2018 TAX CUTS AND JOBS ACT FOR BUSINESS

The recently enacted Tax Cuts and Jobs Act ("TCJA") is a sweeping tax package. Here's an overview of some of the more important business tax changes in the new law. Unless otherwise noted. The changes are effective for tax years beginning in 2018.

CORPORATE TAX RATES REDUCED

One of the more significant new law provisions cuts the corporate tax rate to a flat 21%. Before the new law, rates were graduated, starting at 15% for taxable income up to $50,000, with rates at 25% for income between $50,001 and $75,000, 34% for income between $75,001 and $10 million, and 35% for income above $10 million.

NET OPERATING LOSS (NOL) DEDUCTION MODIFIED

Under the new law, generally, NOLs arising in tax years ending after 2017 can only be carried forward, not back. The general two-year carryback rule, and other special carryback provisions, have been repealed. However, a two-year carryback for certain farming losses is allowed. These NOLs can be carried forward indefinitely, rather than expiring after 20 years. Additionally, under the new law, for losses arising in tax years beginning after 2017, the NOL deduction is limited to 80% of taxable income, determined without regard to the deduction. Carryovers to other years are adjusted to take account of the 80% limitation.

INCREASE IN SEC. 179 EXPENSING

The new law increases the maximum amount that may be expensed under Code Sec. 179 to $1 million. If more than $2.5 million of property is placed in service during the year, the $1 million limitation is reduced by the excess over $2.5 million. Both the $1 million and the $2.5 million amounts are indexed for inflation after 2018.

The expense election has also been expanded to cover:
(1) certain depreciable tangible personal property used mostly to furnish lodging or in connection with furnishing lodging, and

(2) the following nonresidential real property improvements made after it was first placed in service:

- roofs
- heating
- ventilation
- air-conditioning property
- fire protection and alarm systems
- security systems
- any other building improvements that are not elevators or escalators, don't enlarge the building, and are not attributable to internal structural framework

BONUS DEPRECIATION

Under the new law, a 100% first-year deduction is allowed for qualified new and used property acquired and placed in service after September 27, 2017 and before 2023. Pre-Act law provided for a 50% allowance, to be phased down for property placed in service after 2017. Under the new law, the 100% allowance is phased down starting after 2023.

LIKE-KIND EXCHANGE TREATMENT LIMITED

Under the new law, the rule allowing the deferral of gain on like-kind exchanges of property held for productive use in a taxpayer's trade or business or for investment purposes is limited to cover only like-kind exchanges of real property not held primarily for sale. Under a transition rule, the pre-TCJA law applies to exchanges of personal property if the taxpayer has either disposed of the property given up or obtained the replacement property before 2018.

ALTERNATE MINIMUM TAX REPEAL FOR CORPORATIONS

The corporate alternative minimum tax (AMT) has been repealed by the new tax law.

LIMIT ON BUSINESS INTEREST DEDUCTION

Under the new law, every business, regardless of it form, is limited to a deduction for business interest equal to 30% of its adjusted taxable income. For pass-through entities such as partnerships and S corporations, the determination is made at the entity, i.e., partnership or S corporation level. Adjusted taxable income is computed without regard to the repealed domestic production activities deduction and, for tax years beginning after 2017 and before 2022, without regard to deductions for depreciation, amortization, or depletion.

Any business interest disallowed under this rule is carried into the following year, and, generally, may be carried forward indefinitely. The limitation does not apply to taxpayers (other than tax shelters) with average annual gross receipts of $25 million or less for the three-year period ending with the prior tax year. Real property trades or businesses can elect to have the rule not apply if they elect to use the alternative depreciation system for real property used in their trade or business. Certain additional rules apply to partnerships.

NEW FRINGE BENEFIT RULE

The new law eliminates the 50% deduction for business-related entertainment expenses. The pre-Act 50% limit on deductible business meals is expanded to cover meals provided via an in-house cafeteria or otherwise on the employer's premises.

Additionally, the deduction for transportation fringe benefits (i.e., parking, and mass transit) is denied to employers, but the exclusion from income for such benefits for employees continues. However, bicycle commuting reimbursements are deductible by the employer but not excludable by the employee. Last, no deduction is allowed for transportation expenses that are the equivalent of commuting for employees except as provided for the employee's safety.

SUMMARY OF REPEALED EXPENSES

Items that are no longer deductible business expenses:

- Entertainment expenses:
    - Sports tickets, golfing
- Transportation fringe benefits:
    - Parking permits and space rental
    - Mass transit tickets
- On-site employee meals and in-house cafeteria food is now subject to the 50% deduction limitation through 2025
- Domestic Production Activities deduction

NEW DEDUCTION FOR PASS-THROUGH INCOME

The new law provides a 20% deduction for "qualified business income," defined as income from a trade or business conducted within the U.S. by a partnership, S corporation, LLC or sole proprietorship. Investment items, reasonable compensation paid by an S corporation, and guaranteed payments from a partnership are excluded. The deduction reduces taxable income but not adjusted gross income.

For taxpayers with taxable income above $157,500 ($315,000 for joint filers),

(1) a limitation based on W-2 wages paid by the business and the basis of acquired depreciable tangible property used in the business is phased in, and

(2) the deduction is phased out for income from certain service related trades or businesses, such as health, law, accounting, actuarial science, performing arts, consulting, athletics, financial or brokerage services, or where the principal asset is the reputation or skill of one or more employees or owners.

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