CUSTOM CONTENT
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TAX REFORM

Bank Economists See Solid Economic Growth Supported by Tax Reform

THE U.S. economy will continue to grow through 2019, surpassing the longest previous period of economic prosperity in the post-war era, according to the Economic Advisory Committee of the American Bankers Association.

"This expansion has already spanned nine years, supported by strengthening labor markets, low interest rates, and a late-cycle resurgence in business investment," said Ellen Zentner, chair of the group and chief U.S. economist for Morgan Stanley. "Tax reform and the potential for further regulatory easing are likely to add a further near-term boost to growth."

The consensus of 14 chief economists from among the largest North American banks is that tax cuts will boost growth this year by 0.4 percentage points, bringing GDP growth to 2.4 percent. In 2019, the committee expects tax reform to have a smaller impact, and for GDP to grow 2.0 percent.

"Tax cuts will put more money in many peoples' pockets, providing a spark to buying power as well as improving household debt dynamics," said Zentner.

With the economy operating beyond full employment, wages are likely to rise faster, further supporting household spending. The committee forecast is that the national unemployment rate, currently at 4.1 percent, will decline to 3.8 percent by year-end, accelerating wage gains to 3.0 percent this year and 3.5 percent in 2019. Altogether, the committee sees these factors sustaining consumer spending this year and into next.

The group expects business investment to add materially to growth this year as companies channel some of the tax changes into capital expenditures and increased compensation.

"Tax reform has layered on further incentives to the already strong organic growth that has characterized capital spending over the last 18 months," said Zentner.

In 2019, the committee expects growth to slow due to the front-loaded impact of the tax law, which will moderate in out years, and rising interest rates, which will make capital investments and purchases of big-ticket items such as motor vehicles more expensive.

The committee expects 10-year Treasury rates to increase from about 2.6 percent at present to 2.9 percent in December 2018, and then to continue to rise steadily next year. Nonresidential fixed investment growth is projected to be 4.7 percent this year and 3.7 percent next year. Likewise, consumer spending is projected to rise by 2.4 percent this year, slowing to 2.0 percent in 2019.

The group expects inflation to rise gradually to the Federal Reserve's 2 percent goal, allowing the Fed to continue pushing the federal funds rate gradually higher without risk of significantly dampening economic growth. Following three rate hikes last year, the group consensus is for another three this year and two in 2019.

"If economic growth and inflation surprise to the upside, then the Fed could move more aggressively," said Zentner.

The committee sees sustained strength in the availability of bank loans. Delinquency and charge-off rates will remain near historical lows. Bank consumer credit grew 5.4 percent last year and is forecast to grow 5.9 percent this year, while business credit rose 1.4 percent last year and is forecast to grow 3.6 percent in 2018.

"Banks are in an excellent position to support continued expansion, and household balance sheets remain strong," said Zentner.

The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend more than $9 trillion in loans.

TAX REFORM

Multinational Companies Should Start Preparing Now for Monumental Changes in New Tax Law

By BILL ARMSTRONG

THE Tax Cuts and Jobs Act makes fundamental changes to how multinational businesses are taxed for federal income tax purposes.

The following is a summary of some of the most significant implications.

MANDATORY DEEMED REPATRIATION

For the last tax year beginning before January 1, 2018, the act imposes a new tax on a US shareholder's pro rata share of post-1986 accumulated foreign earnings of a specified foreign corporation. This is generally any foreign corporation controlled by US owners or with at least one 10% US shareholder that is a C corporation.

ARMSTRONG

The tax is imposed through section 965. C Corporations are provided with an offsetting deduction intended to reduce the rate of tax imposed to 15.5% for earnings held in cash or cash equivalents. There's a further reduced rate of 8% for earnings invested in other assets. A reduced foreign tax credit is allowed for taxes attributable to the section 965 inclusion. Non-C Corporations aren't afforded either the deduction or, generally, the credit.

Taxpayers can elect to pay the resulting liability over an eight-year period, which is more heavily weighted to the later years.

Those taxpayers will be required to compute their:

- Foreign subsidiaries' net cash (or cash equivalent) positions
- Accumulated post-1986 foreign (E&P), their inclusion amounts, and deductions for 2017 tax provisions and tax filings
- Attributable foreign taxes paid (for C corporation shareholders)

The first payment will be due at the same time as the original due date for the return for the year in question.

MODIFIED TERRITORIAL AND PARTICIPATION EXEMPTION SYSTEM

The act allows for a 100% dividends received deduction for US C corporation shareholders of specified 10%-owned foreign corporations, effective for tax years beginning after December 31, 2017.

This means dividends from foreign affiliates may, in the future, not be subject to US federal income tax—unless the income is subject to Subpart F or another anti-deferral provision.

There is a one-year holding period requirement and an exclusion for what's known as hybrid dividends. Any foreign withholding taxes associated with the dividend are neither creditable nor deductible.

NEW SUBPART F

The definition of a US shareholder has changed under the new tax law to include US persons owning 10% or more of the total value of all classes of stock.

This means that holders of nonvoting preferred shares in a foreign company may now be subject to Subpart F inclusions. With the law change, a US corporation is considered to constructively own the shares that its foreign controlling shareholder owns.

BASE EROSION—A NEW CONCEPT NEW TAXABLE EVENTS

The act has additional provisions similar to those being implemented in many foreign countries under the Organization for Economic Co-operation and Development's base erosion and profit shifting initiative (BEPS).

As a starting point, it repeals the active trade or business exception to gain recognition on outbound transfers. It also expands the definition of intangible property to include goodwill, going concern and similar previously excluded intangibles.

The combination of these two rules effectively defines the following as taxable events:

- Outbound transfers of a trade or business
- Incorporation of a foreign branch office

GLOBAL INTANGIBLE LOW-TAXED INCOME TAX

The law also imposes a tax on global intangible low-taxed income, known as GILTI. Under the new rules, the shareholder of a controlled foreign corporation with an overall rate of return greater than a 10% rate of return on the entity's tangible assets will potentially be subject to a minimum tax in the United States.

In essence, for tax years 2018 through 2025, the intangible profit earned by a CFC will be subject to a US minimum tax unless the CFC pays an effective foreign tax rate of 13.125%. Intangible profit is defined as most CFC earnings reduced by a 10% return on depreciable assets. After 2025, that minimum tax rate increases to 16.406%.

However, under a congruent provision for foreign-derived intangible income, the act created an incentive that will allow US companies to pay a reduced tax rate of 13.125% on foreign intangible income.

NEXT STEPS

For more information about how the Tax Cuts and Jobs Act could affect you and your business, visit our dedicated tax reform page at mossadams.com/taxreform.

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The State of Tax Reform is Strong

By COURTNEY MANLEY

HERE are some considerations in response to concerns about the new tax bill.

"AMERICAN BUSINESSES CAN'T COMPETE"

- Tax reform will increase after-tax incomes for businesses, allowing them to invest more in their workers.
- Cutting the corporate income tax rate isn't a new idea - even President Obama proposed cutting the CIT tax rate to spur economic growth. But President Trump made it a reality.
- Reducing the corporate income tax will relocate corporate profits to the United States, boosting workers' incomes.
- Full business expensing eliminates arcane IRS complexities for businesses to recovery costs & invest.

"TAX REFORM WON'T HELP THE ECONOMY"

- Tax code compliance cost the economy $262.2 billion last year alone. Simplifying the tax code will reduce this figure.
- Currently, 94 percent of individual taxpayers & 85 percent of small business owners pay a professional tax preparer or online service to do their taxpayers for them.
- Reducing compliance costs through tax reform will save Americans $13 billion and 210 million hours of paperwork.
- Full business expensing helps maximize the growth potential of any tax reform plan by making investment easier and cheaper.

"THE TAX CUT AND JOBS ACT HELPS TOO FEW AMERICANS"

- Small business owners pay their taxes on their personal tax returns; decreasing individual rates provides relief for the job creators of America.
- Who actually takes the State and Local Tax deduction? Fewer people than you think.
- Why is tax reform focused on small business? Over 62% of Millennials have considered starting their own business; nearly 75% believe that startups & entrepreneurs are essential for innovation.
- More than one-third of the largest generation in the American workforce is both a worker and a business owner. Tax reform responds to the new reality of work in America.
- Who Pays Income Taxes? Top 1 percent of earners paid 39 percent of income taxes.
- SALT is a tax break for wealthier Americans, with very few benefits flowing towards Americans with lower incomes.

"TAX REFORM MAKES THE TAX CODE MORE COMPLEX"

- Tax reform means well over 90 percent of filers will no longer have to itemize their taxes, tremendously easing their tax compliance burden.
- Because of tax reform, 30 million people will not longer have to endure the frustration of itemizing.
- A modern economy needs a modern tax code: the Tax Cut and Jobs Act was the first major overhaul of the tax code in 30 years.
- Each taxpayers who is now able to take the standard deduction thanks to tax reform will save an average of 7 hours and $190 in costs.

"CONSERVATIVES AREN'T UNITED AROUND TAX REFORM"

- Republican Senators, Administration Officials and Conservative Leaders Agree: the time for tax reform is now
- Nearly 40 groups representing millions of taxpayers endorse the Tax Cuts and Jobs Act.
- 23 Conservative Groups Support the "Tax Cuts and Jobs Act"
- NTU, Conservative Coalition Endorses Tax Reform Framework Coalition to Congress: Include Three Critical Pro-Growth Provisions in Comprehensive Tax Reform

Information fro this article was provided by the National Taxpayers Union (NTU), the Voice of America's Taxpayers. NTU mobilizes elected officials and the general public on behalf of tax relief and reform, lower and less wasteful spending, individual liberty, and free enterprise.

TAX REFORM

Americans' Financial Satisfaction Hits Record High

EXPLOSIVE gains in the stock market and a decline in underemployment overcame rising inflation to advance Americans' personal financial satisfaction to its highest level in the 24-year history of the *AICPA's Personal Financial Satisfaction Index (PFSi)*. The new high reached by the Q4 2017 *PFSi*, released last month, eclipses the previous record reached last quarter and continues a run of seven consecutive quarters the *PFSi* has increased.

The *PFSi* is calculated as the Personal Financial Pleasure Index minus the Personal Financial Pain Index, with readings greater than zero signaling that Americans are feeling more financial pleasure than pain. The Q4 2017 *PFSi* measured 26.9, a 1.2-point increase from the prior quarter. The increase was due to a slight gain (1.3 points) in the Personal Financial Pleasure Index outweighing a modest (0.1 point) increase in the Personal Financial Pain Index.

The Personal Financial Pleasure Index, at 69.2, is up 1.3 points from the previous quarter, continuing its steady increase, setting a record for the fourth quarter in a row. The PFS 750 Market Index, up 5.2 percent, experienced the largest increase over the previous quarter and was only somewhat offset by a 3.0 percent decline in Job Openings per Capita. The other two pleasure factors, the Real Home Equity per Capita and the AICPA CPA Outlook Index, both increased slightly.

"Americans should continue to reassess their personal risk tolerance, and work with their financial advisers to determine how best to approach investment decisions in 2018," said David Cherill, CPA, member of the AICPA Personal Financial Planning Executive Committee. "Many of my clients have more confidence than ever in the market, while others are scared to death and have already taken considerable gains off the table. The potential for volatility remains, but this market has thus far been immune to many of the factors that have resulted in large swings in the past."

The PFS 750 Market Index continues to be the biggest contributor to the Pleasure Index, a trend that began in 2009 and continued in Q4 as the component rose 5.2 percent over Q3 to a record high for the fourth successive quarter. This most recent record high coincides with records set by all three of the major US indices — Nasdaq, S&P 500 and Dow Jones, which all experienced record highs in December. The current level of the PFS 750 Market Index is a robust 15.7 percent above the Q4 2016 reading as the steady expansion of the U.S. economy continued and corporate earnings improved. The strongest market performers in the final quarter of the year were the consumer discretionary sector, which gained just over 11 percent, followed closely by technology which advanced almost 10 percent.

The Job Openings Per Capita Index, the second largest contributor to the Pleasure Index, decreased 3.0 percent since the prior quarter, declining for the first time since Q4 2016. Compared to Q3, job growth in food services, construction and real estate and leasing was outweighed by job decreases in wholesale trade, finance and insurance and information. Overall job openings set a record last quarter at a total of 6.2 million before backing off a few percent to its current level, 6.0 million. (Note: Q4 *PFSi* uses data for October).

The Personal Financial Pain Index, at 42.3, is 12.1 percent lower than the prior year but 0.2 percent higher than the preceding quarter. The slight increase in the Pain Index from the preceding quarter was largely due to a 14.1 percent increase in the Inflation Index overcoming the combined declines of the three other factors that make up the Pain Index, most notably an 8.0 percent decline in underemployment. The minor increase of the Pain Index barely held back the overall improvement of the *PFSi*.

Personal taxes, the leading overall contributor to financial pain for the seventh quarter in a row, showed a 1.5 percent increase from a year ago and a decrease of 0.9 percent from the previous quarter. Among all of the other statistics, this factor uses information from the Bureau of Labor Statistics on income tax, tax on realized net capital gains and taxes on personal property. The current personal tax reading does not reflect he the recently signed tax bill. Any effect from the new tax law would be seen in future quarters.

"The impact of the new tax law on individuals remains to be seen. Americans should monitor their tax situation closely this year as the withholding tables are changing and could result in under withholding of taxes," said Lisa Featherngill, CPA/PFS, member of the AICPA Personal Financial Planning Executive Committee. "I suggest meeting with your CPA financial planner in the 2nd quarter and 4th quarter of 2018 to ensure your financial plan is maximizing the opportunities under the new law."

ADDITIONAL FINDINGS FROM THE Q4 2017 *PFSI*:

The Real Home Equity per Capita Index current value is still 15.2 percent below its 2006 all-time high. The changes in value have been due to increases in the market value of real estate exceeding increases in mortgages outstanding.

The AICPA CPA Outlook Index, which captures the expectations of CPA executives in the year ahead for their companies and the U.S. economy, saw an increase of 3.5 percent above the previous quarter.

The Q4 Inflation index value is 39, up 14.1 percent from 34 in Q3 and 18.4 percent down from last year's Q4 level of 48. Inflation is the most volatile factor contributing to the *PFSi*. The Q4 Inflation Index relies on the Federal Reserve's November level. The blended inflation measure for Q4 is 1.5 percent, still below the Federal Reserve's 2 percent target for inflation.

Delinquencies on Loans current level is 17.6 percent lower than in the prior year and 1.9 percent below the previous quarter's level. All the improvements quarterly and most of those from a year ago are due to delinquencies on mortgages. Though the current reading of delinquencies on mortgages (3.62 percent) is well below the peak delinquency rate for mortgages (11.26 percent) set in the spring of 2010, it is still above what was typical between 1994 through 2003 (2.12 percent).

Underemployment, at 36 points, is 16.1 percent lower than the prior year level and 8.0 percent below the Q3 level.

Learn more at: www.aicpa.org/PFSi.

TAX REFORM

Tax Cuts and Jobs Act: The New Favorable Deduction for Passthrough Entities

By DAVID ERARD

THIS article will focus on the Internal Revenue Code ("IRC") §199A, which provides a new deduction of up to 20% of a taxpayer's Combined Qualified Business Income Amount ("CQBIA") starting in 2018. A full description of §199A provisions is beyond the scope of this article, which will provide a high-level overview of the deduction and some preliminary thoughts. Taxpayers stand to save up to 7.4% on their Federal taxes related to CQBIA, and this significant benefit is deservedly getting a lot of attention.


ERARD

SOURCES OF QUALIFIED BUSINESS INCOME ("QBI")

In the text of the TCJA, the §199A provisions were added under Part II – Deduction for Qualified Business Income of Pass-Thru Entities, and many in the tax community had expected that this new deduction would only apply to trade or business income allocated to an individual from a partnership or S-Corporation. However, the text of §199A itself does not limit the deduction to amounts allocated from pass-thru entities, apparently expanding the population of taxpayers who stand to benefit.

At a high level, QBI consists of the net ordinary rate income a taxpayer receives during a year from a qualified trade or business ("QTB"). The new deduction can be up to 20% of a taxpayer's CQBIA, which consists of the following items:

1) QBI allocated to taxpayers from passthrough entities.

2) QBI reported directly on "Schedule C" of form 1040 (single-member LLCs and sole proprietorships).

3) Qualified REIT dividends.

4) Qualified PTP income.

The calculation of CQBIA will not be as simple as combining the net taxable income from the above sources; certain limitations need to be applied separately to each source of QBI, presenting its own set of challenges.

DEFINING A QTB

QTB is defined broadly as any trade or business other than (1) a specified service trade or business ("STB"), or (2) being an employee. STBs are defined largely by reference to IRC §1202 provisions (with certain modifications), as well as investing and investment management, and trading or dealing in securities, partnership interests, or commodities.

It remains unclear at this point when a given activity will rise to the level of being a QTB. Would an actively managed rental real estate property be viewed differently than a triple-net lease? Given that REIT dividends qualify for the 20% QBI deduction, and that REITs are intended to be passive in nature, there does not appear to be a reason rents within a REIT would be treated differently than those from a property in a partnership.

It is also unclear how taxpayers can "group" different items under §199A. Could trade or business activities in separate passthrough entities be "grouped" using a similar approach to the IRC §469 passive activity rules, or will there be new standards under §199A? There are many questions that will require additional guidance from the government.

LIMITATIONS ON QBI DEDUCTION

Taxpayers with taxable income below $175,000 ($315,000 for joint returns) may be able to claim the QBI deduction even if their income is from a STB.ww Taxpayers with income above the threshold amounts may be eligible for a partial QBI deduction, but high earners are not eligible for a QBI deduction from STBs, and are also subject to additional limitations. The QBI deduction for high-income taxpayers, still subject to the overall 20% of CQBIA limitation, also cannot exceed the greater of (A) 50% of the taxpayer's W-2 wages from that QTB or (B) 25% of the taxpayer's W-2 wages plus 2.5% of the unadjusted basis immediately after acquisition of all qualified property. Accordingly, where a taxpayer's taxable income exceeds certain threshold amounts, the QBI deduction must be supported by the taxpayer's share of these certain business attributes. These limitations are clearly intended to benefit taxpayers who pay wages to employees and make capital expenditures within the U.S.

THE TAKEAWAYS

The new QBI rules may appear fairly simple in concept, but there are many important questions without answers, and the devil will be in the details. Taxpayers will need to monitor developments in this area, and may need to consider modifications to their current structures, as well as their ability to produce the necessary information for owners to calculate the QBI deduction. It will also be very interesting to see how the IRS coordinates these new provisions with recently released rules that were intended to simplify audits of passthrough entities and allow the IRS to make certain adjustments at the entity level; the actual impact to owners of a change in passthrough amounts will now be even harder to determine.

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HCVT provides tax, audit and assurance, business management, and mergers & acquisition services. The team consists of over 550 members, including over 100 partners and principals. HCVT serves its clients from eight offices in Southern California and offices in Northern California, Ft. Worth, Texas and Park City, Utah. To learn more about HCVT, see www.hcvt.com.

Taxpayers Could See Paycheck Changes this Month

THE Internal Revenue Service last month released Notice 1036, which updates the income-tax withholding tables for 2018 reflecting changes made by the tax reform legislation enacted last month. This is the first in a series of steps that IRS will take to help improve the accuracy of withholding following major changes made by the new tax law.

The updated withholding information, posted recently on IRS.gov shows the new rates for employers to use during 2018. Employers should begin using the 2018 withholding tables as soon as possible, but not later than Feb. 15, 2018. They should continue to use the 2017 withholding tables until implementing the 2018 withholding tables.

Many employees will begin to see increases in their paychecks to reflect the new law in February. The time it will take for employees to see the changes in their paychecks will vary depending on how quickly the new tables are implemented by their employers and how often they are paid — generally weekly, biweekly or monthly.

The new withholding tables are designed to work with the Forms W-4 that workers have already filed with their employers to claim withholding allowances. This will minimize burden on taxpayers and employers. Employees do not have to do anything at this time.

"The IRS appreciates the help from the payroll community working with us on these important changes," said Acting IRS Commissioner David Kautter. "Payroll withholding can be complicated, and the needs of taxpayers vary based on their personal financial situation. In the weeks ahead, the IRS will be providing more information to help people understand and review these changes."

The new law makes a number of changes for 2018 that affect individual taxpayers. The new tables reflect the increase in the standard deduction, repeal of personal exemptions and changes in tax rates and brackets.

For people with simpler tax situations, the new tables are designed to produce the correct amount of tax withholding. The revisions are also aimed at avoiding over- and under-withholding of tax as much as possible.

To help people determine their withholding, the IRS is revising the withholding tax calculator on IRS.gov. The IRS anticipates this calculator should be available by the end of February. Taxpayers are encouraged to use the calculator to adjust their withholding once it is released.

The IRS is also working on revising the Form W-4. Form W-4 and the revised calculator will reflect additional changes in the new law, such as changes in available itemized deductions, increases in the child tax credit, the new dependent credit and repeal of dependent exemptions.

The calculator and new Form W-4 can be used by employees who wish to update their withholding in response to the new law or changes in their personal circumstances in 2018, and by workers starting a new job. Until a new Form W-4 is issued, employees and employers should continue to use the 2017 Form W-4.

In addition, the IRS will help educate taxpayers about the new withholding guidelines and the calculator. The effort will be designed to help workers ensure that they are not having too much or too little withholding taken out of their pay.

For 2019, the IRS anticipates making further changes involving withholding.
The IRS will work with the business and payroll community to encourage workers to file new Forms W-4 next year and share information on changes in the new tax law that impact withholding.

Information for this article was provided by the IRS.

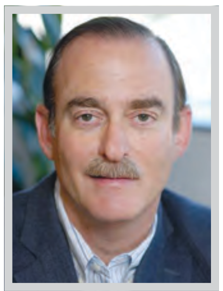
The Impact of the New Tax Law on Real Estate Investment

By PAUL ROSENKRANZ

THE Tax Cuts and Jobs Act (TCJA) is the most far reaching tax change to affect the real estate sector since the Tax Reform Act of 1986. Real estate fared pretty well under the new law, and real estate owners should consider the impact of the following changes.

PASS-THROUGH ENTITIES

Pass-through entities (partnerships, LLCs, and S corporations) and sole proprietorships for both individuals and trusts can deduct up to 20 percent of qualified business income. The deduction is limited to the lesser of (a) 20 percent of qualified business income, or (b) the amount that is the greater of (i) 50 percent of W-2 wages paid by the qualified business or (ii) 25 percent of W-2 wages paid plus 2.5 percent of the unadjusted basis of qualified depreciable property used in the qualified business. Real estate with little or no W-2 wages benefit from this latter test.



ROSENKRANZ

The new deduction is available to passive investors. REIT dividends are eligible for the deduction whereas interest and other dividends and gain from the sale of real estate (except for depreciation recapture) are not. It is unclear if a triple net lease property qualifies for the 20 percent deduction.

DEPRECIATION

The TCJA improves the already favorable depreciation rules. Qualifying property placed in service after Sept. 27, 2017 is eligible for 100 percent bonus depreciation, but bonus depreciation drops by 20 percent per year beginning in 2023, until it is eliminated in 2027. For the first time, the 100 percent expensing is available for used property. Eligible assets are those with a depreciable life of 20 years or less – personal property and "qualified improvement property" defined as work done to the interior of a commercial building, excluding costs related to the enlargement of a building, an elevator or escalator, or the internal framework of the building. A drafting error failed to grant qualified improvement property the reduced 15-year class life necessary for bonus depreciation, but it is expected this will be corrected in the future.

Section 179 also permits the expensing of assets for commercial property. TCJA expands the annual Section 179 limitation from $500,000 to $1 million, with a phase-out beginning at $2.5 million for qualifying assets placed in service. For the first time, Section 179 property includes roofs, HVACs, fire protection and alarm systems, and security systems.

BUSINESS INTEREST LIMITATION

The TCJA limits the interest expense deduction for any business with more than $25 million gross revenue to its interest income plus 30 percent of its adjusted taxable income (essentially EBITDA). Excess unused business interest can be carried forward indefinitely. The new limitation could have a dramatic impact on large, debt-financed real estate property. Fortunately, a rental property owner can elect out of this rule, but the trade-off is that all depreciable property must be depreciated using ADS rules. Under ADS, bonus depreciation is not available, but Section 179 is available. Electing to avoid the interest expense limitation will likely be beneficial for most taxpayers.

EXCESS BUSINESS LOSSES

The TCJA adds a new loss limitation rule for individuals of $500,000 for joint filers ($250,000 single). A real estate owner with an overall tax loss can only use $500,000 of it to shelter non-real estate income (e.g., wages, interest, dividends, capital gains). Excess losses carry over. Passive loss limitation rules still apply, so the excess business loss provisions will have their greatest impact on qualifying "real estate professionals."

1031 EXCHANGES

The new tax law preserves Section 1031 like-kind exchanges for income-producing or investment real estate. Exchanges of personal property were eliminated.

CARRIED INTERESTS

Holders of carried interests - real estate holders of a "promote" or "back end" interest – will continue to enjoy capital gains treatment with one significant change. The holding period for long-term capital gains tax treatment was extended from one to three years.

TAX CREDITS

All real estate tax credits except the Rehabilitation Credit for non-historic buildings built before 1936 were retained under the TCJA.

TAKE THE TIME TO REVIEW THE LAW

The changes to business and individual tax provisions may affect tax planning strategies. It is recommended real estate professionals work closely with their tax advisors to evaluate the impact of the new tax law.

Paul Rosenkranz is a Lead Managing Director for the Los Angeles office of CBIZ and MHM. He has more than 35 years of experience in tax planning for individuals, family-owned and closely-held businesses, including significant experience in the real estate sector.

TAX REFORM

2017 Tax Reform Act — Unrelated Business Income

By LIZBETH NEVAREZ

THE 2017 Tax Reform Act that was passed on December 22, 2017 has significant changes that impact tax exempt organizations. As trusted advisors serving more than 100 nonprofit clients, Green Hasson Janks has highlighted select provisions of the Act. Here is a summary of the changes:

PROVISION: DISALLOWED FRINGE BENEFITS SUBJECT TO UNRELATED BUSINESS TAXABLE INCOME

PRE-REFORM LAW

Prior to 2018 tax exempt organizations were allowed to provide certain fringe benefits to employees and those benefits were not treated as unrelated business income to the tax exempt organization or included as taxable wages to the employee.

TAX REFORM LAW

Any of the following disallowed fringe benefit expenses, which are paid or incurred by the organization after 2017, will be included as unrelated business income to the tax exempt organization.

Qualified Transportation Fringe includes:

• Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

• Any transit pass

• Any qualified bicycle commuting reimbursement.

Parking Facility Used in Connection with Qualified Parking

• Parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation.

On-premises Athletic Facility

• The value of any on-premises athletic facility provided by an employer to his employees.

• "On-premises athletic facility" means located on the premises of the employer and operated by the employer

IMPLICATIONS

Should a tax exempt organization decide to no longer provide such fringe benefits, the organization has the option of increasing an individual's overall wages to compensate for such expenses now being incurred by its employees.

If organizations decide to continue to provide these nondeductible fringe benefits they will need to file the Form 990-T and pay tax on the employee benefits at the corporate tax rate.

PROVISION: SPECIAL RULE FOR ORGANIZATIONS WITH MORE THAN 1 UNRELATED TRADE OR BUSINESS

PRE-REFORM LAW

Tax exempt organizations that carried on more than 1 unrelated trade or business were able to aggregate deductions generated by one trade or business to offset income earned by another.

TAX REFORM LAW

• Tax exempt organizations with more than 1 unrelated trade or business must calculate the unrelated business income for each trade or business separately. Organizations may no longer use deductions from one trade or business to offset the income from a separate trade or business. Gains and losses have to be calculated and applied separately.

• Net operating losses carryovers from operations before January 1, 2018 will still be allowed to offset income derived from another unrelated trade or business. The requirement will apply to tax years beginning after December 31, 2017.

• The tax reform law limits the net operating loss deduction to 80% of taxable income for tax years beginning after December 31, 2017.

• Carry back of losses has been eliminated but operating losses can be carried forward indefinitely.

IMPLICATIONS

• Tax exempt organizations should analyze their current unrelated business income tax cost allocation methodology to ensure all the appropriate expenses are being allocated to the correct unrelated trade or business.

• Another option is for organizations to consider moving their current activities into a separate wholly owned corporation in order to report and offset the unrelated trade or businesses together under one entity.

PROVISION: NET OPERATING LOSS DEDUCTION

PRE-REFORM LAW

Net operating losses could be carried back 2 years and carried forward for 20 years. The entire loss could be used to offset 100% of the taxable income in a current year.

TAX REFORM LAW

• The tax reform law limits the net operating loss deduction to 80% of taxable income for tax years beginning after December 31, 2017.

• Carry back of losses has been eliminated but operating losses can be carried forward indefinitely.

IMPLICATIONS

Tax exempt organizations with an unrelated trade or business will still have to pay tax on 20% of unrelated business income when applying prior year net operating losses.

OTHER TAX REFORM LAWS

Another change that mostly impacts private colleges and universities:

• Excise tax equal to the corporate tax rate of 21% on the tax exempt organization for executive compensation in excess of $1 million. The tax also applies to parachute payments. The excise tax on compensation was really meant to target the larger colleges and universities that are paying large compensations to coaches in the athletic department.

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