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2026 Year-End Tax Planning Guide

From Reactive to Proactive

Now is the time for tax planning. For many companies, September and October are consumed by one overriding priority: getting returns filed. This year was particularly challenging as taxpayers worked to implement aspects of the One Big Beautiful Bill Act (OBBBA), digest new guidance, and respond to evolving tariff developments.

Year-end presents a valuable opportunity to refocus. With returns done, taxpayers can step back from the immediate pressures of compliance and focus on identifying planning opportunities and risk areas before they become filing season issues. Some 2026 planning options may even require action before year-end. More important, many return positions for 2026 and 2027 involve proactive planning and documentation.

Preparing now can help improve transaction outcomes, avoid unintended tax consequences, and incorporate tax considerations into business decisions. Taxpayers can also dive deeper into the raft of IRS guidance that arrived over the past year.

This guide is a resource for understanding many of the most pressing tax issues facing companies as 2026 closes and a new year begins. It covers important tax developments over the past year and offers practical insights and actionable planning strategies across many areas of tax, including:

- Tariff refund strategies
- Methods planning for fixed assets and cost recovery
- Key options for structuring mergers and acquisitions
- Credits, incentives, refunds, and cash tax savings opportunities
- Partnership planning
- SALT refund opportunities
- Responding to international tax changes
- Leveraging technology in the tax function

No guide can cover every possible consideration, and there could be additional developments after the publication date. There is no substitute for a discussion with a tax professional. **Contact us** to discuss your company's specific circumstances.

Unless otherwise noted, the information in this guide is based on enacted tax laws and policies as of the publication date and is subject to change based on future legislative or tax policy changes. **Subscribe** **to receive Tax Policy & Legislation updates straight to your inbox**.

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INCOME TAXES

Income tax planning continues to evolve as taxpayers navigate recent legislative changes, new guidance, and long-standing accounting method opportunities. The last several years have fundamentally reshaped the timing of income recognition and cost recovery, creating new planning considerations for managing cash taxes, taxable income, and broader tax attribute utilization. Many planning decisions have become more interconnected. The legislative and economic changes over the past year should prompt companies to reevaluate income tax planning at year-end.

Evolving Rules for Expense Recovery

Over the past few years, there have been major changes to income tax rules. Delayed provisions from the Tax Cuts and Jobs Act (TCJA) and revisions made by the OBBBA have combined to reshape the framework for recovering some of the most common business costs. Many of the provisions have elective options, and choices under one provision can affect the application of others. Taxpayers should evaluate income tax and cost recovery provisions holistically through scenario modeling.

It's important to start with a clear understanding of key planning considerations associated with major cost recovery provisions, which can include:

- **Interest Deduction:** Adjusted taxable income (ATI) once again excludes amortization, depreciation, and depletion for purposes of Section 163(j), which generally limits interest deductions to 30% of ATI. The OBBBA sought to shut down most interest capitalization planning, but taxpayers can consider other capitalization and amortization options to remove deductions from ATI and increase the amount of interest that can be deducted under the cap.
- **Research and Experimentation:** Taxpayers can fully deduct domestic research and experimentation (R&E) costs for tax years beginning after 2024. Most companies already decided how to recover unamortized costs from 2022 through 2024 on their 2025 returns while making a decision on capitalization versus expensing moving forward. But taxpayers that failed to capitalize R&E costs when that was still required, or did not fully capture applicable costs, may be able to secure audit protection by filing an accounting method change for the 2026 tax year. Accounting method changes to correct the treatment of foreign R&E costs also may be filed for the 2026 tax year.
- **Bonus Depreciation:** Bonus depreciation is 100% for property acquired and placed in service after January 19, 2025, and the provision is now permanent. Taxpayers can still elect out on a class-by-class basis, which offers a flexible tool for managing taxable income.
- **Qualified Production Property:** The OBBBA created a new expensing provision allowing taxpayers to deduct the cost of buildings and other structural components used in a qualified production activity. It is a powerful incentive that can provide significant cash tax savings, but it requires work to document qualification and identify and allocate eligible costs.
- **Charitable Deductions:** Beginning in 2026, corporations can deduct charitable gifts only to the extent they exceed 1% of taxable income, with the disallowed amount permanently lost unless the gifts exceed the 10% taxable income ceiling. If the payments align with business objectives, however, there could be opportunities to claim them as business expenses under Section 162.

- **Meals Expenses:** Beginning in 2026, employers can no longer deduct costs associated with an employer-operated eating facility or meals provided to an employee for the convenience of the employer. Determining whether meal costs fit in those disallowed categories can be highly fact-specific and may require taxpayers to track a new category of costs.

Planning Considerations

In the nearly year-and-a-half since the OBBBA was enacted, a steady stream of guidance has helped clarify many of the changes. Taxpayers now have an opportunity to evaluate the impact of the changes in more depth and reassess planning before 2026 return work starts and ahead of any 2027 transactions.

Year-End Opportunities to Defer Tax

Deferral remains a cornerstone of income tax planning, and companies still have time to shift tax out of 2026 and into future years. These strategies involve method changes and elections that can accelerate deductions into 2026 or defer income recognition to a later year. Taxpayers facing unfavorable limitations on deductions, credits, or other tax attributes also may consider reverse method planning, which accelerates taxable income or defers deductions to improve the taxpayer's overall tax position.

Modeling the interactions among the various provisions is critical to developing a favorable overall approach. Regardless of the ultimate strategic direction, accrual basis taxpayers have the flexibility to change their method of accounting for many common items, including:

- **Advance payments:** Taxpayers can recognize income from some advance payments, including upfront payments for goods, services, gift cards, use of intellectual property, and software sales and licenses, in the year of receipt or defer recognizing a portion until the following year. See Final 451 Regulations Clarified | New Tax Treatment for more information.
- **Recurring liabilities:** Some liabilities, such as taxes, warranty costs, rebates, allowances, and product returns generally must be deducted in the year paid but can be accelerated using the recurring item exception.
- **Accrued bonuses:** Under carefully drafted bonus plans, taxpayers may deduct employee bonuses in the year they are earned (the service year) or, if the bonuses are not paid within two-and-a-half months after year-end, in the year the bonuses are paid. Taxpayers that want to avoid paying bonuses to employees who separate before the bonus payment date may still be able to implement strategies that allow for an accelerated deduction for tax purposes.
- **Prepaid expenses:** Under the "12-month rule," a taxpayer can deduct prepaid expenses for certain incurred liabilities — such as insurance, government licensing fees, software maintenance contracts, and warranty-type service contracts — in the year the expense is paid, rather than having to capitalize and amortize the amounts over a future period.
- **Uniform capitalization costs:** Taxpayers might be able to change their methods of identifying and allocating costs that must be capitalized to inventory under Section 263A, including by adopting an available simplified method.
- **Casualty or abandonment losses:** Deductions may be available for some types of losses sustained during the tax year that are not compensated by insurance or otherwise — including

losses stemming from casualties or abandonment of property. See Developing a Tax Plan for Casualty Gains and Losses for more information.

- **Worthless inventory:** Taxpayers may be able to accelerate losses related to inventory that is obsolete, unsalable, damaged, defective, or unneeded by disposing of or scrapping the inventory by the end of the tax year. Taxpayers also may be able to write down the cost of qualifying "subnormal goods" held at the end of the year.
- **Electing shorter depreciable lives:** It is possible to deduct "catch-up" depreciation (including bonus depreciation, if applicable) for assets placed in service in prior years that were mistakenly classified as property with a longer recovery period. Reviewing fixed asset schedules or performing a cost segregation study can identify assets eligible for an accounting method change to shorter recovery periods.

IRS Procedures

The rules for changing tax accounting methods are often complex and usually require taxpayers to submit a request to change their method of accounting to the IRS. The procedure for changing a particular method depends on the mechanism for obtaining IRS consent, which can be either automatic or non-automatic. Rev. Proc. 2025-23, as modified by Rev. Proc. 2025-28 and Rev. Proc. 2026-32, contains the current list of automatic method changes.

The automatic change procedures generally require taxpayers to attach a Form 3115 to the timely filed federal tax return (including extensions) for the year of change and file a separate copy of the Form 3115 with the IRS no later than the return's filing date. By contrast, an application for nonautomatic method changes, which require more information and are more complex, must be filed with the IRS before the end of the tax year for which the change is requested. For 2026 calendar-year accounting method changes, that means filing non-automatic changes by December 31, 2026. Additional issues or procedures may need to be considered if a taxpayer is under IRS exam. Requests for accounting method changes that otherwise qualify as automatic must be submitted using the nonautomatic change procedures if the taxpayer has made a change for the same item within the last five years.

Planning Considerations

Decisions on cost recovery elections and accounting methods can shift significant amounts of taxable income between tax years and can have consequences for many aspects of the tax return. That can include the Section 55 corporate alternative minimum tax, the Section 163(j) limit on the interest deduction, net controlled foreign corporation tested income and foreign-derived deduction eligible income (FDDEI), and the amount of base erosion and anti-abuse tax (BEAT). Taxpayers should also consider the impact of their accounting methods and planning on state returns, especially when states do not conform to federal tax treatment.

Taxpayers should holistically model the implications of making accounting method changes and elections in all planning scenarios before deciding which changes or elections to pursue.

PARTNERSHIPS

The IRS continues to make partnerships a major focus of its enforcement efforts. Despite cuts in funding and personnel, the IRS is intensifying its scrutiny of partnerships across several fronts, including coordinated litigation, new reporting requirements, and targeted audits. Partnerships should carefully evaluate their transactions and positions for risk, paying particular attention to self-employment (SE) tax developments, management fees, and hot asset reporting.

Self-Employment Tax for Partners

Partnerships, particularly management funds, may need to revisit their positions on SE tax following major decisions this year that have further complicated the issue.

The Courts of Appeals for the Second and Fifth Circuits have each ruled on the SE tax exception for "limited partners," creating a mix of standards that could apply differently to taxpayers depending on their federal circuit court and state-law partnership entity.

The Tax Court has established a "passive investor" standard, which hinges on a partner's roles and responsibilities in the partnership. The Tax Court uses a "functional analysis" to apply its standard based on all the facts and circumstances and has asserted that the analysis applies regardless of whether the partnership is organized under state law as a limited partnership, limited liability company, or limited liability partnership. Under the Tax Court's definition of a limited partner, it is very difficult for partners to simultaneously establish they are akin to passive investors for purposes of the SE tax exemption, while participating enough in the partnership to avoid the net investment income tax.

Taxpayers have challenged the Tax Court's position. The Fifth Circuit rejected the Tax Court's passive investor standard in *Sirius Solutions LLLP v. Commissioner*. In its initial opinion in January 2026 (165 F. 4th 374), the circuit court held that state-law limited partners in a limited partnership qualified for the exception based on their limited liability, regardless of their activities in the partnership.

In an unusual move, the same three-judge circuit panel withdrew the opinion and issued a revised version in August (*K Alain, L.L.L.P. v. Commissioner*, No. 24-60240) establishing a new standard, holding that a limited partner means "a partner who plays no significant role in managing or running a business." The Fifth Circuit concluded that "some participation is allowed, so long as the partners do not exercise control over the business," distinguishing between managerial and non-managerial activities.

The Second Circuit followed closely with its own *decision* (Soroban Capital Partners LP v. Commissioner, No. 25-2079) applying a relatively similar standard, finding that limited partners cannot "exert managerial control" or "exercise control and managerial authority." The Second Circuit also noted that it agrees with the Fifth Circuit's holding that limited partners can provide services or have participation in a partnership, "so long as the activities in question do not constitute controlling, managing, or running the business."

Distinctions in Standards

Despite the similar standards established by the two circuit decisions, the Fifth Circuit made clear that it considered its opinion a rejection of the Tax Court's passive investor standard, while the Second Circuit upheld the Tax Court's conclusion. In practical terms, the Fifth Circuit standard still appears to require a

functional analysis similar to the Tax Court's based on the activities of partners, and the Second Circuit even noted that it found "little daylight" between the Fifth Circuit position and the Tax Court's holding in the case (and presumably between the Tax Court's standard and its own).

Although all three standards may be similar, the holdings in the Fifth and Second Circuits appear slightly more permissive than the way the Tax Court has applied its passive investor standard. Both *Alain* and *Soroban* make clear that a limited partner can provide services as long as those services are not managerial. Partnerships may be able to use the circuit courts' guidance to establish themselves as limited partners even if they provide services for the partnership.

At the same time, the rulings make it harder for taxpayers to continue to take the position that a limited partner in a state-law limited partnership qualifies for the limited partner exception based solely on the state-law designation without regard to their activities.

Planning Considerations

The slight variations in standards among the three courts could create differences in how taxpayers should apply a functional analysis depending on the jurisdiction. A decision on the same issue remains pending in the First Circuit in *Denham Capital Management LP v. Commissioner.*

Many partnerships could benefit from reexamining this issue for their 2026 returns. Some — particularly investment managers, service partnerships, and professional services partnerships that took positions based solely on state-law designations and limited liability — may need to apply a functional analysis for the first time. Determinations on the issue could affect tax distributions and estimated tax payments as early as the fourth quarter of 2026.

The issue requires a careful analysis of existing authorities and can be highly fact-specific. All partnerships seeking to make or support a determination on SE tax should consider:

- Contemporaneously documenting the specific activities performed by limited partners
- Including specific terms in partnership agreements delineating the scope of limited partner rights and responsibilities
- Understanding how their SE tax positions could affect potential liability for the net investment income tax
- Monitoring the area for new developments, especially because a decision in the First Circuit could alter the legal landscape

Management Fee Waivers: Investment Fund Planning

Investment funds that use management fee waiver arrangements should consider revisiting the structures in light of continued IRS scrutiny and recent developments. While fee waivers remain a potentially valuable planning tool, the tax benefits depend heavily on whether the arrangement reflects a genuine profits interest subject to meaningful entrepreneurial risk or a disguised payment for services.

Management fee waivers can create advantages for both managers and investors. Instead of receiving a current management fee, managers waive all or a portion of the fee in exchange for an increased profits interest in the fund. If respected, the arrangement can convert what would otherwise be ordinary service income into partnership allocations of capital gain income. Investors may also benefit because

they will be allocated less capital gain in the future (because the gain was allocated to the manager's additional interest) instead of being allocated a management fee expense that is unlikely to be deductible for individual investors under Section 67.

The OBBBA clarified that the "disguised payments for services" rules in Section 707 that can apply to management fee waivers are self-executing even in the absence of final regulations. The proposed regulations remain relevant in applying the underlying statutory rules to transactions.

The proposed regulations generally apply a factor-based model that aims to determine whether arrangements are classified as payments for services. The key consideration is whether the waiver arrangement involves sufficient entrepreneurial risk. The proposed regulations and related IRS guidance have consistently focused on that concept as the primary factor distinguishing a valid profits interest from a disguised fee.

As a practical matter, managers should avoid structures that effectively guarantee recovery of the waived fee amount. Arrangements that cap allocations, provide reasonably certain returns, or otherwise ensure that the manager will recover the waived fee amount are particularly vulnerable to challenge. Fund managers should also consider the five other factors identified in the proposed regulations.

Planning Considerations

For funds considering new fee waiver arrangements, documentation and timing remain critical. Any waiver should generally occur before the management fee is earned and be irrevocable once made. Fund documents should clearly describe the waiver mechanism, the method for determining the additional profits interest, and any notice requirements. Managers also should confirm that the terms of the waiver are communicated to investors in a timely manner and that operational practices consistently follow the governing documents. Technical failures often create risk even when the economics of the arrangement are otherwise defensible.

Managers may also want to evaluate whether existing structures contain features that strengthen the argument that the additional interest is subject to genuine upside and downside risk. For example, allocations tied to long-term fund performance generally present a stronger profile than allocations tied to near-term gains or predetermined metrics. Similarly, appropriately drafted clawback provisions may support the existence of entrepreneurial risk by requiring managers to return amounts ultimately determined to exceed their agreed share of profits.

Finally, managers should remember that fee waivers raise more than tax issues: They also carry legal, economic, and governance implications. Managers and investors should consider not only the tax implications but also the nontax implications of arrangements. Investors increasingly expect transparency regarding compensation structures, particularly when fee waivers alter the timing or character of management compensation.

Hot Asset Reporting

As year-end approaches, partnerships should prepare to report exchanges of partnership interests with unrealized receivables or inventory items, commonly referred to as "hot assets," on Form 8308.

Partnerships are generally required to file Form 8308 with their returns to report a partner's sale or exchange of a partnership interest if any money or other property received in exchange for the interest is attributable to unrealized receivables or inventory items (that is, when there has been a Section 751(a) exchange). Partnerships must also furnish the form or an equivalent statement to the transferor and transferee partners by January 31 of the year following an exchange or, if later, 30 days after the partnership has received notification of the exchange.

Final regulations (T.D. 10048) issued in 2026 make permanent the partial reporting relief the IRS offered over the last few years after expanding the reporting requirements in 2023. Under the final rules, partnerships must furnish only the information in Parts I, II, and III of Form 8308 to the transferor and transferee in a Section 751(a) exchange by January 31 of the year following an exchange (or, if later, 30 days after receiving notification of the exchange). A fully completed Form 8308, including Part IV, must then be attached to Form 1065 for the partnership's tax year that includes the last day of the calendar year in which the Section 751(a) exchange took place.

Planning Considerations

Partnerships should understand that while Part IV is not due January 31, other aspects of Form 8308 remain significantly expanded compared to pre-2023 changes. Partnership transactions often include hot assets that can trigger a Section 751(a) exchange. Taxpayers should establish procedures for identifying transfers involving Section 751 property, obtaining timely notice of transfers, furnishing Parts I through III by the applicable deadline, and completing Part IV before filing Form 1065.

CREDITS AND INCENTIVES

With all the economic and tax planning challenges facing companies, it is important to leverage every available tax benefit. Fortunately, lawmakers have packed the code with credits and incentives designed to reward taxpayers for investing in specific types of activities and geographic areas. In addition, despite what many taxpayers assumed, the OBBBA left in place a healthy and growing energy credit market.

Tax Credit Monetization Planning: Alive and Well

Some taxpayers questioned whether the OBBBA would spell the end of the rapid growth of the transferable tax credit market. In fact, the market for monetizing credits emerged from the legislation largely intact and continues to attract both new buyers and sellers seeking tax savings. The result is a market that remains active, is increasingly sophisticated, and will likely play an important role in project financing and corporate tax planning for years to come.

The continued influx of new buyers has been one of the clearest indicators of market strength. SEC filing data shows that references to transferable tax credit purchases in public company disclosures more than doubled between fiscal year 2024 and fiscal year 2025, highlighting growing corporate adoption and awareness.

Market pricing also reflects continued demand. As of mid-2026, transferable production tax credits and well-structured investment tax credits generally traded at meaningful premiums relative to more complex or uninsured transactions.

Seller Considerations

Transferability continues to offer a compelling alternative to traditional tax equity structures. Before the enactment of the Inflation Reduction Act, developers and other credit-generating taxpayers generally needed to rely on complex tax equity partnerships to monetize credits and depreciation. Section 6418 fundamentally expanded the buyer universe by allowing eligible taxpayers to directly sell specific credits for cash to unrelated parties.

Transferring credits is an excellent option for accelerating liquidity and improving project economics. The simpler transactions open the door for a much broader group of potential buyers. Although direct transfers are less complex than traditional tax equity financing, sellers must still identify buyers, navigate timing issues, and properly substantiate credits.

Pricing is influenced by factors such as recapture risk, technology type, transaction size, and the strength of seller indemnities or insurance support, so sellers should focus on developing robust credit support.

Buyer Considerations

For buyers, the market has become increasingly attractive as transaction processes have matured and pricing mechanisms have become more transparent. The buyer base now extends well beyond the historic pool of tax equity investors and includes a growing number of corporate taxpayers.

For taxpayers with consistent federal liabilities, the market creates an opportunity for cash tax savings. Transactions can typically be structured to align with quarterly estimated tax payments, effectively

replacing a payment to the IRS with a reduced payment for a tax credit. Established diligence frameworks, as well as indemnities and tax credit insurance, can help mitigate potential risks.

Crunch Time for New Markets Tax Credit Program

The Community Development Financial Institutions Fund (CDFI Fund) recently opened its 2026 allocation round for the new markets tax credit (NMTC), launching a competitive process for a valuable incentive. Persistently high interest rates make the subsidized capital available through the program even more valuable. The program is now permanent, with an annual allocation of $5 billion, and taxpayers should expect stiff competition for financing.

The NMTC program supports capital investments in low-income communities by offering loans subsidized by tax credits to eligible businesses for use toward eligible costs, such as real estate, furniture, fixtures, and equipment. The loans often feature interest-only terms; below-market rates; and potential principal forgiveness after seven years, providing a permanent cash benefit to businesses.

Eligible businesses — both for-profit and nonprofit — can apply for NMTC financing for capital expenditure projects in qualifying census tracts. The program supports a wide range of sectors, including manufacturing, healthcare, education, renewable energy, and retail, but restrictions apply to farming and residential rental activities.

Each year, certified community development entities (CDEs) apply to the CDFI Fund for NMTC allocations. If awarded an allocation, CDEs raise equity from tax credit investors and deploy capital to eligible businesses (otherwise known as qualified active low-income community businesses) based on community impact and strategic priorities, which can vary by geography or industry.

Planning Considerations

The NMTC program remains highly competitive. Early engagement with CDEs and timely submission of project information are critical to securing financing. Businesses should prepare detailed project plans that demonstrate strong community impact and align with CDE priorities. Acting early improves the likelihood of receiving funding and could unlock additional benefits.

New Era for Opportunity Zones

Year-end will mark an important pivot point for qualified opportunity zones (QOZs), as the initial program sunsets and a revitalized version created by the OBBBA takes effect. The renewed and now permanent program will bring fresh planning opportunities, but there are also important time-sensitive implications for existing funds and investors.

Tax Benefits

Opportunity zones represent one of the most generous tax incentives ever created by Congress. The provision can offer benefits to investors looking for tax-efficient returns, individual companies operating in specific geographies, or asset managers setting up funds.

Taxpayers can defer eligible capital gains by investing in a qualified opportunity fund (QOF). For investments made after 2026, taxpayers must recognize the deferred gain five years after making the

investment but can receive a 10% increase in basis for holding the investment five years. For QOFs operating in a new category of rural opportunity zones, the basis increase is 30% (QOFs in rural opportunity zone also qualify for a lower substantial improvement standard).

The more powerful tax benefit may be the tax-free appreciation of the underlying investment itself. Taxpayers receive a full basis step-up to fair market value (FMV) for property held 10 years, but the OBBBA added a rule freezing the basis step-up to FMV at 30 years after the date of the investment.

Current Investments

Taxpayers who previously invested in a QOF face an important impending deadline. Capital gains deferred by prior investments must generally be recognized at the end of 2026 to the extent the gains exceed the investment's FMV. This gain cannot be re-deferred with another QOZ investment, but there may still be options to mitigate the impact, including harvesting suspended or deductible portfolio losses, creating deductions through cost segregation, or performing a valuation to substantiate a reduced FMV of the QOF investment. Passive activity and at-risk rules can affect these strategies.

Taxpayers can also consider triggering gain before the end of the year through an inclusion event. Unlike gain triggered by the mandatory recognition rule, gain from an inclusion event might qualify for re-deferral into another QOF. If timed correctly, the 180-day QOF investment window will allow taxpayers to make deferral investments of 2026 eligible gain in 2027 and be eligible for five additional years of deferral and a basis increase of up to 10%.

Existing QOFs and qualified opportunity zone businesses (QOZB) should also consider their capital needs and business plans. Under updated criteria, new census tracts will be designated as QOZs for 2027, a move that is expected to shrink the number of qualifying zones. Under transitional guidance (Notice 2026-40) issued earlier this year, QOZBs and QOFs operating in legacy zones that are not re-designated will have limited opportunities to place qualifying property in service in future years. The IRS will generally allow property to qualify only if it replaces existing property in the ordinary course of a trade or business or is acquired pursuant to a working capital plan in place before the end of the year (and satisfies other requirements).

Planning Considerations

Current investors should consider their options ahead of the mandatory recognition date, which could require action before year-end. QOFs and QOZBs should evaluate their capital and investment plans. If their census tracts are not re-designated, they may need to take proactive steps, including potentially updating a working capital plan before year-end, so that future acquisitions of property can be considered qualifying. In addition, new and legacy QOFs and QOZB s should be preparing to comply with updated reporting rules that are taking effect for 2026 tax returns.

Investors, funds, and businesses can look for fresh investment opportunities in the newly designated zones in 2027. The tax benefits are substantial, but the rules are complex and require taxpayers to structure and maintain investments in specific ways.

MERGERS AND ACQUISITIONS

M&A activity over the past year has been shaped by volatile financing costs, evolving tax policy, and increased regulatory scrutiny. Tax considerations remain a critical driver of transaction structuring and value creation. Buyers and sellers are both focused on identifying transactions that enhance after-tax returns while mitigating emerging risks that can affect transaction outcomes. The IRS is increasingly leaning on the economic substance doctrine to challenge transactions, adding another layer of risk to tax planning. At the same time, stronger tax incentives are creating new tax-efficient opportunities to structure acquisitions and exit businesses.

Court Wins Give IRS Stronger Hand on Economic Substance

The IRS is expected to begin asserting economic substance arguments more aggressively after several recent court victories, making the doctrine a more important factor in evaluating M&A transactions. Lingering uncertainty over the relevancy threshold will complicate the analysis.

The Tax Court recently issued two decisions siding with the IRS. In *Otay Project v. Commissioner* (T.C. Memo. 2026-21), the Tax Court denied a deduction in connection with a basis adjustment under Section 743(b), both because basis was improperly calculated under the technical rules and because the transactions lacked economic substance. In a reviewed opinion, the Tax Court held in *Patel v. Commissioner* (165 T.C. No. 10) that the taxpayer was liable for economic substance penalties for a failed captive insurance transaction.

The most important case may be *Liberty Global Inc. v. United States* (No. 23-1410), in which the Tenth Circuit affirmed a district court decision denying a $110 million refund claim after concluding the transactions at issue lacked economic substance. The transactions sought to exploit a mismatch between the effective dates of the dividends received deduction and the tax on global intangible low-taxed income enacted under the TCJA.

Liberty Global argued that the economic substance doctrine should apply only after a relevancy determination and therefore should not apply to what it characterized as the basic business transactions forming the initial steps of its strategy.

The 2-1 majority opinion rejected Liberty Global's argument, characterizing the debate over a separate relevancy inquiry as a "red herring." The Tenth Circuit agreed with the district court that economic substance was relevant because Liberty Global's transactions "mechanically utilize the provisions of the tax code to obtain a benefit not intended by Congress." The court said Liberty Global cannot escape the economic substance doctrine "by including within its integrated structure steps that might, if standing alone, be considered basic business transactions."

The Tenth Circuit's conclusion is partially at odds with the Tax Court's reviewed decision in *Patel,* which held that "Congress could not have been clearer" that a determination on relevancy is required separately and before the economic substance doctrine is applied. The Tax Court, however, ultimately found that the economic substance doctrine was relevant in *Patel* using that threshold, and the IRS prevailed in the case.

Planning Considerations

Taxpayers should expect the IRS to assert economic substance arguments more aggressively despite the lingering uncertainty over the relevancy threshold. The recent cases reveal how widely the IRS is willing to apply the doctrine, including to issues as different as partnership basis adjustments, dividend effective date planning, and microcaptive insurance. Taxpayers with M&A or internal structuring activity that involves complex or multistep transactions that generate favorable tax results should evaluate the potential application of the economic substance doctrine to their fact patterns.

Different courts may apply different relevancy thresholds for the application of the doctrine, and the Tax Court could apply a different test based on the jurisdiction of the taxpayer. Under the *Golson* rule, the Tax Court generally will follow the precedent of the court of appeals to which the taxpayer would appeal. In *Patel,* the Tax Court followed the common law application in cases from the Sixth Circuit, where the case could be appealed. Taxpayers in other circuits could find the Tax Court relying on cases from their respective jurisdictions.

Ultimately, taxpayers should be careful when relying on arguments that the doctrine is not relevant. The taxpayers in *Patel* prevailed on the legal question of whether a separate relevance determination was required, but the Tax Court still concluded that the doctrine was relevant and sustained the economic substance penalties. Based on the tone in the majority opinion in *Liberty Global*, the Tenth Circuit also appeared inclined to find the doctrine relevant for the taxpayer's transaction, regardless of how the relevancy determination was made.

Qualified Small Business Stock

Qualified small business stock (QSBS) under Section 1202 is an increasingly attractive structuring option — especially when factoring in enhancements enacted under the OBBBA. QSBS offers the potential for tax-free appreciation and often fits well within a private equity structure.

Section 1202 generally allows noncorporate taxpayers to exclude 100% of the gain on QSBS held for five years, up to stated limits. For stock issued after July 4, 2025, the OBBBA also allows a 50% exclusion for stock held for at least three years and 75% for stock held at least four years. The OBBBA increased the maximum amount of gain that can be excluded from $10 million to $15 million (taxpayers can still exclude 10 times basis, if greater). Those changes allow a more lucrative tax benefit for owners while providing flexibility if exit plans change.

The OBBBA also raised the maximum amount of gross assets a qualified small business is allowed to hold before and immediately after the time of issuance from $50 million to $75 million. By increasing the threshold, the OBBBA can restore an existing corporation's ability to issue QSBS if the aggregate gross assets have exceeded $50 million in the past but have never exceeded $75 million. The higher threshold also expands the potential QSBS benefits for private equity firms acquiring target businesses with enterprise values of up to $75 million.

Planning Considerations

QSBS offers a powerful tax savings opportunity for the right type of acquisition at the right size, and the OBBBA changes make the structure even more flexible and accessible. Section 1202 imposes important restrictions on business activity and asset use. Taxpayers pursuing Section 1202 as a planning opportunity should track and document compliance with the asset and

business tests, as well as other Section 1202 requirements. See Qualified Small Business Stock: Planning for Founders and Early Investors for more details.

ESOPs: Liquidity and Exit Planning Options

Employee stock ownership plans (ESOPs) are an increasingly attractive option for private companies to transfer ownership and unlock meaningful liquidity. The transition not only reshapes the ownership structure but can also redefine how employees engage with the company.

For owners, ESOPs offer one of the most tax-advantaged mechanisms to obtain liquidity. The seller receives fair market value and favorable tax treatment on the sale. For the company, ESOPs provide tax-advantaged financing and enhanced cash flow. Employees receive valuable retirement benefits and a rewarding and motivational arrangement.

Financing

An assessment of the strategy should start with financial modeling and valuation assessments to evaluate transaction options and identify tax structuring considerations. A key decision will be whether to have the seller finance the deal or bring in outside capital. ESOP financing demands a deep understanding of long-term cash flows, repurchase obligations, the seller note component, and how the senior bank might provide support beyond the loan to finance the ESOP sale. Many large, and even regional, banks have dedicated ESOP teams consulting with local bankers and credit committees on ESOP transactions.

In a 100% sale to an ESOP, it is typically not practical for a senior bank to fund the entire purchase price, given credit policy and amortization requirements. If the sellers do not want to take back a large seller note as a form of consideration, other forms of alternative capital, including mezzanine lenders, private credit, insurance companies, and pension funds, can bridge the liquidity gap.

Planning Considerations

Navigating ESOP financing requires careful consideration of transaction structure, capital sources, lender requirements, and long-term business objectives. See **Financing Considerations in an ESOP Sale** for more information.

Plan Design

Thoughtful plan design is also key to a transaction's success and focuses on how employees will participate, earn allocations, vest in their benefits, and eventually receive distributions. Such plan provisions have long-term implications and can influence the effectiveness of the ESOP as a retention and recruiting tool. Key design considerations include the following:

- **ESOP Effective Date**: A retroactive adoption at the beginning of the prior fiscal year can allow the company to claim a tax deduction for contributions made to the ESOP for that year. Employees benefit by learning they have already begun to accrue share allocations and vesting credit. A current-year effective date can simplify plan administration and may be the only option if entity restructuring prohibits adopting the plan for a prior year.

- **Employee Eligibility Criteria:** Companies should consider excluding certain groups based on sound business objectives. Such groups can include leased employees, independent contractors, nonresident aliens, employees covered by a collective bargaining agreement, interns, temporary workers, and employees in specific job classifications and locations. Employers also should carefully weigh options for establishing waiting periods and minimum service requirements because those features can dampen employee enthusiasm and delay a sense of ownership.

- **Share Allocation:** Allocating shares based on compensation is a straightforward method that makes it easier for employees to understand and the company to administer. There is flexibility to define eligible compensation, adding a cap or excluding items such as commissions, bonuses, and overtime pay. Another option is a "points" system, which is designed to reward tenure and loyalty.

- **Vesting:** Vesting is a key mechanism for encouraging retention and rewarding long-term commitment while also protecting the company from granting full benefits to short-tenured employees. Many employers adopt a three- or six-year graded vesting schedule, although other options are available. Companies should evaluate employee turnover trends and how vesting can be structured to support targeted retention goals.

- **Distribution rules:** Distribution provisions are essential for managing cash flow, setting employee expectations, and helping ensure compliance with regulatory requirements. Companies should consider whether to defer distributions after employee separation and whether to make payments as a lump sum or in installments. Plans can convert stock balances to cash at separation to lock in value and can also include a small-balance force-out provision to reduce the number of small, inactive accounts maintained by the ESOP.

The above list is far from exhaustive, and there are other options and considerations, including alignment with retirement plans, Roth features, diversification rights, and the definitions of retirement and disability.

Planning Considerations

Decisions regarding eligibility, allocations, vesting, and distributions shape whether the ESOP effectively supports the company's broader objectives. When these features are intentionally aligned with workforce dynamics, company culture, and financial goals, an ESOP can serve as a powerful tool for engagement, retention, and shared ownership. For companies considering an ESOP, early attention to plan design allows leadership to anticipate administrative, financial, and employee effects and build a benefit structure that evolves alongside the business.

International Tax

International tax planning is awash in new developments, from Pillar Two on the global stage to the OBBBA changes in the U.S. Yet some of the most effective planning strategies build on long-standing concepts that are finding renewed relevance in current regimes. Taxpayers should consider a range of options to leverage the new side-by-side system and favorable OBBBA provisions to their advantage, including transfer pricing techniques, intercompany transactions, and accounting methods planning.

International Tax Planning: What's Old Is New Again

The biggest international tax planning opportunities of 2026 should feel familiar. The stability and upside provided to U.S. multinationals by the Pillar Two side-by-side agreement renews the viability of long-standing tax planning strategies that hinge on traditional intercompany transactions and internal financing arrangements. But simply recycling old structures won't be enough. Companies need to update their planning playbook to account for meaningful differences between then and now.

Pillar Two

The agreement on a side-by-side system exempts U.S. multinationals from key aspects of Pillar Two. Multinational groups with U.S. parents will generally avoid the application of the Pillar Two income inclusion rule (IIR) and undertaxed profits rule (UTPR) for tax years beginning in 2026. The side-by-side system does not apply retroactively, meaning companies still must fulfill their obligations under the rules and safe harbors in place for 2024 and 2025. In addition, U.S. multinationals will have to contend with qualified domestic minimum top-up taxes (QDMTTs) in many of the jurisdictions where they have controlled foreign corporations (CFCs).

> **Planning Considerations:** Countries are implementing the side-by-side package into local law on varying timelines. Fewer than 10 jurisdictions have already enacted the necessary legislation, while many others are still working toward implementation. U.S. multinational groups should consider the financial statement implications if they operate in jurisdictions that have not yet enacted the side-by-side system, even where enactment is expected to occur retroactively to 2026.

Going forward, the application of the minimum tax rules for net CFC tested income (NCTI) and the base erosion and anti-abuse tax (BEAT) offer U.S.-parented companies advantages compared to foreign counterparts dealing with the IIR and UTPR. The side-by-side system also provides stability to the international tax system, allowing companies to plan with more confidence.

Importantly, NCTI does not apply on a country-by-country basis like the IIR does, potentially providing benefits for shifting income from high-tax jurisdictions to low-tax jurisdictions. Companies must still account for QDMTTs in local jurisdictions, but there could be opportunities to revisit internal financing arrangements and other intercompany planning strategies.

Under changes made by the OBBBA, only "directly allocable" deductions are allocated to the NCTI foreign tax credit (FTC) limitation category, which also excludes interest and research costs. Based on the initial IRS guidance implementing the rules, taxpayers can look to reallocate interest, stewardship, R&E, settlements, damages, and legal and accounting expenses to U.S. source income. This can increase the ability to use FTCs and reduce the residual U.S. tax imposed on foreign earnings. For more information on the new rules, see **Proposed Regulations Could Affect FTC and FDDEI Calculations for Multinational Taxpayers**.

Planning Considerations

Taxpayers should evaluate whether their intercompany debt, cash pooling, treasury centers, and placement of external borrowing still produce the intended results. For example, deductible interest may reduce foreign taxable income, while the corresponding interest income may be earned in another group entity or jurisdiction. Depending on the applicable tax rates, withholding taxes, FTC profiles, and local limitations, financing arrangements may reduce the group's combined U.S. and foreign tax burden. Familiar techniques involving debt capitalization, refinancing, entity classification, and the timing of interest payments may also merit renewed attention.

These strategies must be evaluated under today's rules rather than simply revived in their historical form. Internal financing can affect NCTI, subpart F income, withholding taxes, FTC limitations, the Section 163(j) limit, transfer-pricing requirements, and local interest-deduction restrictions. It may also increase BEAT exposure when a U.S. corporations makes deductible interest or other payments to a related foreign person. Groups should model NCTI, FTC, and BEAT consequences together because a structure that improves one calculation may produce an adverse result under another.

Reevaluating the Benefit for Foreign Sales and Services

The OBBBA significantly revised the deduction for certain foreign sales and services. While the deduction percentage decreased, other changes expanded the potential benefit for many companies.

The deduction is no longer based on foreign-derived intangible income (FDII) and is now calculated using foreign-derived deduction eligible income (FDDEI). The new version eliminates the reduction in eligible income from a deemed 10% return on tangible property (qualified business asset investment, or QBAI). In addition, eligible income is now reduced only by "properly allocable" deductions, which excludes interest or R&E expenses (see BDO's alert for the IRS guidance on these rules.

These changes increase the value of the deduction for some companies, particularly those that received a limited benefit under the prior rules. With proactive planning, the new deduction becomes even more powerful.

FDDEI is no longer just about identifying qualifying export income. Taxpayers should evaluate whether accounting methods, elections, cost recovery decisions, and income recognition strategies can increase

deduction-eligible income, preserve taxable income needed to use the deduction, and improve the overall benefit.

Accounting method planning strategies can include:

- **Deferring deductions:** Strategies such as electing to capitalize costs, deferring recovery of sales commissions and contract acquisition costs, or foregoing bonus depreciation can increase deduction-eligible income, creating a potential additional permanent deduction out of a timing change.
- **Cost allocation:** Inventory methods planning, indirect cost capitalization, and other allocation strategies can remove deductions from eligible income and increase the FDDEI deduction.
- **Revenue recognition:** Changing methods for advanced payments, long-term contracts, licensing arrangements, service contracts, and the treatment of items such as rebates and incentives can increase the amount of eligible income.
- **Fixed assets:** Repairs and other fixed-asset planning can help manage eligible income.

Planning Considerations

A holistic modeling exercise is critical. Shifting recovery periods and income recognition can affect other aspects of the tax return, including other international provisions and the ability to use credits. Taxpayers should consider a coordinated approach involving accounting methods, R&E expensing elections, bonus depreciation decisions, transfer-pricing policies, and financing arrangements. Modeling these items together may allow taxpayers to increase deduction-eligible income, preserve taxable income, and enhance the value of the Section 250 deduction over multiple years.

Managing BEAT

Companies facing BEAT liability may be able to reduce exposure through proactive planning, including through interest capitalization and the services cost method (SCM) exception.

The BEAT is a minimum tax that applies to multinational that have at least $500 million in average annual gross receipts for the previous three years, make “base erosion payments” to foreign related parties, and have a “base erosion percentage” for the tax year of at least 3% (2% for some taxpayers, including banks).

The definition of base erosion payments is broad and includes “any amount paid or accrued by the taxpayer to a [foreign related party] and with respect to which a deduction is allowable.”

Interest Capitalization

Interest paid to a related foreign party is generally a base erosion payment, but there may be opportunities to reduce the amount of interest included in the calculation by capitalizing it to other assets.

The OBBBA shut down many interest capitalization planning strategies for purposes of the Section 163(j) limit on the interest deduction. Under those rules, interest capitalized to other assets in tax years beginning after 2025 (other than interest capitalized to straddles under Section 263(g) or to specified production property under Section 263A(f)) will remain part of the Section 163(j) calculation.

The OBBBA did not adopt a parallel rule expressly requiring all capitalized interest to be treated as a base erosion payment for BEAT purposes, so interest capitalized to other assets can potentially be removed from the calculation of base erosion payments.

SCM Exception

The BEAT regulations also provide an SCM exception for some outbound intercompany payments for certain intercompany services provided by non-U.S. related parties. This exception can help reduce BEAT exposure.

The IRS introduced the SCM to simplify the transfer pricing of some controlled services transactions and reduce taxpayers' compliance burden regarding routine intercompany services. Under Treas. Reg. §1.482-9(b)(1), the SCM "evaluates whether the amount charged for certain services is arm's length by reference to the total services costs … with no markup."

To be eligible for the SCM for transfer pricing purposes, a service must:

- Be a covered service — either a service enumerated in Rev. Proc. 2007-13 or a service with a median arm's length markup on total services costs no greater than 7%.
- Not be a specifically excluded activity enumerated in Reg. §1.482-9(b)(4).
- Not be excluded from SCM due to the business judgment rule, which disallows the use of SCM if the service is related to competitive advantages, core capabilities, or fundamental risks of success or failure of the business.
- Be substantiated in books and records adequately maintained by the taxpayer.

If the SCM exception is applied to a transaction that is priced as cost plus a markup, only the cost component can be excluded from BEAT. If another non-cost-based method is used, which can include the comparable uncontrolled services price method, the cost component must be separated from the total payment; only the cost component can be excluded from BEAT. In other words, the markup or profit component is always subject to BEAT.

Planning Considerations

Multinationals should carefully analyze outbound payments for intercompany services to determine whether some of the payment can be excluded from BEAT using the SCM exception, whether or not the SCM was used to determine the transfer pricing of those services.

In addition, multinationals availing themselves of the SCM exception must maintain records showing the total costs of the intercompany services, as well as the method used to apportion those costs between the services eligible and ineligible for the SCM exception.

Multinationals should also coordinate their transfer pricing policies and documentation with their BEAT analyses and documentation to support consistency between them. For example, transfer pricing benchmarks with cost-plus markups above 7% may preclude the use of the SCM exception, even if the actual markup used for transfer pricing purposes was below 7%.

Customs and Trade

After a volatile 2025, tariff policy continued to shift across several fronts throughout 2026. Key developments include:

- The launch of the refund process for tariffs imposed under the International Emergency Economic Powers Act (IEEPA)
- The expiration of temporary Section 122 global tariffs after reaching their maximum statutory 150-day limit (with no extension granted by Congress)
- New and proposed Section 301 measures affecting a broad range of trading partners
- Changes to Section 232 tariffs on steel, aluminum, copper, and derivative products, including an August presidential proclamation imposing minimum import prices based on weight, plus a 15% ad valorem tariff, for imports of polysilicon and its derivatives

Sector-specific tariff measures have added further complexity to the trade environment. Companies face continued uncertainty arising from U.S.-Canada trade tensions and related retaliatory measures, as well as practical challenges, including documentation, procedural, and timing considerations, associated with pursuing IEEPA tariff refunds.

Mitigation Strategies

The barrage of developments creates both risks and planning opportunities. Companies may face higher landed costs and unexpected duties, while broader uncertainty can strain cash flow; disrupt supply chains; and complicate pricing, margin, investment decisions, and long-term planning.

Against that backdrop, companies should focus their 2026 year-end review on tariff actions and effective dates, refund opportunities, entry requirements, retaliatory measures, customs valuation and transfer pricing, tariff classification, and documentation readiness.

Planning Considerations

Before evaluating specific customs and trade strategies, companies should identify the products or transactions creating the greatest duty exposure; determine which tariff programs, exclusions, refund opportunities, or mitigation strategies could materially change costs; and confirm whether they have the documentation, data, and internal controls necessary to support their customs and trade positions.

Depending on the facts and circumstances, companies may benefit from several strategies, including recovering previously paid duties, reducing the dutiable value of imports, aligning transfer pricing and customs positions, harnessing free trade agreements, and strengthening documentation needed to support refund and mitigation claims.

IEEPA Tariff Refund Opportunities

Businesses that paid tariffs imposed under the IEEPA should evaluate whether all available refunds have been claimed under the U.S. Customs and Border Patrol's (CBP's) consolidated administration and processing of entries (CAPE) program and whether other refund procedures may provide an opportunity to recover additional duties previously paid. The review should include identifying affected entries,

matching duty payments to the relevant tariff authority and effective dates, confirming whether CAPE claims were filed, and whether corresponding refund amounts (with interest) have been received.

Importers should also consider whether to file an action at the U.S. Court of International Trade (CIT) to pursue IEEPA duty refunds for entries that are past the protest deadline, which generally means more than 180 days after the CBP closed out or liquidated the entry at issue.

Class actions arising from the IEEPA tariff are awaiting certification, which could be imminent and eliminate the need to file individual lawsuits. The deadline to file an action at the CIT is February 4, 2027, for importers that paid the "fentanyl" IEEPA tariffs on goods from China, Canada, and Mexico, and April 5, 2027, for those that paid the "reciprocal" IEEPA tariffs.

Companies should assess whether contractual terms or other business arrangements affect entitlement to IEEPA tariff refund proceeds. In many cases, vendors passed the tariff cost through to customers, some of which are now seeking payment equal to the refund amount as a condition of continuing the business relationship. Reviewing such arrangements early can help identify competing claims to refund proceeds and inform the company's recovery strategy.

Planning Considerations

Companies should consider the interaction between IEEPA refund opportunities and other duty recovery strategies, including drawback, to avoid duplicative claims and preserve documentation needed to support recovery. Relevant records may include entry summaries, duty payment records, Chapter 99 tariff classifications, importer-of-record data, supplier and customer contracts, customs broker reports, and prior protests or post-entry filings. Because refund eligibility may depend on entry date, liquidation status, protest status, or administrative instructions, companies should identify filing deadlines and preserve their rights as early as possible.

Duty Drawback

Companies that import merchandise and subsequently export, destroy, or use that merchandise in exported products should evaluate whether they can recover duties through the duty drawback program. Drawback can provide refunds of up to 99% of certain duties, taxes, and fees previously paid and may represent a significant source of cash flow improvement. As part of a year-end review, companies should:

- Identify imported products that were subsequently exported, destroyed, or incorporated into exported goods;
- Evaluate whether drawback claims have been filed for all eligible periods;
- Assess documentation readiness, including import, export, manufacturing, and inventory records;
- Review relationships among importers, manufacturers, and exporters to determine whether drawback rights have been properly preserved;
- Quantify potential refund opportunities using available import and export data via the Automated Commercial Environment (ACE).

Planning Considerations

Because drawback claims generally involve a five-year lookback period, companies that have not previously evaluated eligibility may be able to recover substantial amounts of previously paid duties.

First Sale Rule

Companies importing goods through multitier supply chains should evaluate whether the first sale rule (FSR) will reduce customs duties. Under the FSR, qualifying importers may be able to base customs value on the price paid in the earliest sale in the supply chain rather than the higher price paid by the U.S. importer. The potential benefit of the FSR becomes more significant as tariff rates increase because duties are normally calculated ad valorem (as a percentage of customs value). Year-end planning considerations include:

- Identifying transactions involving manufacturers, trading companies, distributors, or other intermediaries;
- Determining whether sufficient documentation exists to support a bona fide first-sale transaction;
- Reviewing intercompany and third-party agreements to confirm eligibility;
- Quantifying potential duty savings under alternative valuation approaches; and
- Evaluating whether implementation would require changes to customs procedures, documentation, or compliance controls.

Companies experiencing significant tariff costs may find that FSR planning can provide meaningful savings without requiring supply chain restructuring.

Cost Unbundling

Companies should evaluate whether certain costs currently included in the customs value of imported merchandise may be treated as nondutiable and excluded from duty calculations. As tariff rates increase, even modest reductions in customs value can generate meaningful duty savings.

A cost-unbundling review generally focuses on identifying charges that may be separately stated and excluded from customs value under applicable customs rules. Depending on the facts and circumstances, these costs can include certain buying commissions, management or service fees, exclusive distribution rights payments, and some U.S.-based R&D costs. As part of year-end planning, companies should:

- Review intercompany and third-party agreements to identify costs that may be embedded in product pricing;
- Evaluate whether charges currently included in customs value are appropriately characterized and documented;
- Assess whether modifications to invoicing, contracting, or pricing practices could improve customs valuation outcomes prospectively;
- Confirm that any excluded costs are supported by sufficient documentation and treated consistently across customs, accounting, and tax functions; and
- Quantify potential duty savings associated with alternative valuation approaches.

Because customs duties are generally calculated as a percentage of customs value, reducing the dutiable value of imported merchandise can provide ongoing savings across future import transactions.

Companies facing elevated tariff costs should consider whether a cost-unbundling review could help reduce duty exposure while strengthening customs compliance.

Customs Valuation and Transfer Pricing

In light of evolving tariff and trade developments, businesses that import products from related parties should evaluate whether customs valuation and transfer pricing policies remain aligned. Decisions affecting transfer pricing can also affect customs duties, and vice versa. As tariffs increase, customs duties could exceed income tax costs for some import-intensive businesses. As a result, companies should review whether current pricing policies appropriately balance customs and income tax considerations. Year-end planning considerations include:

- Reviewing transfer pricing policies for transactions involving imported goods;
- Confirming that customs valuation positions are adequately supported and consistent with transfer pricing and customs documentation;
- Evaluating whether year-end transfer pricing adjustments could create customs implications or refund opportunities;
- Assessing whether nondutiable costs can be identified and appropriately excluded from customs value; and
- Coordinating customs, transfer pricing, finance, and tax functions when evaluating pricing changes.

Planning Considerations

A coordinated review of customs valuation and transfer pricing policies can help companies reduce duty exposure, strengthen compliance, and avoid unintended consequences resulting from inconsistent positions.

Canada Trade and Tariff Planning Considerations

Businesses with operations, customers, suppliers, or investments in Canada should evaluate the impact of recent U.S. and Canadian tariff measures on 2027 tax and business planning. Recent developments have the potential to affect product costs, transfer pricing policies, inventory strategies, supply chains, and cash flow. Planning considerations include:

- Reviewing tariff classifications and country-of-origin determinations to confirm proper duty treatment;
- Evaluating customs duty mitigation opportunities, including any exclusions and duty drawback programs;
- Assessing whether transfer pricing policies remain appropriate in light of increased customs costs and changing supply chain economics;
- Modeling the impact of tariffs on profitability, pricing, and working capital;
- Reviewing contracts and sourcing arrangements to identify opportunities to reduce tariff exposure; and
- Considering supply chain diversification when there is meaningful Canada-related trade exposure.

Compensation and Benefits

Human capital management continues to evolve as employers navigate a growing mix of tax compliance obligations, workforce expectations, and changing federal rules. Recent legislative and regulatory developments have expanded reporting requirements, altered the tax treatment of certain employee-related expenses, and increased the importance of proactive payroll and benefits governance. Organizations that periodically reassess their compensation, benefits, and payroll practices are likely to be better positioned to reduce exposure and capture available tax benefits.

New Employer Reporting Requirements on Tips and Overtime

Transition relief has ended, so employers will be required to fully report qualified tips and qualified overtime compensation paid to employees and independent contractors in 2026.

The reporting supports the deductions for individuals created by the OBBBA, which are in effect from 2025 through 2028. Although the deductions are claimed at the individual level, employers must make important employer-level determinations to comply with the reporting requirements, including:

- Determining whether employee occupations fit in one of the qualifying categories for receiving qualified tips
- Verifying that tips are voluntary
- Evaluating whether overtime is required under the Fair Labor Standards Act (FLSA)

Under transitional penalty relief, employers generally were not required to report overtime and tip information for 2025. That relief has expired, and employers should be preparing to include the required information on Forms W-2 and 1099-NEC for 2026. Individuals generally cannot take the deductions unless the qualified tips and overtime compensation are reported.

The IRS has released final regulations on tips (T.D. 10044) and informal guidance on overtime compensation (FS-2026-13).

Overtime Pay

For purposes of the deduction, qualified overtime pay is generally pay in excess of the regular rate of pay under FLSA (the “half” in “time-and-a-half”). The overtime must be required under section 7 of the FLSA, which excludes:

- Employees exempt from the FLSA, such as those under a collective bargaining agreement
- Overtime pay that may be offered by employers but is not required under the FLSA, such as for time worked exceeding eight hours a day but not exceeding 40 hours in a week
- Overtime pay at rates exceeding the required rate under the FLSA, such as double time

Employers should evaluate their policies against state and federal requirements to verify that they are reporting only qualified overtime compensation.

Tip Reporting

Eligible tips must be earned in an occupation that customarily and regularly received tips before December 31, 2024. The IRS has issued final regulations with an exclusive list of more than 70 qualifying occupations organized into eight broad groups:

- Beverage and food service
- Entertainment and events
- Hospitality and guest services
- Home services
- Personal services
- Personal appearance and wellness
- Recreation and instruction
- Transportation and delivery

Many of the 70 listed occupations are fairly broad categories but include "illustrative examples." The illustrative examples are not exhaustive, and companies may employ workers in jobs that could potentially fit under a broad occupation, but that are not explicitly described in an example.

Planning Considerations

In the final regulations, the IRS expanded the list of qualified occupations to include additional roles such as visual artists, floral designers, and gas pump attendants, signaling broader eligibility than many employers expected. Companies in industries outside hospitality may have employees or independent contractors who could potentially fit under the broad definition of an occupation but are not covered by a specific example. Employers should make reasonable determinations on whether a job description fits under a listed occupation. The IRS said it intends to interpret the occupation definitions in "a fair and impartial manner consistent with their commonly understood meaning."

Meals Deduction Changes Could Require Action

New rules for the meals deduction that became effective in 2026 may require employers to separately identify new categories of costs. The changes generally disallow deductions for an employer-operated eating facility and meals provided to an employee for the convenience of the employer.

Determining whether meal costs fit in the disallowed categories can be a highly fact-specific determination. The rules are complex, and taxpayers should evaluate their meal costs to verify whether they are properly tracking nondeductible meal costs or missing allowable deductions.

The changes stem from the TCJA, which eliminated the deduction for entertainment expenses and extended the 50% limit on the meals deduction to de minimis fringe benefits under Section 132(e), which were previously 100% deductible if occurring in eligible employer-operated eating facilities.

The TCJA also included a delayed change under new Section 274(o) for amounts paid or incurred after December 31, 2025. The changes disallow deductions for:

- Any expense for the operation of an employer-operated facility described in Section 132(e)(2) and for food or beverages associated with that facility; and

- Any expense for meals provided to an employee for the convenience of the employer, as described in Section 119(a).

The OBBBA further amended Section 274(o) to provide narrow exceptions from the above disallowances for employer-provided meals on some commercial or fishing vessels, oil and gas platforms, fish processing facilities, and meals sold by taxpayers in a bona fide transaction for adequate and full consideration.

Planning Considerations

The deductibility of meal and entertainment costs is determined by a complex mix of overlapping rules and exceptions. Entertainment expenses generally are not deductible, but there are several exceptions in Section 274(e). The IRS released final regulations on the rules under Section 274 in 2020, but many businesses are still not applying the rules correctly. Substantiation is key to deducting eligible costs, and taxpayers should reassess the rules to properly identify, track, and document deductible meals and entertainment costs.

Employer-Operated Facilities

Section 132(e)(2) defines an employer-operated eating facility as a facility located on or near the employer's business premises that generates enough revenue to cover its operating costs and does not discriminate in favor of highly compensated employees.

Before the enactment of the TCJA, meal costs associated with those facilities received preferential treatment under Section 274, which exempted the expenses from the 50% limit on other meal deductions. The TCJA removed that exception beginning in 2018 and now disallows a deduction altogether for those expenses if paid or incurred after 2025.

Planning Considerations

The 2020 final regulations under Section 274 do not provide any additional guidance on the disallowance of deductions for operating eating facilities under Section 132(e). The IRS is working on additional guidance clarifying what the term "eating facility" means for purposes of the new disallowed deduction rules, but employers must make reasonable interpretations based on the available authorities until new guidance is issued.

Meals Provided at the Convenience of the Employer

Section 119 defines meals provided at the convenience of the employer as meals provided on the employer's business premises for substantial noncompensatory business reasons. Generally, meals must be provided during working hours, with limited exceptions. The IRS has not yet issued further guidance on the application of Section 119 in the context of the disallowed deduction under Section 274.

Planning Considerations

The underlying determinations can be highly fact-specific and could affect taxpayers across a broad range of industries, such as hospitals, manufacturers, distributors, and other companies with large employee facilities that often include onsite cafeterias, as well as construction, drilling, mining, and other services that can require prolonged employee stays at remote locations with employer-provided meals. It is important not only to identify nondeductible costs

but also to evaluate whether employers are missing allowable deductions. For instance, most employer drinks and snacks in kitchens or breakrooms are still 50% deductible, and restaurants may generally deduct 100% of the cost of meals provided to food service employees before, during, or after their shifts.

Payroll Risks and Compliance

Payroll tax compliance remains one of the most significant and frequently overlooked risk areas for employers. Payroll taxes can represent one of an organization's largest tax obligations, and even minor errors can lead to substantial penalties; unexpected costs; employee relations issues; and complications during major business transactions, including mergers, acquisitions, and public offerings. As employers evaluate year-end tax and finance priorities, an assessment of payroll processes, controls, and compliance procedures should be a key component of the planning agenda.

Worker Classification

Classifying workers has long been a crucial part of payroll and benefits and a focal point for tax and labor agency audits. Employers must navigate a complex framework of federal, state, and local rules when determining whether a worker should be treated as an employee or independent contractor. The standards differ based on the purpose, including IRS determinations for payroll tax withholding, the Department of Labor rules for overtime and minimum wage, and state and local tax and labor laws.

Because different government agencies often apply different classification standards, employers should periodically revisit existing classifications, particularly as job duties evolve or workers begin providing services across multiple jurisdictions. Year-end can be the perfect time to review worker classifications, validate supporting documentation, and identify situations that might warrant correction before they become audit issues.

Taxable vs. Nontaxable Compensation

Compensation in its simplest form means anything an employer provides to an employee in exchange for services. The difficult question is whether the value of that compensation must become part of the employee's taxable wages because failing to report or misreporting compensation can result in large penalties. Confusion is common considering that taxable compensation can take many forms, including:

- Bonuses, awards, presents, and gift cards (no matter how small the value)
- Trips (including spousal or other "plus one" or family members accompanying the employee)
- Stock-based compensation
- Commissions
- Fringe benefits (car or housing allowances, stipends for cell phones or internet, moving expenses, etc.)
- Group term life insurance over $50,000 per year or whole life insurance premiums;
- Disability insurance premiums
- Education assistance for employees or their children
- Forgivable loans, including paying for education on the condition the employee will work for the employer for a specified period after graduation

Nontaxable compensation, which must meet strict IRS rules, includes qualified benefits such as employer-paid health insurance and retirement plan contributions. However, those fringe benefits and others can become taxable if the employer fails to comply with requirements.

Failure to properly include taxable compensation in employee wages can lead to under-withholding, employment tax exposure, Form W-2 reporting corrections, and potentially heavy penalties and interest. Employers should consider implementing a formal process that requires all departments to route compensation-related programs through payroll and tax personnel before distribution to employees.

Planning Considerations

Year-end is an ideal time to assess whether recent organizational changes have created payroll risks. Events such as acquisitions, expansion into new states, implementation of new payroll technologies, changes in benefits offerings, or transitions to a new payroll provider often introduce compliance gaps that might not become apparent until months later. Employers should view payroll compliance as a continuous risk management function rather than as a routine administrative process. A proactive review of worker classifications, payroll deductions, compensation reporting procedures, and internal controls can help reduce exposure to tax assessments and employment-related penalties while improving operational efficiency and employee confidence.

State and Local Taxes

State and local tax (SALT) issues consistently rank among the top concerns of tax and finance professionals. Eighty-six percent of respondents to BDO's 2026 Tax Strategist Survey said increasing state audit activity is a policy challenge, with 32% describing it as a significant challenge. It's no surprise why. State laws evolve rapidly and vary widely by entity, income, or industry. Fortunately, SALT planning strategies can be among the most effective, and they often lead to refund opportunities.

OBBBA Conformity

The OBBBA made important changes to federal tax law, and 2026 saw many states passing legislation to decouple from various aspects of the act to preserve their state coffers. The most common provisions that states decoupled from include:

- The limit on interest deductions under Section 163(j);
- Expensing rules for bonus depreciation and qualified production property; and
- Expensing for R&E under Sections 174 and 174A.

Because state approaches to conformity vary so widely, companies operating in multiple jurisdictions must perform state-by-state analyses to understand their filing and reporting responsibilities.

Planning Considerations

SALT conformity remains one of the most difficult aspects of tax compliance, with 28% of respondents to BDO's Tax Strategist Survey identifying it as having a major impact. State conformity can affect some of the most important tax planning decisions, including interest capitalization strategies, capitalization and expensing elections, M&A transactions, and transfer pricing.

SALT M&A Considerations

Companies often do not realize that almost all transactions have SALT implications. Failing to address SALT questions early can create complications down the road. For instance, taxpayers should think about SALT issues if they're planning to:

- Buy, sell, or restructure a business
- Expand into new states, add locations, or hire remote employees
- Implement a new enterprise resource planning, tax provision, compliance, or reporting system
- Launch a new service, digital asset initiative, or revenue stream

Without taking SALT into account before those kinds of undertakings, taxpayers might face problems such as:

- Failing to file income, franchise, or gross receipts tax returns in all relevant states
- Overly voluminous state income tax filings that are too voluminous
- Receiving a state income tax notice, audit request, nexus questionnaire, or proposed assessment
- Inflated state tax liabilities or apportionment percentages

Companies may need help understanding how changes to federal or state tax laws affect state income taxes, including how to account for net operating losses, credits, and incentives. There also may be opportunities for proactive planning to reduce filing burdens, improve compliance, or identify potential refunds.

Planning Considerations

State taxation should not be treated as an afterthought, and it is important to examine each company's facts, including revenue streams and business activities. Without an informed approach, companies risk missing state tax savings, facing unexpected state tax liabilities, and losing control over a growing portion of their tax profiles. For more information, use our State Income Tax Assessment to identify ways to help reduce state income tax liabilities.

Addressing SALT Exposure With Transfer Pricing

State transfer pricing is often overlooked, but it is a critical element of tax planning. While companies frequently focus on federal and international transfer pricing issues, the state implications can be equally material. Ignoring state transfer pricing considerations can expose companies to substantial state tax risk and unexpected state tax liabilities and result in missed opportunities for state tax savings.

Every transfer pricing arrangement that affects related-party transactions has potential state tax consequences, whether in cross-border contexts or purely domestic settings. States apply their own rules, often diverging significantly from federal standards and creating substantial complexity. If state impacts are not analyzed, companies can face duplicative adjustments, double taxation, or disallowed deductions.

Integrating state transfer pricing into overall tax planning delivers two key advantages: It reduces exposure to audit challenges and penalties and can unlock meaningful tax savings by aligning intercompany pricing with state-specific requirements. Companies that proactively incorporate state rules into their transfer pricing policies strengthen compliance, lower risk, and improve after-tax results.

Given the differences in state rules — from separate reporting jurisdictions to combined reporting states with unique adjustment powers — thoughtful planning and detailed documentation are essential. By embedding state transfer pricing analyses into benchmarking, implementation, and continual monitoring, taxpayers can better navigate the evolving SALT landscape while safeguarding enterprise value.

Sales Tax Refund Opportunities

Companies operating in multiple states with expansive procurement functions may be paying more sales and use tax than required.

States have a dizzying array of sales and use tax rules, with varying rates applying to specific categories and different localities offering unique exceptions. Even well-managed organizations can often overpay due to sourcing, exemption, or classification issues.

Some of the most common overpayments arise from purchases of machinery, equipment, and consumables (including energy) used in the manufacturing process. While overpayments can occur in

any sector, the manufacturing, healthcare, and natural resources industries are the most frequently affected.

A sales and use tax review can uncover meaningful refund opportunities. The process includes reviewing several years of purchase records to identify missed exemptions, overpayments, and inadvertent errors.

Planning Considerations

A sales tax review can be particularly timely for taxpayers that recently changed ERP systems or tax engines. Taxpayers with large manufacturing, research, or technology-related purchases can also benefit.

Financial Statements

Developments over the past several years have made accounting for income taxes more complex and challenging. The uneven implementation of the side-by-side agreement on Pillar Two across different jurisdictions complicates the financial statement implications. The ongoing implementation of OBBBA changes can also affect the measurement of deferred tax assets and liabilities and valuation assumptions. But the biggest change comes on the regulatory side, with the enhanced tax disclosure standards introduced by the Financial Accounting Standards Board (FASB). Fortunately, most public companies already have a year of reporting under their belts, revealing some key takeaways for future reporting.

Lessons From the First Year of New Income Tax Disclosures

The FASB significantly expanded rate reconciliation disclosure requirements for both public business entities (PBEs) and non-PBEs when it released new rules under Accounting Standards Update (ASU) No. 2023-09, *Improvements to Income Tax Disclosures*.

The new rules require entities to annually disclose the amount of income taxes paid (net of refunds received) disaggregated by federal, state, and foreign jurisdictions. The ASU also introduced requirements for all entities to disclose income taxes paid to individual jurisdictions exceeding a specified threshold and updated disclosures about unrecognized tax benefits (UTBs) and undistributed earnings of subsidiaries.

The ASU took effect for PBEs for fiscal years beginning after December 15, 2024, and for non-PBEs for fiscal years beginning after December 15, 2025. Most PBEs now have one season of reporting under the new rules behind them, offering lessons for both PBEs applying the rules again and for non-PBEs that will apply them next year for the first time when preparing their 2026 financials.

Adoption

The ASU allowed companies to choose whether to apply its new rules prospectively or retrospectively. Under the former, PBEs applied the new rules only to 2025, which is simpler but limits comparability across periods presented. Under the latter, a company would restate prior periods, which is more complex but provides consistency across years presented.

Foreign Tax Effects

Under ASU 2023-09, companies must disaggregate foreign tax effects by both jurisdiction and nature for any reconciling item meeting the 5% quantitative threshold. This requirement created just a handful of new line items for some businesses while expanding rate reconciliation for others, depending on the geographic profile of their operations.

A company that separately disclosed a jurisdiction or line item in its first filing must continue presenting that in rate reconciliation — even if the jurisdiction or line item falls below the 5% threshold — until it naturally cycles off the comparative window for prior periods.

Planning Considerations

The 5% threshold requires filers to exercise judgment because it can translate to a relatively smaller dollar amount when pretax income is low in any given year. During the first year of adoption, companies had to determine whether separately disclosing a technically qualifying item would be meaningful or material to investors. Some companies provided detailed country-level disaggregation and others presented more aggregated disclosures.

UTBs

ASU 2023-09 introduced a rate reconciliation line for changes in UTBs, but its use of the word "may" gave companies discretion in how to apply it.

Under the final standard, companies must present prior-year UTB changes on a dedicated UTB line, aggregated across all jurisdictions. For current-year UTBs, the standard allows companies to either net the UTB against the tax category that generated it or include it in the UTB line.

Planning Considerations

The ASU's use of "may" created presentation differences, but many companies chose to present all UTB changes on a single line, probably to keep their reporting simple and consistent.

State and Local Taxes

ASU 2023-09 does not require disaggregation of state and local tax reconciling items in the rate reconciliation. Companies must qualitatively disclose only the states making up the majority (greater than 50%) of the state and local tax effect.

That threshold allows for significant activity in a state line that is not visible to observers reading a filing. Apportionment changes, footprint shifts, discrete items, valuation allowances, and state tax credits can all be embedded in a single line with limited explanation.

Non-PBE Considerations

The primary distinction for non-PBEs is how they explain the difference between the statutory and effective tax rates.

Non-PBEs are exempt from the numerical tabular reconciliation required of PBEs. Instead, they must provide a narrative that qualitatively describes the nature and effect of certain items that significantly influence the difference between the statutory and effective tax rates:

- State and local income tax, net of federal (national) income tax effect
- Foreign tax effects
- Effects of changes in tax laws or rates enacted in the current period
- Effect of cross-border tax laws
- Tax credits
- Changes in valuation allowances
- Nontaxable or nondeductible items
- Changes in UTBs

Non-PBEs must also list individual jurisdictions that result in a significant difference between the statutory and effective tax rates.

That differs from PBEs, which must disclose in the "State and Local Income Tax" category the state and local jurisdictions making up more than 50% of the tax effect. Thus, if a PBE had tax expense in 11 states, but only four made up the majority of the effect, the PBE would list only those four jurisdictions. PBEs must also disaggregate foreign tax effects by both jurisdiction and nature.

The objective is to provide financial statement users with an understanding of the primary drivers of the tax rate without the burden of precise quantitative disaggregation.

Although non-PBEs must provide only qualitative disclosures, they can elect to report incremental information, such as a tabular reconciliation, similar to that required of a PBE. Non-PBEs electing such reporting should consider applying the full disclosure framework prescribed for PBEs so that the disclosure is not misleading.

Planning Considerations

Companies must keep comparability in mind as they approach their first or second filing season under ASU 2023-09. They should provide clear and concise narratives that explain judgment decisions to all relevant stakeholders. Shifting to the new requirements can be challenging, so an early start is critical to accurate, timely filing.

Companies can consider using outside advisors to provide models and technology specifically designed to handle the new disclosures. For more on lessons from the first year of ASU 2023-09 reporting, see BDO's detailed publication.

Tax Function and Compliance

The artificial intelligence (AI) revolution is here. One of the implications for the tax function is clear: Tax professionals are expected to do more with less, all while IRS compliance responsibilities grow. One of the keys to leveraging new technology is to align the tax and finance functions, resulting in more automation, better data management, and more powerful analytics. It is also important to keep up with the IRS's evolving payment and filing rules while remembering that the agency's systems and employees don't always get it right. Their mistakes can turn into your refund with the right planning.

From Silos to Shared Intelligence: Aligning Tax and Finance

The tax and finance functions are deeply interdependent. Tax relies on enterprise resource planning systems; general ledgers; customer relationship management platforms; payroll; human resources; and other finance-owned data to calculate, report, forecast, and comply. Finance, in turn, depends on tax calculations and insights for financial reporting, cash flow analyses, forecasting, and transaction modeling.

Yet many organizations still manage that relationship through handoffs, spreadsheets, manual extracts, and point-in-time reconciliations. The result can be delayed analyses, inconsistent data, duplicated effort, and greater reliance on estimates. In an environment where leaders expect faster answers and greater visibility, alignment is no longer simply an efficiency initiative. It is an operating-model priority.

Why Alignment Matters Now

The role of the tax department is becoming more strategic. Tax leaders are increasingly asked to weigh in on business decisions, evaluate the tax implications of transactions, model legislative and regulatory changes, and identify opportunities that affect cash flow and earnings.

That broader mandate positions the tax department as an important contributor to strategic transactions, business resilience, and risk management. It also raises the standard for the data behind tax advice. When the tax and finance functions share governed data, common definitions, and connected workflows, tax leaders can respond more quickly to executive questions, and the finance department can incorporate tax effects earlier in planning and decision-making. The organization gains a more complete view of potential benefits, risks, and tradeoffs before decisions are finalized.

Shared Data Foundation

Alignment begins with access, but it should not end there. Providing the tax function with another data feed may solve an immediate request while preserving the same downstream dependency. A more durable model connects tax to an enterprise data lake, data hub, or other governed platform and gives tax an active role in defining requirements, mappings, controls, and business-ready views.

The objective is not technology for its own sake. It is a shared information model in which the finance and tax functions work from consistent data, understand lineage, and agree on how financial information is transformed for tax use. That foundation can improve accuracy, speed, scalability, and auditability while allowing professionals to spend more time on analysis and planning.

Centralized Data, Automation, and AI

Centralized data also creates a practical foundation for automation and AI. Rather than asking employees to prompt large public language models against raw or unapproved information, organizations can embed task-based automation within controlled workflows. Approved data views, documented tax rules, defined thresholds, human review, and retained audit evidence can help agents perform recurring activities consistently and transparently.

Silos to Synergy

Organizations do not need to reach the same destination in one step. They should begin by assessing how mature, connected, and collaborative the tax and finance functions are across data, process, technology, people, and governance. Regardless of the starting point, the following actions can create momentum:

- Creating a joint tax and finance governance team with clear ownership for priorities, data definitions, access, controls, and issue resolution.
- Taking inventory of recurring tax data needs across provision, compliance, planning, controversy, and reporting, including sources, frequency, volume, pain points, and current automation.
- Defining tax-ready data views and source-agnostic schemas so downstream work does not need to be rebuilt every time an ERP, chart of accounts, or source system changes.
- Prioritizing a manageable use case that is recurring, rules-based, data-intensive, and visible enough to demonstrate value.
- Building controls into the design, including role-based access, documented business rules, human approval, exception handling, evidence retention, and SOX alignment.
- Measuring outcomes that matter to both functions, such as cycle time, reconciliation effort, data quality, exception rates, and time redirected to analysis.

The most effective organizations will treat tax as a partner in finance transformation and data strategy, not as the final recipient of information. By moving from handoffs to shared intelligence, tax and finance can create a more proactive, scalable, and resilient operating model.

Post Office Rules and Filing Deadlines

A new U.S. Post Office (USPS) rule on postmarks took effect on December 24, 2025, raising potential challenges for taxpayers that rely on postmarks to establish that a filing deadline was met.

The timely mailing and payment rules under Section 7502 (commonly referred to as the “mailbox rule”) generally provide that a return or payment may be deemed filed or paid on the date of mailing if properly addressed and postmarked by the due date, even if it is delivered after the due date.

The new postal rule clarifies that the USPS will generally postmark mail on the day it is received in the distribution center or retail unit, which may not be the same day the mail was originally submitted or tendered for mailing. The rule states:

> While the presence of a postmark on a mailpiece confirms that the Postal Service was in possession of the mailpiece on the date of the postmark’s inscription, the postmark date does not inherently or necessarily align with the date on which the Postal Service first accepted possession of the mailpiece.

The rule notes that for proof of mailing when originally submitted, customers can request a manual local postmark at a USPS retail location or obtain proof of mailing (for example, a certified mail receipt). Pre-printed labels do not demonstrate that the USPS has accepted the mailpiece, nor do they establish the date of acceptance.

Planning Considerations

Evidence of timely mailing or filing is a crucial part of the federal, state, and local tax filing systems. The new USPS rule indicates that depending on the method of submission, there could be delays in the postmarking of a mailed document, including tax returns or payments. Taxpayers seeking to use the mailbox rule as proof of timely submission should understand the potential for delay and consider requesting a manual postmark at a local USPS location. Alternatively, taxpayers can use specifically identified private delivery services that meet the requirements under Section 7502.

Understanding Changing Payment Rules

The IRS is seeking to phase out paper checks for both payments and refunds and is increasingly pushing taxpayers toward electronic transactions. Taxpayers should assess the available electronic options before making any payment or refund transaction. Failing to use an available (or required) electronic option could delay refunds or create problems with the IRS crediting a payment to the correct account.

The IRS is still accepting paper checks for individual tax payments but is adding additional electronic options. Businesses are already required to remit many types of payments electronically, but checks can still be used if electronic methods are not available. International taxpayers should evaluate the existing options for refunds and payments, which can include paper checks or wire payments.

Account and Interest Recovery

Not enough taxpayers take the time to double-check the IRS's math. Sophisticated companies typically have complex payment and filing relationships with the IRS. That dynamic creates the potential for IRS errors in calculations of penalties and interest. A transcript review often can uncover refund opportunities.

Why Do Errors Arise?

IRS accounts can be affected by amended returns, examinations, carrybacks, payment transfers, refund offsets, disaster relief provisions, administrative adjustments, and procedural changes that require complex account postings. When multiple transactions affect the same tax period, IRS errors in the timing or sequencing of postings can result in deficiency interest being overcharged or refund interest being underpaid. Similarly, penalties might be assessed despite reasonable cause, first-time abatement eligibility, filing or payment relief provisions, or processing mistakes. Because interest calculations frequently depend on the precise dates of assessments, payments, refunds, and credits, even minor posting errors can create meaningful overpayments, particularly for taxpayers with large balances or long examination cycles.

When Should Taxpayers Consider Reviews?

Large corporations, multinational businesses, and taxpayers that have undergone IRS examinations often have numerous account transactions and significant interest accruals, increasing the chances of processing errors that could create refund opportunities. Taxpayers that have filed amended returns, submitted refund claims, received examination adjustments, made large estimated tax payments, or undergone M&A activity may have complex account histories that warrant review. Employment and excise taxes can also raise posting issues involving deposits, assessments, and subsequent adjustments. In many cases, the more volume and complexity of IRS account activity, the better chance of errors.

Planning Considerations

Every business and individual with federal tax filing obligations has IRS transcripts and account activity that can be analyzed for potential refund opportunities. Refunds can be the result of overpaid deficiency interest, underpaid statutory interest on refunds, improperly assessed penalties, penalties eligible for abatement, and other IRS processing or posting errors. Because the review primarily relies on IRS transcripts and account records, the process typically requires little investment in resources or effort from the tax department while potentially producing meaningful cash recoveries.