



June 9, 2023

***Via the Federal eRulemaking Portal***

Emily M. Lesniak  
Office of the Associate Chief Counsel (Procedure and Administration)  
Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2023-36)  
1111 Constitution Avenue N.W., Room 5203  
Washington, D.C. 20224

**Re: Recommendations for Items to be Included on the 2023–2024 Priority Guidance Plan (Notice 2023-36)**

Dear Ms. Lesniak:

The U.S. Chamber of Commerce (“Chamber”) welcomes the opportunity to provide recommendations for items to be included on the 2023–2024 Priority Guidance Plan, which will identify guidance projects that the Department of the Treasury and Internal Revenue Service intend to actively work on as priorities during the period of July 1, 2023–June 30, 2024. The following recommendations reflect some of the most pressing guidance needs of our member companies from across the industry spectrum but are by no means exhaustive. For your convenience, we have grouped our recommended guidance projects by subject matter in a manner consistent with prior-year Priority Guidance Plans.

**Consolidated Returns**

- Regulations under section 1502 removing obsolete rules and updating regulations to reflect statutory changes.<sup>1</sup>
- Regulations regarding life-nonlife consolidated groups under section 1.1502-47.

**Corporations and their Shareholders**

- Proposed regulations or other published guidance under the provisions of Part 1 of Subtitle A of Public Law 117-169 (the “Inflation Reduction Act” or “IRA”) regarding the

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<sup>1</sup> Unless otherwise indicated, all references to “section” herein are to sections of the Internal Revenue Code of 1986, as amended (“Code”).

new corporate alternative minimum tax (“AMT”), including regulations or other published guidance:

- specifying the number of consecutive taxable years required by section 59(C)(i)(II) and articulating clear, simple, and objective criteria governing the Secretary’s determination under section 59(C)(ii);
  - confirming that, consistent with congressional intent, other comprehensive income is not included in adjusted financial statement income (“AFSI”);
  - confirming that, for purposes of section 56A(c)(2)(C), the term “dividends” refers to dividends for federal income tax purposes (as defined in section 316(a)), not financial reporting purposes;
  - confirming that section 56A(c)(2)(C) disregards both equity method and fair value (mark-to-market) method financial accounting treatments for purposes of determining the taxpayer’s AFSI with respect to a non-consolidated corporation;
  - excluding from AFSI dividends from any controlled foreign corporation (“CFC”) for which the taxpayer has included its pro rata share of CFC AFSI;
  - allowing a dividends received deduction in cases where non-CFC dividends received by the taxpayer would otherwise be eligible for a dividends received deduction for regular tax purposes;
  - explaining and illustrating the treatment of partnerships under section 56A(c)(2)(D) while minimizing the administrative complexity and compliance burdens for partnerships, including by disregarding mark-to-market unrealized gains and losses with respect to investments held directly or indirectly by a partnership;
  - confirming that the taxpayer’s pro rata share of each CFC’s net income or loss is computed in the aggregate (netted) for purposes of section 56A(c)(3), not on a CFC-by-CFC or country-by-country basis;
  - clarifying that section 56A(c)(13) applies only to property placed in service after the effective date of section 56A; and
  - preventing the potential duplication of income earned indirectly through a CFC.
- Regulations or other published guidance under the provisions of Part 2 of Subtitle A of the Inflation Reduction Act regarding the computation and reporting of the new excise tax on the repurchase of corporate stock in section 4501, including regulations or other published guidance:
    - withdrawing the highly problematic and ill-defined funding rule described in section 3.05(2)(a)(ii) of Notice 2023-2, 2023-3 I.R.B. 374; and
    - exempting the repurchase of plain vanilla preferred stock from the scope of new excise tax in section 4501.<sup>2</sup>

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<sup>2</sup> Corporate stock with the following four characteristics is generally considered “plain vanilla preferred stock” for federal income tax purposes: (1) nonvoting; (2) limited and preferred as to dividends and without participation in corporate growth to any significant extent; (3) limited redemption and liquidation premium rights; and (4) nonconvertible. See generally I.R.C. §§ 382(k)(6)(A), 1504(a)(4). As such, redemptions of plain vanilla preferred

## **Energy Security**

- Regulations or other published guidance under provisions of Part 1 of Subtitle D of the Inflation Reduction Act addressing clean electricity and reducing carbon emissions, including regulations on the definition of qualifying energy property under section 48.
- Regulations or other published guidance under provisions of Part 2 of Subtitle D of the Inflation Reduction Act addressing clean fuels.
- Regulations or other published guidance under provisions of Part 3 of Subtitle D of the Inflation Reduction Act addressing clean energy and energy efficiency incentives for individuals, including regulations under section 179D to clarify the definition of designer and other issues.
- Regulations or other published guidance under provisions of Part 4 of Subtitle D of the Inflation Reduction Act addressing clean vehicles.
- Regulations or other published guidance under provisions of Part 5 of Subtitle D of the Inflation Reduction Act addressing investments in clean energy manufacturing and energy security.
- Regulations or other published guidance under provisions of Part 7 of Subtitle D of the Inflation Reduction Act addressing incentives for clean electricity and clean transportation.
- Regulations or other published guidance under provisions of Part 8 of Subtitle D of the Inflation Reduction Act addressing credit monetization.

## **Financial Institutions and Products**

- Regulations or other published guidance under section 166 on the conclusive presumption of worthlessness for bad debts.

## **General Tax Issues**

- Regulations or other published guidance under section 174 regarding the amortization of post-2021 research and experimental expenditures, including regulations or other published guidance:
  - defining the term “specified research or experimental expenditures”;

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stock are qualitatively akin to repaying a class of debt; they do not resemble the type of opportunistic stock repurchases that Congress sought to curtail with the new excise tax.

- clarifying the treatment amounts paid to others for research or experimentation under a contract;
  - defining the term “software” for purposes of applying the special rule in subsection (c)(3); and
  - clarifying the application of subsection (d) upon the disposition of a research project in its entirety.
- Regulations or other published guidance under section 461(l) regarding the limitation on excess business losses of noncorporate taxpayers, including regulations or other published guidance:
    - clarifying that net interest income, dividend income, and net capital gain are taken into account in determining the excess business loss of a taxpayer where such income or gain is attributable to the taxpayer’s trade or business; and
    - clarifying—consistent with the self-charged interest rules in other sections of the Code—that for purposes of determining the amount of excess business loss, self-charged interest income should be netted with self-charged interest expense.

### **International**

- Regulations under sections 959 and 961 concerning previously taxed earnings and profits under subpart F, including the extent to which basis created under section 961(c) should be treated as basis to determine tested income in applying section 951A.
- Regulations or other published guidance confirming that a foreign country’s qualifying domestic minimum top-up tax (“QDMTT”), as defined in Article 10 of the OECD Global Anti-Base Erosion Model Rules (Pillar Two), generally meets the requirements for a creditable foreign income tax under section 901.

### **Partnerships**

- Final regulations addressing adjustments to bases and capital accounts and the tax and book basis of partnership property.

### **Tax Administration**

- Guidance under section 3134 relieving small-business employee retention credit (“ERC”) claimants from the administrative and financial burdens of being required to file an amended return for any taxable year where wages were deducted and an ERC related to those wages was received in a subsequent year.
  - Ideally, such guidance would allow taxpayers the election to include their ERC proceeds in income for the taxable year(s) in which they actually receive the credit proceeds, not the year(s) to which the credit(s) relate (e.g., 2020, 2021).

The Chamber appreciates the opportunity to provide these recommendations for items to be included on the 2023–2024 Priority Guidance Plan, and we urge the Department of the Treasury and Internal Revenue Service to maintain close liaison with the business community throughout the plan year in working on these and other guidance projects. To that end, we would welcome the opportunity to discuss our recommendations with you or your colleagues in further detail and provide whatever additional information you may require. Thank you for your time and attention.

Sincerely,

A handwritten signature in blue ink, reading "W. M. McLeish". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Watson M. McLeish  
Senior Vice President, Tax Policy  
U.S. Chamber of Commerce