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Highlights from the 2022-23 IRS Priority Guidance Plan

The IRS released its [Priority Guidance Plan \(PGP\)](#) for 2022-23 on November 4, 2022. This document identifies 205 projects and issues that the IRS intends to prioritize over the next year. The list includes a number of areas that may be of interest to nonprofits and other tax-exempt organizations, employers and other taxpayers. The following issue areas could be particularly notable, although they are far from the only projects covered by the PGP.

Employee Benefits

The PGP identifies numerous issues related to employee benefits, executive compensation, employment taxes and related areas.

Employment Tax Credits

Several laws passed by Congress to address the COVID-19 pandemic provided refundable tax credits to employers, mostly based on payroll tax liabilities, to encourage them to keep workers on their payrolls and to provide benefits like paid sick leave. The PGP identifies the recapture of erroneous refunds as a priority issue. The IRS most recently issued [temporary regulations](#) and [proposed rules](#) on this issue in September 2021.

Qualified Asset Accounts

The PGP lists regulations and guidance on qualified asset accounts (QAAs), as defined by [§ 419A of the Internal Revenue Code \(IRC\)](#), as a priority. A QAA is a type of welfare benefit fund used to set assets aside to pay disability, medical, unemployment, severance or life insurance benefits.

Voluntary Employees' Beneficiary Associations

Under [IRC § 501\(c\)\(9\)](#), [voluntary employees' beneficiary associations \(VEBAs\)](#) are tax-exempt if they meet certain requirements. VEBAs pay benefits to members, members' dependents or other beneficiaries. Much like other tax-exempt organizations, VEBA's earnings cannot inure to the benefit of shareholders or other individuals. The PGP includes VEBA regulations in its list.

Ineligible Deferred Compensation Plans

Amounts included in deferred compensation plans do not count toward gross income until the year the participant or beneficiary receives those amounts, as long as the employer and the plan meet standards set by law. [Section 457\(f\) of the IRC](#) addresses the tax treatment of deferred compensation plans that do not meet those standards. The IRS published [proposed regulations](#) in June 2016, and it will make those regulations a priority in 2022-23.

Donor-Advised funds

The IRS defines a [donor-advised fund \(DAF\)](#) as a fund or account that a 501(c)(3) organization, known as the “sponsoring organization,” maintains separately from other accounts. Each DAF has a single donor. While the sponsoring organization has control over a DAF, the donor has the right to advise it on how to invest assets or distribute funds.

Congress added DAFs to the IRC in 2006. The IRS did not issue any [guidance](#) with regard to DAFs until 2017, and it has not issued any guidance or regulations since. The PGP identifies four items involving DAFs that will receive priority in 2022-23:

- Excise taxes on DAF distributions under [IRC § 4966](#)
- Excise taxes on unlawful benefits paid by DAFs under [IRC § 4967](#)
- Excise taxes on excess benefits under [IRC § 4958](#)
- Application of the [public support test](#) to DAF distributions

Exempt Organizations

The PGP includes numerous items that address matters involving tax-exempt organizations, including:

- Revisions to [Rev. Proc. 80-27](#), which deals with [group exemption](#) of organizations affiliated with or under the control of a central organization
- Final regulations on supporting organizations under [§ 509\(a\)\(3\)](#), based on [proposed rules](#) published in 2016
- Regulations that deal with computing an organization’s unrelated business income under [§ 512](#), and which take into account changes made by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

General Tax issues

The PGP identifies a wide range of issues that it categorizes as “general tax issues,” including the following:

- Guidance on charitable contributions and conservation easements under [§ 170](#)
- Guidance related to the corporate alternative minimum tax established by the [Inflation Reduction Act of 2022](#)
- Regulations addressing how to compute the net operating loss deduction under [§ 172](#)
- Guidance on the tax treatment and validation of transactions involving [digital assets](#), such as cryptocurrency.

Contact [Frankel Zacharia](#) today to learn more about how we can support your business. Call us at 402.496.9100 or email www.fzacpa.com.