of that apparent disparity, reports suggest that progressive taxwriters in the House gave Ways and Means Committee ranking Democrat Richard Neal of Massachusetts an earful during a closed-door meeting on January 10, arguing that their party should not accede to what, in their view, amounts to a watered-down child tax credit expansion. (At roughly half of the current $70 billion package, or $35 billion, the Smith-Wyden child tax credit boost currently under discussion is indeed relatively small compared to Democrats' 2021 expansion, which ran north of $100 billion in that year alone.)

Ranking member Neal has not yet tipped his hand as to whether he backs the Smith-Wyden deal as it currently stands, though he did sound a sour note on the proposed child tax credit changes when talking to reporters this week.

"They're not talking about full refundability, and that's a big deal," Neal said January 10.

For her part, Rep. Rosa DeLauro, D-Conn., who is playing a large role in current spending talks as ranking Democrat on the House Appropriations Committee and has been a long-time advocate for an expanded child tax credit, also criticized the tax deal in no uncertain terms.

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"It is time to get to work moving policy that will actually improve [lower-income Americans'] lives, not watered-down policy for the sake of making a deal," she said. "Because of the way this deal is currently structured, I am opposed and will vote 'no' should it ever come to the floor for consideration."

Other tax-relief items in the mix?: It has been rumored in recent weeks that some Democratic taxwriters—particularly in the Senate—have been eyeing the tax package as a way to move certain enhancements to the low-income housing tax credit, though it is very unclear whether the GOP would accept that demand. (Incentives to promote affordable housing appeared to enjoy bipartisan support during a Senate Finance Committee hearing last year. For prior coverage, see *Tax News & Views*, Vol. 24, No. 9, Mar. 10, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230310_3.html

Reports this week also suggested that some lawmakers in the House may push to include disaster-relief provisions similar to those approved by the Ways and Means Committee last November. (For coverage of the Ways and Means mark-up, see *Tax News & Views*, Vol. 24, No. 37, Nov. 3, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231103_5.html

Deal not yet final: Wyden and Smith, meanwhile, have been clear that the deal is not yet final and that further changes are still possible.

"This isn't final and there are a few issues still under discussion, but we're hopeful about getting this done in time for the upcoming filing season," Wyden said January 10.

Or, as a staffer involved in the negotiations remarked: "We're not pencils down."

Johnson comes under fire for 'topline' spending agreement with Schumer

But importantly, it would be hard to overstate the extent to which any tax deal's fate is tied to other dynamics in Washington—especially those surrounding government funding for fiscal year 2024, which began last October 1.

House Speaker Mike Johnson, R-La., is coming in for heavy criticism from conservative Republicans for striking a deal with Senate Majority Leader Charles Schumer, D-N.Y., announced January 7, that largely adheres to the fiscal 2024 appropriations levels agreed to by President Biden and then-Speaker Kevin McCarthy, R-Calif., as part of the Fiscal Responsibility Act of 2023 (FRA, P.L. 118-5) that Biden signed into law last June.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

In fact, during a series of meetings on January 11, a number of House conservatives urged Johnson to renege on his deal with Schumer—an action that would greatly increase the risk of a government shutdown when one tranche of government funding expires on January 19 under the stopgap funding measure currently in place—and many of them came away thinking he would do just that.

But the speaker denied that he made any commitments in that regard.

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“We’re having thoughtful conversations about funding options and priorities,” Johnson said. “We had a cross-section of members in today. We’ll continue having cross-sections of members in and while those conversations are going on, I’ve made no commitment. So if you hear otherwise, it’s just simply not true.”

The FRA placed statutory caps on appropriations for fiscal years 2024 and 2025, with those caps set at about $886 billion for defense discretionary and $704 billion for nondefense discretionary spending. Importantly, however, Biden and McCarthy also agreed on the side (that is, not as part of the FRA itself) that nondefense accounts would be increased by tens of billions of dollars above the statutory cap through a series of adjustments, including by reallocating $10 billion in each of fiscal years 2024 and 2025 from the $80 billion mandatory funding stream provided to the Internal Revenue Service as part of the Democrat-drafted Inflation Reduction Act of 2022 (P.L. 117-169).
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

That “side agreement” has always faced strident opposition from House conservatives, but the topline spending agreement between Johnson and Schumer enshrines it, pegging nondefense funding in fiscal 2024 at $773 billion, $69 billion above the $704 billion FRA cap.

Rep. Chip Roy, R-Texas, a member of the conservative House Freedom Caucus, called the Johnson-Schumer deal “terrible” and wrote in a social media post that it “gives away the leverage accomplished in the (already not great) [spending] caps deal” between Biden and McCarthy.

Rep. Tim Burchett, R-Tenn., declared he was “currently a ‘no’” shortly after the topline deal was announced. “I’d like to see some real cuts . . . and maybe cut back on all the . . . spending that we’ve been doing. And until we do that, we are falling off a fiscal cliff,” he said.

Johnson claims win on accelerated IRS cuts: With Democrats in charge of the Senate and the White House and the parameters for fiscal year 2024 appropriations largely set in the Fiscal Responsibility Act last summer, it could be argued that Speaker Johnson had very little leverage in his negotiations with Majority Leader Schumer.

For his part, however, Johnson is claiming that he did secure some additional spending cuts, most notably through the acceleration into fiscal 2024 of the $10 billion cut to the IRS’s mandatory Inflation Reduction Act money otherwise scheduled to occur—under the Biden-McCarthy side deal— as part of the fiscal year 2025 spending process. Thus, if the current spending accord is enacted into law, the $80 billion tranche of mandatory spending provided to the IRS by the Inflation Reduction Act—funds which the agency has indicated it plans to use to bolster tax enforcement, taxpayer services, and business systems modernization—would be reduced to roughly $60 billion. Success on this front could also encourage Republicans to seek additional reductions as part of future spending talks.

Johnson and Schumer also agreed to rescind about $6 billion of unspent COVID-relief funding provided as part of previous legislation.

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“This is not what we all want, it’s not the best deal that we could get if we were in charge of both chambers and the White House,” Johnson told reporters January 9. “But it’s the best deal that we could broker under the circumstances.”

Much work left to do: Of course, all of this—the IRS funding rescission, the COVID relief rescission, and, most importantly, the underlying appropriations measures themselves—still needs to drafted, passed through both chambers, and signed into law by the president in short order to avoid a shutdown of government operations.

Under the “laddered” continuing resolution (CR) currently keeping the government’s doors open—a conceit of Speaker Johnson that was enacted late last year shortly before the scheduled expiration of a prior CR on November 17—government operations are continued at fiscal 2023 funding levels through January 19 for some departments and agencies and through February 2 for others. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 39, Nov. 17, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231117_1.html

That means Congress now has just one week to avoid a partial government shutdown, and three weeks to avert a full government shutdown.

Senate Appropriations Committee Chairman Patty Murray, D-Wash., alluded to the narrow timeframe during a January 9 press conference.

“ [M]ake no mistake: negotiating final funding bills is no walk in the park,” Murray said. “We are working nonstop right now to get this done, but we are obviously crunched for time.”

Murray also ruled out Democratic acceptance of any so-called “poison pill” policy riders demanded by Republicans and included in many of the appropriations measures considered by the House during the current funding cycle.

Schumer tees up another CR: All of this has made it obvious to much of official Washington—including Senate leaders from both parties—that another continuing resolution will be required to prevent a government shutdown while work on more durable, full-year appropriations legislation continues.

In fact, Senate Majority Leader Schumer on January 11 teed up action on a “shell” bill designed to carry another CR through the upper chamber. A procedural vote on that legislation is expected on January 16. At this point, it remains unclear what the contours of a Senate CR will be, including its duration and whether it will maintain a “laddered” structure.

Across the aisle, Senate Minority Whip John Thune, R-S.D., told reporters this week that it was “unrealistic” to expect appropriations work to be finalized in advance of the upcoming January 19 and February 2 deadlines and that any new CR might have to run until March after considering the congressional calendar and scheduled recesses.

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"We ought to allow some time to do some work on the other bills and, if there is a CR, maybe in the March timeframe," Thune said.

Johnson boxed in: Speaker Johnson, for his part, stated that he was "done with" any additional short-term CRs after Congress approved his laddered measure last November.

But he may have to change course if a government shutdown is to be averted.

Johnson is also down to an extremely narrow, two-seat GOP majority in the House—meaning that, for all practical purposes, he likely will again have to rely on substantial Democratic support to pass funding legislation given the near certainty of multiple Republican defections on his right flank.

Furthermore, with three members of the House Freedom Caucus effectively holding veto power on the powerful House Rules Committee—the panel that sets the terms for debating bills on the House floor—it is increasingly likely that Johnson may have to bring any CR or appropriations bills (or other nonfunding legislation, for that matter) straight to the floor under an expedited process known as "suspension of the rules" that provides for limited debate, no amendments, and a two-thirds vote for passage (rather than the usual simple majority that is needed to pass legislation under a "rule").

This process is normally reserved for noncontroversial bills, but may become more commonly employed by House Republican leaders given the fractures in their caucus—a reality that could further anger conservatives.

Crapo wary of approps package as a tax vehicle: As it relates back to tax policy, Sen. Mike Crapo, R-Idaho, the ranking Republican on the Finance Committee, sees the continuing cloudy outlook on appropriations as the primary reason he has not yet lent his support to the emerging Smith-Wyden tax framework.

"There is concern about both the vehicle, which impacts the politics of putting the [tax] deal together, and some concerns about substance," Crapo said. "The absence or presence of a vehicle impacts the ability to put together the substance of a deal."

And, of course, any extension of the fiscal 2024 appropriations process by way of a CR would negatively impact Congress's ability to get a tax package to President Biden's desk in advance of the January 29 start of the tax filing season as desired by Sen. Wyden.

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New Deloitte Tax resources look at guidance on Pillar Two issues, corporate AMT, research expenditures

New tax alerts from Deloitte Tax LLP discuss recent administrative guidance on a host of issues including the Pillar Two global minimum tax rules, the application of the corporate alternative minimum tax enacted in the Inflation Reduction Act of 2022, the mandatory capitalization of research expenditures under section 174 enacted in the Tax Cuts and Jobs Act of 2017, the scope of the Internal Revenue Service's letter ruling program for corporate transactions, and currency rules under section 987, as well as a recent federal court ruling on reporting requirements for foreign bank and financial accounts for dual residents with foreign treaty residency.

OECD guidance on Pillar Two compliance

The OECD/G20 Inclusive Framework last month released Tax Challenges Arising from the Digitilisation of the Economy—Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023.
URL: https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf

A new alert from Deloitte Tax discusses the highlights of the latest OECD release, which provides guidance both with respect to certain aspects of the full GloBE Rules set forth in the Model Rules and related Commentary and Administrative Guidance, as well as the transitional country-by-country (CbC) reporting introduced in the OECD's December 2022 "Safe Harbors and Penalty Relief" document. The new Administrative Guidance will be incorporated into a revised version of the Commentary that is expected to be released in the future.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-21-december-2023.pdf

A Tax News & Views webcast on the OECD guidance scheduled for January 23 at 2:00 p.m. (eastern time) will explore (1) the highlights of the new rules as they relate to the CbC reporting safe harbor, (2) the rules for pushing down GILTI taxes when controlled foreign corporations qualify for the CbC safe harbor, and (3) newly introduced anti-avoidance rules.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/tax-news-and-views-webcast.html

Notice 2023-80 on Pillar Two and foreign tax credits

In the US, meanwhile, the Treasury Department and the IRS last month released Notice 2023-80 announcing their intention to issue proposed regulations to address the application of the foreign tax credit rules to certain top-up taxes, including income inclusion rules, qualified domestic minimum top-up taxes, and undertaxed profits rules described in Pillar Two, along with guidance that taxpayers may rely on until proposed regulations are issued.
URL: https://www.irs.gov/pub/irs-drop/n-23-80.pdf

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In addition, Notice 2023-80 announces that proposed regulations will address the interaction of the GloBE Model Rules and the dual consolidated loss rules. It also extends and modifies the temporary relief granted by Notice 2023-55 for determining whether a foreign tax is creditable under sections 901 and 903.
URL: https://www.irs.gov/pub/irs-drop/n-23-55.pdf

This new alert from Deloitte Tax provides a high-level summary of the foreign tax credit rules set out in the notice.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-22-december-2023.pdf

Additional guidance on corporate AMT

Treasury and the IRS released Notice 2024-10, which provides additional interim guidance to further clarify the application of the 15 percent alternative minimum tax on "adjusted financial statement income" of applicable corporations that was included as a revenue offset in the Inflation Reduction Act of 2022 (P.L. 117-169), the roughly $740 billion tax, spending, and deficit-reduction package that moved through a Democratic-controlled House and Senate under fast-track budget reconciliation rules in the 117th Congress.
URL: https://www.irs.gov/pub/irs-drop/n-24-10.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppD.pdf

A new alert from Deloitte Tax provides an overview of the notice.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppD.pdf

Notice 2024-10 supplements several other guidance items on the corporate AMT from Treasury and the IRS in the past year, including interim guidance in Notice 2023-7 announcing the government's intention to issue proposed regulations and addressing several time-sensitive issues related to the application of the tax (see previous Deloitte Tax alert), interim guidance in Notice 2023-20 focused on the application of the tax to the insurance industry (previous alert), temporary penalty relief in Notice 2023-42 for corporations that do not pay estimated tax related to their corporate AMT liability (previous alert), and additional interim guidance in Notice 2023-64 that is intended to help corporations determine whether they are subject to the tax and how to compute their liability (previous alert).
URL: https://www.irs.gov/pub/irs-drop/n-23-07.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230106_3_suppA.pdf
URL: https://www.irs.gov/pub/irs-drop/n-23-20.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230303_4_suppA.pdf
URL: https://www.irs.gov/pub/irs-drop/n-23-42.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230609_3_suppA.pdf
URL: https://www.irs.gov/pub/irs-drop/n-23-64.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230922_3_suppA.pdf

Mandatory amortization of research expenditures

Treasury and the IRS also recently issued additional guidance on a provision in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) that generally requires specified research and experimental expenditures under

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section 174 to be amortized over five years (15 years in the case of foreign expenditures) rather than deducted immediately as under prior law. The provision, which was one of the revenue offsets in the roughly $1.3 trillion Trump-era budget reconciliation tax package, took effect beginning in 2022.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Rev. Proc. 2024-9 offers procedural guidance for taxpayers to make accounting method changes to apply the provisions of prior interim guidance (Notice 2023-63, released this past September) on the amortization requirement.
URL: https://www.taxnotes.com/research/federal/irs-guidance/revenue-procedures/irs-issues-accounting-method-changes-guidance-research-costs/7hq4d
URL: https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-announces-pending-proposed-regs-re-expenditures/7h8n1

In conjunction with the revenue procedure, the government also released Notice 2024-12, which modifies certain provisions of Notice 2023-63.
URL: https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-clarifies-guidance-research-expenditures/7hq4h

A new alert from Deloitte Tax offers an overview of Rev. Proc. 2024-9 and Notice 2024-12. A previous alert discusses Notice 2023-63. (See separate coverage in this issue for details on congressional efforts to temporarily reverse certain TCJA changes to the treatment of research expenditures as part of a larger bipartisan tax deal.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppA.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230922_2_suppA.pdf

Expanded scope of IRS letter ruling program for corporate transactions

In other regulatory developments, the IRS kicked off 2024 with the release of Rev. Proc. 2024-1 and Rev. Proc. 2024-3, which expand the agency's letter ruling practice for certain corporate transactions.
URL: https://www.irs.gov/irb/2024-01_IRB#REV-PROC-2024-1
URL: https://www.irs.gov/irb/2024-01_IRB#REV-PROC-2024-3

The practical implication of this guidance is that the IRS will now issue:

- "Transactional rulings" and "comfort rulings" under sections 332, 351, 368, and 1036,
- With respect to distributions under section 355, rulings regarding the non-device requirement, whether a distribution and an acquisition by one or more persons of stock in the distributing corporation or the controlled corporation will be part of a plan (or series of related transactions) under section 355(e) and certain issues related to the business-purpose requirement, and
- Rulings on the excise tax on repurchases of corporate stock under section 4501.

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A new alert from Deloitte Tax discusses the significance of the two revenue procedures for the IRS's letter ruling practice.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppC.pdf

Updates to recently proposed section 987 regulations

The Treasury Department and the IRS on November 9 of last year released proposed currency regulations under section 987 and related rules. Section 987 applies to taxpayers with a qualified business unit (QBU) in the form of a disregarded entity, branch, partnership, trust, or estate, if the QBU has a functional currency that is different from the functional currency of its tax owner(s). Section 987 addresses foreign currency translation related to operations, assets, and liabilities of QBUs, and provides rules for computing taxable income (and associated earnings and profits) of the QBU, recognizing currency gain or loss, and translating basis in property that is transferred to or from a QBU.
URL: https://www.federalregister.gov/documents/2023/11/14/2023-24649/income-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit

The government issued a technical correction to the preamble of the proposed regulations on December 6, however, to clarify certain details in the guidance.
URL: https://www.federalregister.gov/documents/2023/12/06/2023-26785/income-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit-correction

An updated tax alert on the proposed regulations that reflects the changes to the preamble is available from Deloitte Tax. (This updated alert replaces a previous tax alert that was released on November 17.)
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-20-december-2023.pdf

FBAR requirement for dual residents with treaty foreign residency

On the judicial front, the US District Court for the Southern District of California recently ruled in *Aroeste vs. United States* that an individual who was a lawful permanent resident of the United States should be treated as a nonresident of the United States for purposes of filing a Report of Foreign Bank and Financial Accounts (FBAR) once that individual began to be treated as a resident of Mexico under the residency tiebreaker provisions of the US-Mexico Income Tax Treaty.

The government is expected to appeal the court's decision in *Aroeste* to the Ninth Circuit. For the time being, taxpayers filing as non-US residents under an applicable tie-breaker provision of a US income tax treaty (with any jurisdiction) should continue filing FBARs or any other required international information returns.

A new alert from Deloitte Tax discusses the decision.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppB.pdf

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US-Chile tax treaty enters into force

Thirteen years after it was originally signed, a new tax treaty between the US and Chile finally entered into force on December 19, 2023. The agreement is especially welcome news for those US taxpayers with investments in Chile's significant reserves of lithium and copper, which are used in the batteries critical for many current and emerging technologies.

According to the announcement from the US Treasury Department, provisions in the US-Chile tax treaty include:

- Reduced source-country withholding tax on certain payments of dividends as well as payments of interest and royalties;
- A prohibition against source-country taxation of business profits of an enterprise in the absence of a so-called "permanent establishment";
- Beneficial rules for individuals, including provisions that govern the taxation of income from employment, payments to students and trainees, and pensions and social security payments;
- A comprehensive limitation on benefits provision; and
- A comprehensive provision allowing for full exchange of information between the US and Chilean tax authorities.

A long and winding road

Chile and the US initially signed the treaty in 2010, but it was not ratified before Congress passed the Tax Cuts & Jobs Act of 2017 (TCJA, P.L. 115-97). Because of the TCJA's base erosion and anti-abuse tax (BEAT) as well as its new rules regarding the distribution of certain foreign dividends, it was determined that the bilateral treaty (as well as several others) required changes before it could be ratified. Those changes—known as reservations—were worked out with the Treasury Department in 2022, but while the Senate Foreign Relations Committee approved the treaty with the additional language in March of 2022, the full Senate did not vote on it before the 117th Congress formally adjourned.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

The Foreign Relations Committee again approved the treaty last June, this time accompanied by a new declaration addressing double taxation relief in future tax treaties. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 22, June 2, 2023.) The declaration addresses concerns raised by GOP senators about the double taxation relief language in the Chile tax treaty without making changes to the treaty or the two reservations previously approved by the Foreign Relations Committee in May of 2022.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230602_2.html

The full Senate overwhelmingly approved the agreement in June of 2023, by a vote of 95-2, and the Chilean government subsequently approved the new version. (For prior coverage, see *Tax News & Views*, Vol. 24, No.

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25, June 23, 2023,) The US Treasury announced December 19 that both countries had completed the final steps in the ratification process.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230623_2.html

For taxes withheld at source, the treaty will have effect for amounts paid or credited on or after February 1, 2024. For all other taxes, it has effect for taxable periods beginning on or after January 1, 2024.

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Tax filing season to begin January 29, IRS says

The Internal Revenue Service announced this week that it will begin accepting and processing 2023 tax year returns on January 29, 2024.

For most taxpayers, the deadline to file their personal federal tax return, pay any tax owed, or request an extension to file is Monday, April 15, 2024, the IRS said in a January 8 news release. Taxpayers living in Maine or Massachusetts have a filing deadline of April 17, 2024, however, due to the Patriot's Day holiday (on April 15) and the Emancipation Day holiday (on April 16) in those states. In addition, a taxpayer who resides in a federally declared disaster area also may have additional time to file.
URL: https://www.irs.gov/newsroom/tax-relief-in-disaster-situations

IRS Commissioner Danny Werfel noted in the release that the agency is continuing to use the 10-year mandatory funding stream it received under the Inflation Reduction Act of 2022 (P.L. 117-169) to overhaul its customer service operations and streamline the tax filing process. (The additional mandatory funding is also earmarked for strengthening the IRS's enforcement programs.)
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

"As our transformation efforts take hold, taxpayers will continue to see marked improvement in IRS operations in the upcoming filing season," Werfel said. "IRS employees are working hard to make sure that new funding is used to help taxpayers by making the process of preparing and filing taxes easier."

Among the service improvements the agency is touting for the upcoming filing season are expanded in-person service at Taxpayer Assistance Centers; increased help available on the IRS's toll-free line and an expanded customer call-back feature designed to significantly reduce wait times; enhancements to the "Where's My Refund?" tracking tool; and enhanced paperless processing capabilities that will enable taxpayers to submit all correspondence, nontax forms, and responses to notices digitally and to file a wider range of tax forms electronically.

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Filing season converging with tax deal, government funding efforts

The IRS's announcement comes as taxwriting leaders in the House and Senate are attempting to finalize a deal on a modest tax package that would couple business-focused tax relief—including provisions to temporarily reverse certain changes that have taken effect pursuant to 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97) that curtailed deductions for research expenditures and business interest expense and dialed down immediate write-offs for capital investments—with assorted enhancements to the child tax credit.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Senate Finance Committee Chairman Ron Wyden, D-Ore., who has been negotiating the tax package with House Ways and Means Committee Chairman Jason Smith, R-Mo., has stated that his goal is to see such a measure approved and signed into law before the start of the filing season to give the IRS a chance to make necessary updates to its computer systems and to ensure that early-filing taxpayers don't have to amend their returns to reflect newly enacted tax law changes. At this point, however, it is unclear if that target deadline is realistic.

The start of the filing season also overlaps with congressional efforts to finalize funding for the IRS and other federal departments and agencies for fiscal year 2024, which began last October 1. Following a months-long standoff, House and Senate leaders announced January 7 that they had reached an agreement on topline appropriations numbers for the current fiscal year that essentially will hold spending at the levels in effect for fiscal year 2023.

With suballocation numbers still being worked out, the agency's final funding level for the current fiscal year remains uncertain. Senate appropriators approved a total fiscal year 2024 allocation of $12.3 billion (consistent with the fiscal year 2023 funding level) on a bipartisan basis last July. By contrast, appropriators in the Republican-controlled House approved a total allocation of $11.2 billion on a party-line vote last July, in a nod to demands by members of the House Freedom Caucus to hold nondefense discretionary spending for this fiscal year at the levels in place for fiscal year 2022. The lower topline number from House GOP appropriators reflects a steep proposed reduction in funding for the IRS's enforcement programs compared to the Senate proposal. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 26, July 14, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230714_2.html

The just-announced budget framework also would accelerate the scheduled rescission of $20 billion of the roughly $80 billion in mandatory funding that was allocated to the IRS over 10 years under the Inflation Reduction Act. President Biden and then-Speaker Kevin McCarthy, R-Calif., reached a handshake agreement during their negotiations over the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal that was signed into law this past June, to rescind $10 billion of the Inflation Reduction Act funding in fiscal year 2024 and another $10 billion in fiscal year 2025. This week's spending agreement calls for rescinding the entire $20 billion in fiscal year 2024.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

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The government is currently operating under a “laddered” continuing resolution that funds some federal departments and agencies through January 19 and others—including the Treasury Department and IRS—until February 2.

See separate coverage in this issue for more on the status of congressional efforts to advance a tax relief package and appropriations legislation.

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State of the Union address set for March 7

House Speaker Mike Johnson, R-La., on January 6 formally invited President Biden to deliver his 2024 State of the Union address before a joint session of Congress on March 7. The president accepted the invitation later on January 6, telling the speaker in a statement posted on X (formerly known as Twitter) that he was “looking forward” to appearing before lawmakers.
URL: https://www.speaker.gov/wp-content/uploads/2024/01/2024.01.06-SOTU-Invite.pdf

The State of the Union message will give President Biden the opportunity to tout what he sees as the key achievements of his administration to date and to lay out his policy and governing agenda for the coming year. With the 2024 presidential election now just 10 months away, Biden also may take a longer view and discuss his policy vision for a potential second term in office.

The Constitution requires US presidents to “from time to time give to the Congress information on the State of the Union,” but it does not prescribe a specific date for doing so. Typically, State of the Union addresses have been delivered in late January or early February, but that timeline has been known to slip. President Biden gave his 2023 message on February 7 of that year and his 2022 address on March 1.

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