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CERTIFIED PUBLIC ACCOUNTANTS | TAX & ADVISORY SERVICES

TAX CUSTS AND JOBS ACT
BRIEF SUMMARY OF KEY PROVISIONS

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I. Individual Tax Rates and Deductions

(A) Tax rates lower for most taxpayers. (See rate schedules attached).

(B) Itemized deductions curtailed:

(1) $10,000 total limitation for state and local income taxes and real property taxes combined. Applies only to liabilities of individuals (and trades or businesses, including rental operations).

(2) Mortgage interest limited to interest on $750,000 mortgage debt on a residence (unless indebtedness was incurred before 12/15/17 which can be up to $1,000,000). Deduction for interest on up to $100,000 home equity loan is generally eliminated (unless funds can be traced to investment or business use or constitutes residential acquisition indebtedness within the above limits).

(3) Miscellaneous deductions virtually eliminated.

(4) Casualty loss deductions eliminated unless due to a disaster declared by the President.

(5) Other itemized deductions remain: medical expenses subject to 7.5% floor, charitable contributions generally up to 60% of adjusted gross income and investment interest expense to the extent of investment income.

(C) "Standard deduction" raised to $12,000 for single individuals, $24,000 for married couples and $18,000 for heads of household.

(D) Personal exemptions eliminated.

(E) Overall impact on regular tax liability for many taxpayers is minimal. (See comparative analysis attached.)

II. Other Provisions Affecting Individuals

(A) Child Credit:

(1) Increased from $1,000 to $2,000 per child, with $1,400 refundable.

(2) Phased-out beginning at $200,000 of income for single individuals and $400,000 for married couples.

(B) Alternative Minimum Tax:

(1) Alternative Minimum Tax (AMT) remains for individuals but with higher exemptions ($109,400 for married couples and $70,300 for all other taxpayers except estates and trusts) and higher phaseout thresholds ($1,000,000 for married couples and $500,000 for all others except estates and trusts). This, together with the severe limitations on itemized deductions for state and local income and real property taxes and the elimination of miscellaneous deductions, will result in far fewer individuals being subject to AMT.

(2) The Alternative Minimum Tax for C-corporations has been eliminated.

(C) Section 529 Plans can distribute up to $10,000 annually for K-12 education expenses.

(D) Alimony payments are no longer taxable to the recipient nor deductible to the payor, effective for divorces occurring in 2019 or thereafter.

(E) "Kiddie Tax" provisions now require using trusts and estates rate schedules (rather than the parent's rate schedule) to compute the tax on unearned income over $2,100 for children under 19 (or under 24 if they are full-time students).

(F) The "individual mandate" penalty for not having health insurance has been eliminated.

III. New Deduction for "Pass-Through" Income

(A) Defined as the lesser of 20% of taxable income or 20% of Qualified Business Income (QBI), subject to limitations.

(B) Qualified Business Income (QBI) is generally any business income which is taxed directly to an individual taxpayer (non C-corporation income).

(1) There is no limit on the maximum amount of QBI (except the W-2 wage/capital limit noted below) other than for "specified service businesses".

(2) For "specified service businesses", the 20% deduction is phased-out for single individuals with taxable income between $157,500 and $207,500 and married couples with taxable income between $315,000 and $415,000. "Specified service businesses" include the professions, other than engineering and architecture, health related services, consulting and financial or brokerage services, or any business for which the principal asset is the reputation or skill of its employees or owners.

(3) For other than "specified service businesses", QBI is limited to 50% of W-2 wages when taxable income exceeds certain levels. For single individuals this limitation is phased-in between $157,500 and $207,500 of taxable income, and for married couples between $315,000 and $415,000 of taxable income, (Note that there is an alternative formula based on 25% of W-2 wages and 2.5% of capital investment.)

IV. C-Corporations

(A) Income tax rate reduced to a flat 21%.

(B) Personal Service Corporations are no longer subject to a special rate, so their income is now also taxed at a flat 21%.

(C) The Alternative Minimum Tax (AMT) has been repealed.

(D) The corporate dividends received deduction has been modified (to produce approximately the same tax on dividends after considering the new 21% corporate tax rate).

(E) Note that most Act provisions affecting corporations are permanent, while most provisions affecting individuals expire after 2025.

V. Other Provisions Affecting Businesses

(A) Elimination of deduction for entertainment expenses (but not business meals or business travel).

(B) Generous depreciation and write-off of business assets.

(1) Increases from 50% to 100% the first-year bonus depreciation deduction for both new and used "qualified property" placed in service after 9/27/17, but is phased-out beginning in 2023.

(2) Under Code Sec. 179, taxpayers can now elect to write-off the full basis of "qualifying property" up to $1,000,000 annually, with phase-out starting at $2,500,000 of "qualifying property".

(3) Increases the depreciation limits for "luxury" automobiles.

(C) Limitation on interest expense deduction for businesses with average gross receipts of $25,000,000 or more.

(1) Limit is the business's interest income plus 30% of its adjusted taxable income.

(2) For pass-through entities, the limit is applied at the entity level.

(3) Any unused deduction generally can be carried forward indefinitely.

(D) Net Operating Losses (NOLs).

(1) Limits the deduction to 80% of the taxable income for the year to which the loss is carried. (For taxpayers other than corporations, the deduction limit is 90% until tax years beginning after 2022.)

(2) Any unused NOL may be carried forward indefinitely, but there is no longer a carryback of NOLs.

(3) NOLs arising in years beginning after 12/31/17 are adjusted for an inflation factor.

(E) The Domestic Production Activities Deduction has been repealed.

(F) Like-Kind Exchange treatment is now limited to real property that is not held primarily for sale. (Personal property no longer qualifies.)

VI. Estates and Trusts Related Provisions

(A) Income Tax:

(1) Tax rates - Four brackets: 10%, 24%, 35% and 37%. Note that an estate or trust reaches the highest bracket with taxable income over $12,500, so these bracket changes have little impact.

(2) Itemized deductions curtailed - Most limitations on deductions that apply to individuals also apply to estates and trusts (eg. $10,000 combined limitation for state and local income taxes and real property taxes). (However, some commentators believe that an argument can be made that at least some activities of an estate or trust qualify under Code Sec. 212 as activities for the production of income, thereby avoiding these limitations.)

(3) Elimination of miscellaneous itemized deductions.
Note: Without regulations or further clarification, it is unclear if the deduction for trustee fees, lawyer fees, accountant fees, etc., will be affected. However, at this time, we believe that such fees will be treated as deductions in arriving at adjusted gross income, not itemized deductions, and therefore will remain deductible.

(4) An estate or trust will be allowed a deduction of up to 20% of business income it receives from pass-through entities (under the same rules which apply to individuals).

(5) Deduction for personal exemption amounts unchanged. Estates - $600, Simple Trust - $300, and Complex Trust - $100.

(6) AMT- exemptions and phaseout limits unchanged.

(7) Income tax paid by an estate or trust, as well as income flowing through to a beneficiary, will likely increase due to the reduction in itemized deductions and the minimal tax rate changes.

(B) Estate, Gift and Generation-Skipping Transfer (GST) Tax:

(1) The Federal Estate, Gift and GST Tax Exemption is doubled for decedents dying and gifts made after December 31, 2017 from $5,000,000 to $10,000,000 (indexed for inflation since 2012). The 2018 Federal exemption is approximately $11,200,000 per individual and $22,400,000 for married persons. After 2025, the increased exemption amount is scheduled to revert to the original exemption amount (with continued indexing for inflation).

NOTE: Even with the substantial increase in the Federal exemption, it is still important to consider estate planning at this time:

- As noted above, the increased exemption is scheduled to revert to its previous exemption amount after 2025, and there is always the chance that these exemption amounts may be modified in the future, and in particular if there is a change in administration in three years.

- Individuals may want to utilize some of this exemption while it is available with lifetime gifting strategies.

- Many states (including NYS) impose an estate tax (with typically lower exemption amounts).

(2) Step-up in basis retained.

(3) Annual gift exclusion increased to $15,000 per donee per year in 2019.

(4) NYS exemption - Under current law, on January 1, 2019 the NYS exemption is set to match the federal exemption; however, it should be noted that New York Tax Law Section 951(a) expressly provides that any reference to relevant Internal Revenue Code provisions generally means the United States Internal Revenue Code of 1986, with all amendments enacted on or before January 1, 2014. So absent additional NYS legislation, it is likely that the NYS exemption will remain tied to the $5,000,000 exemption (indexed for inflation since 2012). The 2018 NYS exemption is $5,250,000.

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