**Q4. How is discharge of debt income allocated between taxpayers who are jointly and severally liable with respect to the discharged debt?**

 In responding to this question, the Form 1099-C regulations may cause confusion. In the case of multiple debtors (who are subject to joint and several liability) with respect to the discharge of $10,000 or more of indebtedness, the regulations require the creditor to issue a Form 1099-C to each debtor. With respect to spouses (who are co-obligors), only one Form 1099-C is required to be sent.[[1]](#endnote-1) Moreover, on each Form 1099-C (if more than one is sent to multiple debtors), the full amount of the discharged debt is reported. So if multiple debtors each receive a Form 1099-C, there may be confusion as to how much of the discharged debt each debtor must report.

 *Example*: Asher, Ashley and Joel are jointly and severally liable with respect to a $120,000 bank loan. In 2015, the bank forgives the loan and issues each co-obligor a Form 1099-C reporting the discharge of the entire $120,000 loan. If each co-obligor was required to report $120,000 as discharge of debt income, it would be triple counted.

 Although there are no regulations on point and no court has addressed this issue, in a chief counsel advice memorandum, the IRS stated that the full amount of discharge of debt should be allocated among the co-obligors (including co-obligor spouses) based on all the facts and circumstances.[[2]](#endnote-2) Thus, in the above example, if Asher, Ashley and Joel were equal partners, the $120,000 of discharged debt should be allocated among them equally.

**Q4A. Is the discharge of a guaranteed debt income to the guarantor?**

 No. The rationale for taxing discharge of debt income is the debtor’s tax-free enjoyment of the borrowed funds during the period he or she was obligated to repay the lender. Once the obligation is discharged, then it is appropriate to tax the previously enjoyed economic benefit. Conversely, a guarantor who has a contingent obligation to repay the debt (because the primary obligor defaults) never enjoyed the benefit of the borrowing. Therefore, the discharge of a guaranteed debt does not trigger discharge of debt income to the guarantor.[[3]](#endnote-3)

1. Treas. Reg. § 1.6050P-1(e)(1)(i). [↑](#endnote-ref-1)
2. Chief Counsel Advise 200023001 (June 9, 2000). [↑](#endnote-ref-2)
3. *Landreth v. Commissioner*, 50 T.C. 803 (1968); *Mylander v. Commissioner*, T.C. Memo 2014-191 (September 17, 2014). [↑](#endnote-ref-3)