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KPMG report: JCT Bluebook clarifies intended application of enhanced charitable contribution deduction

The staff of the Joint Committee on Taxation (JCT) on December 20, 2018, issued the *General Explanation of Public Law 115-97*—the "Bluebook." This report provides initial impressions regarding an explanation in the Bluebook (JCS-1-18) of a charitable contribution deduction measure.

The **Bluebook**—prepared in consultation with the staffs of the House Committee on Ways and Means, the Senate Committee on Finance, and the Treasury Department's Office of Tax Policy—provides an explanation of the federal tax provisions enacted in December 2017 as Pub. L. No. 115–97 (the law that is referred to as the "Tax Cuts and Jobs Act" or the "Act").

The Bluebook contains an explanation of each provision in the Act—including the reason for change to existing law—and thus may provide insight regarding congressional intent underlying those provisions. Note that the Bluebook is technically not considered "legislative history" with regard to the Act. See *FPC v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 472 (1973). Courts have applied varying degrees of deference to prior versions of Bluebooks issued with regard to prior legislation.

Bluebook explanation of section 170(b)(1)(G)

The Act added to the Code new subparagraph 170(b)(1)(G), which increases the adjusted gross income limitation for charitable contributions of cash made by individuals to public charities and certain private foundations to 60% (from the then-current 50% limitation). This new rule applies to contributions made in tax years beginning after December 31, 2017 and before January 1, 2026.

Some have interpreted the new provision as providing that the increased percentage limitation is only available if the entirety of a donor's charitable contributions for the year is made in cash. The Bluebook states that under the new provision, the 60% limitation is intended to be applied after (and reduced by) the amount of a donor's noncash contributions which, for example, would permit a donor to benefit from the 60% limitation if 50% of the contributions are of noncash property and only 10% consists of cash. Nevertheless, the Bluebook recognizes that a technical correction may be needed to reflect this intent.

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